Chapter 4: Ethics

Please note. Corrections were made to this workbook through January of 2017. No subsequent modifications were made. For clarification about acronyms used throughout this chapter, see the Acronym Glossary at the end of the Index.

For your convenience, in-text website links are also provided as short URLs. Anywhere you see **uofi.tax/xxx**, the link points to the address immediately following in brackets.

INTRODUCTION

Circular 230 provides ethics rules for tax preparers and practitioners, but these rules apply only to activities that fall within the definition of "practice before the IRS." **Practice before the IRS** is generally defined as preparer or practitioner activity that addresses any matter with the IRS that relates to a taxpayer's rights, privileges, or liabilities under federal tax law.[1] Actions of the preparer or practitioner that fall outside the scope of such practice before the IRS are not subject to Circular 230.

The tax professional with other professional licenses is likely subject to professional codes of conduct that may have wider scopes than Circular 230's "practice before the IRS." Examples of such codes of conduct include the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct and state bar association ethics rules for attorneys. Professional codes of conduct and Circular 230 both apply to practice activities and services provided to clients that fall under the scope of these two sets of standards.

Note. For a helpful resource that provides further details about specific ethics rules (and links to access further information), see **uofi.tax/16a4x1** [www.irs.gov/Tax-Professionals/Enrolled-Agents/Information-for-Tax-Professionals]. For a list of Internal Revenue Bulletins that publish disciplinary sanctions imposed by the IRS Office of Professional Responsibility (OPR) against specific preparers or practitioners, see **uofi.tax/16a4x2** [www.irs.gov/Tax-Professionals/Enrolled-Actuaries/Disciplinary-Sanctions-Internal-Revenue-Bulletin].

Circular 230 is administered and enforced by the OPR.

Although this chapter focuses on the rules within Circular 230, there are other IRS rules specific to tax preparation that tax preparers must keep in mind. For example, IRS Pub. 1345, *Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns,* provides rules for e-filing returns.

Note. For further details on rules associated with e-filing, including the six security and privacy standards that e-filers must meet, see IRS Pub. 1345 at **uofi.tax/16a4x3** [www.irs.gov/pub/irs-pdf/p1345.pdf].

1. Circular 230, §10.2(a)(4).

Beyond the due diligence requirement in §10.22 of Circular 230, the IRS provides specific guidance on due diligence associated with the earned income credit (EIC), additional child tax credit, American opportunity credit, and offshore asset reporting. These are rules that tax preparers must bear in mind when preparing tax returns.

> **Note.** Specific guidelines on due diligence for the EIC and for offshore asset reporting are provided at **uofi.tax/16a4x4** [www.eitc.irs.gov/Tax-Preparer-Toolkit/dd/Preparer-Due-Diligence] and **uofi.tax/16a4x5** [www.irs.gov/pub/irs-utl/fbar_document_on_irs_gov_ver_08-04-10.pdf], respectively.

Although the rules of Circular 230 appear straightforward, their actual application to a client situation or within a firm is not always simple or clear. Frequently, Circular 230 rules affect a relationship with a client or communications between tax professionals without them being aware of this fact. The following scenarios illustrate situations in which various rules under Circular 230 (and other rules) become relevant.

SCENARIO 1

Bill and Cathy are siblings. In January 2015, they create a partnership (ABC Partnership) with their father, Alfred. Each of the three partners has an equal partnership interest. Alfred transfers some farmland into the partnership with the assistance of his attorney, Debra. The farmland is worth $100,000, and Alfred's basis in it is $70,000. Bill and Cathy each contribute cash of $100,000 to the partnership, which the partnership uses to purchase a tractor and other farm equipment that will be used to operate the farm.

Besides his farming income, Alfred earns approximately $350,000 of annual self-employment income from his civil engineering consulting business. Alfred's consulting business and farming consume a substantial amount of his time each year. Alfred does most of ABC's farm work each year, including the soil preparation, planting, harvesting, and transportating of harvested crops to required destinations. Alfred's farming activity in the partnership requires approximately 20 hours per week.

Bill is the full-time manager of the farm operation, for which he receives $40,000 per year. This is his only income. Bill spends approximately 40 hours per week managing the financial activity of the farm business, ensuring that all farm equipment is in working order, and arranging for any necessary repairs and maintenance. He also hires any seasonal workers that are needed throughout each year.

Cathy is currently pursuing a master's degree in business administration at a nearby university as a full-time student. She is married to a cardiac surgeon who works at the local hospital on a full-time basis. She has very little direct involvement with the farming operation.

In early 2016, Alfred meets with his accountant, Rachel, and provides her with his tax information for 2015, as well as the relevant personal tax information for Bill and Cathy. Rachel assisted Alfred in establishing ABC Partnership and advised each family member about their contribution to it. She presented a written summary of her tax-planning ideas to Alfred in late 2014. In discussing his 2015 tax return, Alfred tells Rachel that the $200,000 of cash from Bill and Cathy was used to purchase a new tractor and farm equipment. Alfred and Rachel decide to expense these purchases under IRC §179 in accordance with the tax planning that Rachel had completed for Alfred immediately before the partnership was established.

Rachel indicates to Alfred that she will have the partnership return, Schedules K-1, and personal returns finished within a few weeks. Rachel and Alfred then discuss some longer-term tax-planning aspects of the partnership. Alfred indicates that within the next five years, he would like to subdivide and sell some of the land along one side of the farm property, which is adjacent to a developing subdivision. A contractor has approached him to discuss purchasing some of the land, and it appears that a relatively high price could be obtained for several lots on that side of the farm.

1. What ethical issues should Rachel be concerned about in this scenario?

2. What best practices should Rachel have used?

SCENARIO 1 DISCUSSION

Individual	Entity	Accountant
Alfred (father)	ABC Partnership	Rachel
Bill (son)	ABC Partnership	Rachel
Cathy (daughter)	ABC Partnership	Rachel

CONFLICTING INTERESTS

Under Circular 230, §10.29, Rachel should not engage in practice before the IRS if representing her clients involves a conflict of interest. A conflict of interest exists if:

- The representation of one client will be directly adverse to another, or
- There is significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or third person, or a personal interest of the practitioner.

Section 10.29 covers practitioner conduct in circumstances involving a conflict only if the practitioner is acting within the scope of Circular 230. Circular 230 covers only conduct falling within the definition of "practice before the IRS." Under the terms of Circular 230, **practice before the IRS** includes representation relating to a taxpayer's rights, privileges, or liabilities under federal tax law.[2] This includes the following.

- Preparing or filing documents with the IRS
- Corresponding and communicating with the IRS
- Providing a taxpayer with written tax advice or planning that may reduce their tax liability
- Representing a client at conferences, hearings, or meetings with the IRS

Note. Circular 230 does not apply to situations outside the scope of what is considered practice before the IRS. However, the practitioner may be subject to other rules of professional conduct, such as the AICPA code of conduct or bar association rules, that have a broader application than Circular 230.

2. Circular 230, §10.2(a)(4).

Rachel's tax planning and preparation services constitutes practice before the IRS. Several aspects of her client engagement with Alfred involve potential conflict-of-interest issues. As with any representation of an entity and its owners, the practitioner should be aware of the potential for existing conflicts between these parties. Moreover, Rachel needs to be aware of existing or potential conflicts among the partners.

Partnership Representation

Simultaneous representation of the partnership and the partners may provide sources of conflict. Rachel may find a need to represent the partnership entity in a manner that may conflict with its partners. For example, entity-level items — representing the partnership in an audit, and furnishing partnership tax information to the partnership's attorney in the event of a lawsuit — may require Rachel to act on behalf of the partnership in a manner that conflicts with the interests of one or more partners.

> **Note.** Conflicts between an entity and its owners frequently arise in the context of legal representation but may also occur in practice before the IRS under Circular 230. For cases involving this issue within the context of a law practice, see **uofi.tax/16a4x6** [www.freivogelonconflicts.com/partnerships.html].

Partner Representation

Because the partnership has three partners, all with very different tax situations, Rachel must recognize the potential for conflict in planning for the partnership and three partners simultaneously. She should realize that each partner's tax objectives and interests may not coincide with those of other partners.

Rachel's tax planning constitutes practice before the IRS. She has violated §10.29 by preparing the tax plan with the objectives and tax information of only one of the three partners in mind. She has also violated §10.29 by reviewing the partnership tax plan with only one of the three partners and agreeing with him to claim a §179 deduction for the equipment without regard to how this decision will affect the other two partners. Although this tax decision may serve Alfred's best interests, Rachel should discuss its impact with Bill and Cathy as it relates to their respective tax circumstances. Rachel should recognize how the §179 deduction may impact each partner as follows.

- Alfred is a high-income taxpayer. In addition, he is a material participant in the farm partnership under the material participation rules of IRC §469. Accordingly, he may use the §179 deduction to offset other active income that he receives in 2016, such as his other self-employment income.
- Bill may also benefit from the §179 deduction, but his low income and the corresponding likelihood of a large carryforward of the disallowed §179 deduction limit the benefits to him. This is particularly true if Bill has other tax deductions and benefits that could be used to reduce his tax liability at his lower income level. Although there is no carryforward time limit for the unused §179 deduction, it may be several years before Bill obtains any tax benefit from the decision to expense the farm equipment at his income level.
- Cathy is not engaged in active conduct in the partnership business under the applicable rules of IRC §179.[3] Accordingly, under these tax rules, she will not likely be eligible to claim a §179 deduction from the partnership.

3. IRC §179(b)(3)(A); Treas. Reg. §1.179-2(c)(6)(ii).

These distinct differences in how a §179 deduction will impact the three partners may create conflicts among them. Under §10.29, Rachel may still represent all the partners, despite the conflicts that exist, if:[4]

- She reasonably believes she can provide competent and diligent representation to each partner,
- Representing all three partners is not prohibited by law, and
- Each partner waives the conflict of interest by providing informed consent and providing written confirmation within 30 days to Rachel at the time she knows of the conflict.

However, the rules are unclear about how precise Rachel's knowledge needs to be about a particular conflict for the partners' consents to be **informed** when she apprises them of the nature of any conflict. Compare the following two situations.

- Before starting on the tax planning, Rachel meets with all three partners and indicates that any items researched and developed may affect each of them differently and have different degrees of advantage or disadvantage for each of them. She obtains their informed consents and written confirmations.
- While reviewing the tax plan with all three partners, Rachel explains in detail how the §179 deduction will flow through to each partner and how it will affect each partner differently. The partners provide her with their informed consents and necessary written confirmations.

These two situations differ in the level of specificity with which Rachel defines the conflict to the partners and the time at which Rachel discloses the conflict. Neither the level of specificity required nor the time at which Rachel should inform the partners of any conflict is made entirely clear by §10.29(b).

Alfred's status as father of the other two partners may give Rachel a sense of his apparent authority over partnership business decisions. However, she cannot allow Alfred's senior family status to cause her to prioritize his tax decisions and objectives at the expense of the other partners. Therefore, instead of meeting exclusively with only one partner and taking their tax objectives into consideration, Rachel needs to ensure that all the partners are aware of partnership considerations and decisions that will affect them, including the §179 election decision and Alfred's desire to sell some of the farmland to a contractor. Even if Bill and Cathy agree to let Rachel defer to their father's decisions, it is unclear whether §10.29 will allow her to do so. Bill and Cathy may not be able to provide the required informed consents if the nature of the conflicts that may evolve throughout Rachel's professional relationship with them are largely unknown.

> **Note.** Under §10.29, a copy of any written consent must be retained for 36 months after representation concludes and must be provided to the IRS upon request.[5]

Tax return preparation and research and development of a written tax plan both constitute tax practice before the IRS under Circular 230. Rachel should not rely on information provided only by Alfred to create a tax plan or complete Bill and Cathy's returns. She must ensure that she has all the relevant information about Bill and Cathy before completing any tax return and the tax plan should consider the tax objectives of all three partners, not just Alfred.

DUE DILIGENCE

Preparation of tax returns for the partnership and its three partners places a due diligence obligation on Rachel. Under Circular 230, §10.22, Rachel must exercise due diligence in preparing the return and in determining the correctness of representations made to the IRS.

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4. Circular 230, §10.29(b).
5. Circular 230, §10.29(c).

Before completing the returns for the partnership and the partners, Rachel first needs to obtain a copy of any partnership agreement that Debra (the attorney) drafted for the new partnership. Generally, this provides Rachel with the terms agreed to by the partners in connection with the division of profits and losses and allocation of partnership items, such as any special allocations. She needs to know if any of the partners receives a guaranteed payment. She also needs to have a clear picture of what the three partners agreed to before she completes any of the returns. This is necessary to ensure that all the amounts that pass through to the partners and are shown on their respective Schedules K-1, *Partner's Share of Income, Deductions, Credits, etc.,* and individual returns reflect the terms they agreed on.

If there is no partnership agreement, then the applicable state partnership statute likely provides default terms that apply to the partners. Rachel must be aware of provisions that are relevant for tax purposes because these statutory terms may form part of any partnership agreement.

Note. In Illinois, the Illinois Uniform Partnership Act[6] governs relations between partners and between the partners and partnership when no partnership agreement exists.[7]

Observation. Because a partnership agreement (or statutory provisions) may create conflict among the three partners by impacting their respective tax liabilities differently, §10.29 requires Rachel to inform the partners of any conflict once she becomes aware of it and to obtain informed consent from each partner. There will be a greater burden on Rachel to ensure that the partners understand what they have agreed to and what partnership agreement or statutory terms prevail if Debra has not ensured that they have such an understanding.

Although Alfred provided Rachel with tax return information for Bill and for Cathy, Rachel needs to make reasonable inquiries of Bill and Cathy and have written permission to disclose information to determine if the information Alfred provided is accurate and complete for each partner whose tax return she prepares.

Due diligence is important with respect to Bill and Cathy. Rachel needs to find out whether Bill qualifies for any other tax benefits because of his lower income level (such as the EIC) and what the optimal filing status for him will be for the year. She also needs to explain to Bill that the §179 deduction that passes through to him may be of limited value for the current tax year.

Rachel needs to know if Cathy files married filing separately (MFS) or married filing jointly (MFJ). This determines whether the tax items that pass through to her affect only her or both her and her husband. Due diligence requires Rachel to ask relevant questions about Cathy's filing status and about her husband's tax situation if they file jointly. Her husband's income forms an integral part of Cathy's overall tax picture each year. Having this information is necessary for proper and accurate tax return preparation and planning.

Observation. It is common for one taxpayer to furnish their own tax information and information for a related taxpayer, such as a spouse, child, or parent. This common situation has significant due diligence implications for the tax preparer. Due diligence requires the preparer to make the necessary inquiries to ensure they have complete and accurate information for the other taxpayer. Appropriate due diligence may require having direct contact with the taxpayer and requesting additional documentation. Taxpayers that qualify for the EIC have specific due diligence and documentation requirements. For further information on the EIC due diligence requirements, including the requirement to complete Form 8867, *Paid Preparer's Earned Income Credit Checklist,* see **uofi.tax/16a4x7** [www.eitc.irs.gov/Tax-Preparer-Toolkit/dd].

6. 805 ILCS 206.

7. 805 ILCS 206/103(a).

RELIANCE ON CLIENTS FOR INFORMATION

The Circular 230, §10.34 provision regarding reliance on client information is closely related to the concept of due diligence because it indicates when relevant inquiries of a client must be made to meet due diligence requirements. While Circular 230 does not require Rachel to audit client information provided or investigate the accuracy of such information, she must make reasonable inquiries of Bill and Cathy and have written permission to disclose information[8] if the information furnished by Alfred appears incorrect, inconsistent with an important fact, or incomplete.[9]

It would be best for Rachel to speak directly with Bill and Cathy regarding the completeness of their tax information, but nothing in Circular 230 specifically prevents her from obtaining their tax information from Alfred. However, obtaining this information from Alfred without knowing his level of knowledge about Bill's and Cathy's tax circumstances may seriously compromise Rachel's ability to assess the accuracy or completeness of the information. Arguably, Rachel should insist on speaking with each partner directly so she can ask them the necessary questions to fulfill due diligence requirements.

SCENARIO 2

June established J Realty Development Inc., an S corporation, in 1980. In contemplation of retirement, she decided to gradually reduce the level of business activity after several years of steady growth. As part of this business reduction, the S corporation sold some assets — including some parcels of land — to a third party on an installment note. The sale took place in March 2014, and the corporation receives annual payments on the note from the third-party buyer.

In early 2016, June received correspondence from the IRS that the corporation's 2014 Form 1120S, *U.S. Income Tax Return for an S Corporation,* is under examination. The sale of the parcels as part of the installment sale is within the scope of the examination.

June hired Frank, a CPA, to represent J Realty Development in the audit. Frank earned his CPA designation two years ago. He prepared June's 2014 individual and S corporation returns but has never handled an audit. He agreed to represent the corporation in the audit and obtained a signed Form 2848, *Power of Attorney and Declaration of Representative,* from June.

During the examination, the IRS contended that a large part of the installment agreement did not qualify under the IRC §453 installment-method rules because some of the assets sold are considered inventory. The IRS took the position that the amounts received by J Realty Development are properly classified as inventory and when passed through to June should be recharacterized from long-term capital gain to ordinary income.

Frank disagreed that the land parcels were inventory. Before the final meeting with the examiner, Frank met with June to discuss the parcels. June indicated that part of her business over the past several years involved regularly selling vacant parcels to customers.

During the final audit meeting, Frank provided June's 2014 Form 1040 as requested by the IRS examiner. After reviewing Forms 1120S and 1040, the examiner continued to maintain that the parcels were inventory and proposed changes to the S corporation's return and June's individual return to reflect that inventory sale. After reviewing June's Form 1040, the examiner contended that June did not receive reasonable compensation for her services. The examiner therefore proposed relevant changes to June's return, increasing the total compensation shown on her Form W-2, *Wage and Tax Statement.*

8. Treas. Reg. §301.7216-2(e).
9. Circular 230, §10.34(d).

1. What ethical issues should Frank be concerned about in this scenario?

2. What best practices should Frank have used?

SCENARIO 2 DISCUSSION

Individual	Entity	Accountant
June	J Realty Development	Frank

Under the terms of §10.29, it appears that June needs to provide a separate waiver for J Realty Development that she would sign in the capacity of the corporate director or officer. She also needs to sign one for herself in her personal capacity as an individual taxpayer. Even if Frank had June sign two Forms 2848 — one for the corporation and one for herself — this would not suffice as the necessary written client confirmation described under the terms of §10.29(b).

The terms of informed consent would be met if Frank first informed June of the risks associated with providing a copy of her 2014 personal return to the IRS examiner, including the risks of widening the scope of the audit by providing such additional information that the IRS agent requested. In turn, June could have provided Frank with a written waiver of the conflicting interests associated with the joint representation after clearly understanding the nature of such risks.

PROVISION OF INFORMATION

It may be argued that Frank could have rightfully limited the scope of the audit to a review of the installment sale by J Realty Development. Even so, Circular 230, §10.20, indicates that Frank must, upon receiving a proper request from an IRS employee:[10]

- Furnish the records or information in any matter before the IRS (unless he reasonably believes in good faith that the information is privileged), or
- If he does not have the records or information the IRS requests, notify the IRS employee about the identity of the person he believes may have such requested information.

This provision of Circular 230 seems to suggest that it may not be possible to limit the scope of an audit because the practitioner must provide any information requested by the examiner unless there is a reasonable belief that the information is privileged. This Circular 230 provision creates a gray area regarding the practitioner's refusal to provide nonprivileged information in an audit or tax controversy that is arguably beyond the scope of the audit.

[10] Circular 230, §10.20(a).

COMPETENCE

Under the terms of Circular 230, Frank must possess the necessary competence to engage in practice before the IRS.[11] Competent practice requires Frank to have the appropriate level of knowledge, skill, thoroughness, and preparation needed for the matters involved in his engagement with clients.

Frank had never represented any client in an examination. His representation of June's S corporation was his first experience with an audit. Arguably, the audit outcome was unfavorable to June and J Realty Development at least in part because Frank did not have the necessary competence with audit representations to limit the scope of the audit or otherwise negotiate with the auditor for a more favorable outcome.

Frank was not prohibited from engaging in a first-time practice endeavor, as long as he took the necessary steps to obtain the competence needed to effectively represent his client in an audit for the first time. Under §10.35, if Frank was not already competent to provide effective audit representation, he should have taken steps to become competent such as consulting with other practitioners who have more experience and studying publications regarding how to provide effective audit representation.[12]

DUE DILIGENCE

Frank met with June to discuss the land parcels when the audit was underway. June indicated at that time that she regularly sells vacant parcels as part of her business. These facts indicate that the parcels are indeed inventory. Had Frank asked relevant questions before preparing the return for June's S corporation, he arguably could have avoided reporting the sale of the parcels under the installment method because inventory does not qualify for that method.

Frank did not exercise appropriate due diligence by asking pertinent questions when he prepared the 2014 return for J Realty Development. Under Circular 230, Frank must exercise due diligence in preparing and filing tax returns and in determining the correctness of written representations made to the IRS.[13] Frank violated this due diligence requirement by failing to ask relevant questions about the parcels when he completed June's returns for the 2014 tax year. In addition, Frank should have asked relevant questions about the reasonableness of June's compensation for 2014.

SCENARIO 3

Linda is an enrolled agent (EA) who prepares tax returns for local clients in a small rural town. Her friend Betty has been divorced for only a few months and is faced with having to file her own return for the first time in many years. When Betty was married, her husband prepared and filed their return.

Linda offered to prepare Betty's return and met with her in February 2016 to discuss her 2015 tax information and prepare her return. Betty mentioned that, during 2015, she received only two months of child support payments and that her ex-husband, Alan, was in arrears for the remaining 10 months of the year. Linda indicated that the receipt of child support did not have any tax ramifications and suggested that Betty inform the local office of the state children's aid agency to let them know about her ex-husband's nonpayment of child support.

A month later, in March 2016, Linda met with Vanessa, a long-time client. Vanessa's new husband Alan, accompanied her to the meeting. Vanessa and Alan were married during 2015, and Linda explained that since they were married as of the last day of 2015, they could file using MFJ status. Alan indicated that he is self-employed as a roofer, and that because business was very slow during 2015, he has only a small amount of income and no expenses. Vanessa works as a full-time teacher at the local elementary school.

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11. Circular 230, §10.35.
12. Ibid.
13. Circular 230, §10.22(a).

After comparing MFS returns for the spouses with an MFJ return, Linda explained that the MFJ return provides substantial advantages, which may include a larger EIC. In addition, Vanessa would still get her usual substantial tax refund, which she is accustomed to receiving each year due to large additional voluntary tax withholding made in connection with her teaching pay. The spouses decide to file jointly, and Linda prepared and filed their MFJ return for 2015.

In early May, Vanessa contacted Linda about a letter that she received from the IRS and does not understand. The letter indicates that her anticipated tax refund of $8,500 was applied against a debt with the state children's aid office. Linda and Vanessa subsequently met and reviewed the letter. After discussing the application of Vanessa's anticipated tax refund against the debt mentioned in the IRS letter, Linda discovered that Vanessa's new husband, Alan, is Betty's ex-husband, who failed to pay child support for 10 months of 2015.

Vanessa is terribly upset because she had no idea that her refund could be used to pay Alan's child support obligation, and had she filed MFS, she would not have this problem. Linda told Vanessa not to worry because she can apply for injured spouse relief using Form 8379, *Injured Spouse Allocation.*

1. What ethical issues should Linda be concerned about in this scenario?

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2. What best practices should Linda have used?

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SCENARIO 3 DISCUSSION

Individual	Accountant
Betty	Linda
Vanessa and Alan	Linda

DUE DILIGENCE

Under Circular 230, §10.22, Linda must exercise due diligence in preparing returns and in determining the correctness of representations made to the IRS.

At the time Linda recommended that Vanessa and Alan file MFJ, she was unaware that Alan was Betty's ex-husband and that he had a child support debt that the IRS could potentially offset against Vanessa's refund. It may be argued that under the terms of §10.22, Linda did not fail to exercise appropriate due diligence because the tax returns she prepared for Betty, as well as for Vanessa and Alan, were accurate as filed.

However, it may also be argued that the accuracy of the returns does not necessarily indicate that Linda exercised the required due diligence. She should have asked further questions to ascertain the identity of Vanessa's new husband, Alan. Even if seeing Alan's name and social security number (SSN) (both required to prepare an MFJ return) were not enough for Linda to conclude that he was the taxpayer in arrears with Betty's child support, due diligence may have required her to ask him about any debts he owed, such as unpaid taxes and child support. These debts could have caused an offset of Vanessa's anticipated tax refund, and Linda should have inquired about them before recommending an MFJ return, particularly because the subject of Vanessa's typical annual tax refund was discussed.

Note. Under Circular 230, due diligence is required to ensure the accuracy of a return or other documents submitted to the IRS and to ensure the accuracy of any oral or written representations made to the IRS. Circular 230 does not state that due diligence is a requirement that a practitioner must exercise to protect a client. Client protection under Circular 230 is fostered by the conflicting interest rules (discussed later).

Another due diligence concern exists in Alan's assertion that he is self-employed and thus has little income and no expenses. This statement should have alerted Linda to the possibility that Alan was providing amounts with the purpose of maximizing an EIC claim. Due diligence requires Linda to ask additional relevant questions to ensure the accuracy of the information Alan is providing.

Note. The EIC has very specific due diligence rules. For a summary of these rules — including a due diligence video and special rules to address self-employed taxpayers claiming the EIC — see **uofi.tax/16a4x8** [www.eitc.irs.gov/Tax-Preparer-Toolkit/dd/lawandregs]. For tax years beginning in 2015, the practitioner penalty for failing to comply with EIC due diligence requirements is $505 per failure.[14]

CONFLICTING INTERESTS

A conflict of interest exists between Vanessa and Alan. Although Linda explained the advantages of filing MFJ to Vanessa and Alan, she should also have explained that both spouses would be jointly and severally liable for any tax owed. This is an important change in tax liability for new spouses. Linda should also have advised them that certain debts of either spouse could be paid using refund amounts under federal tax rules. These rules create a conflict of interest between the spouses that is known to Linda.

Circular 230, §10.29 obligates Linda to discuss these rules and to obtain informed consents and the appropriate written waivers from Vanessa and Alan. If Linda had done these things, Vanessa would have been able to make an informed decision about the risks inherent in filing MFJ with Alan.

Observation. Taxpayers who file MFJ should be advised of the joint and several liability each spouse has for any amount of tax owed for each year in which an MFJ return is filed. This arguably constitutes a conflict, as described in §10.29, that requires tax preparer explanation and waivers by the married taxpayers in accordance with §10.29(b).

14. IRC §6695(g), (h); *EITC Due Diligence Law and Regulation.* Jan. 26, 2016. IRS. [www.eitc.irs.gov/Tax-Preparer-Toolkit/dd/lawandregs] Accessed on Mar. 22, 2016.

Another conflict of interest between Vanessa and Alan may be created when Linda recommends the injured spouse procedure to Vanessa. Calculating the amount of the refund Vanessa is entitled to under the injured spouse rules requires determining the amounts of separate tax liability. This will require an appropriate allocation of income and deductions to each spouse and each spouse's contribution to the year's tax liability. If any estimated payments were made during the year, each spouse's contribution is a question of fact. Vanessa may require Alan's cooperation in furnishing correct information to facilitate making accurate calculations under circumstances in which he may be less than forthcoming.

Observation. The special rules that apply in a community property state may also be a source of conflict between the spouses. In such a state, the entire refund that is otherwise due to Vanessa after she completes the injured spouse allocation may be applied against Alan's child support debt. Moreover, in some community property states, any premarital debt of one spouse may be considered the debt of both spouses.

Note. Under §10.29(a), there is no requirement that the practitioner know about a conflict in order for a conflict to exist. However, §10.29(b) mentions knowledge of the existence of the conflict on the part of the practitioner in connection with obtaining the client's informed consent.

SCENARIO 4

Greg works for CPAs Plus LLP, a big-city CPA firm that has many clients in the automobile retail sales industry. He is assigned to three major automobile dealer accounts and handles their required tax compliance annually. Greg has prepared corporate and personal returns for these three automobile dealerships and their owners since he was first assigned to the dealers in 2009.

One of the dealerships Greg prepares returns for is Renaissance Auto LLC (Renaissance). Renaissance is owned by two sisters, Abby and Barbara. Occasionally, Renaissance engages in automobile sale or purchase transactions with other dealers on a wholesale basis from inventory to facilitate retail sales to customers who want a specific model of a particular color, option package, or other features. Renaissance makes these wholesale transactions with several local dealers, including Layton Auto Sales Inc. (Layton) and MegaCar LLP (MegaCar). Layton's accounting and annual tax returns are prepared by Samantha, who also works at CPAs Plus. MegaCar's accounting and tax work is done by another CPA firm in the city, TaxesRUs. MegaCar is owned by Abby's husband, Arthur.

On January 6, 2016, a class-action lawsuit was filed against most major automobile dealers in the city. The lawsuit involves allegations of price fixing in connection with the retail sales of automobiles and auto parts. Greg reads about this lawsuit in the local newspaper, and the subject is subsequently discussed at CPAs Plus's staff meeting the next day.

During February and March, Greg is busy preparing tax returns, including those for the automobile dealers he is assigned to. He finalizes the 2015 return for Renaissance in March 2016.

Each year, Marge, an accountant from TaxesRUs, contacts Greg for a copy of Renaissance's Form 1120, *U.S. Corporation Income Tax Return,* and his calculations regarding the wholesale transactions between Renaissance and MegaCar to facilitate completion of this aspect of MegaCar's returns. Marge requests this information, and Greg faxes the 2015 Form 1120 and the wholesale transaction totals and calculations to her.

A few days later, Greg meets with Samantha, who is finalizing the intercompany transactions for Layton. Greg reviews his work and calculations regarding intercompany transactions between Renaissance and Layton so Samantha has the relevant amounts and information to complete Layton's return.

Later the same day, after meeting with Samantha, Greg receives subpoenas by certified mail. One of them is from the attorney for Renaissance, and the other is from an attorney representing Layton. Each subpoena indicates that the respective automobile dealer was named in a price-fixing lawsuit and requests their last three years of business and personal tax returns. Greg contacts each dealer's attorney by telephone to discuss the subpoena. In his conversation with each attorney, he mentions both subpoenas and reviews some relevant amounts from his work papers regarding the sales and number of cars sold for both companies. He subsequently emails the requested tax information to each attorney for their respective client, as outlined in each subpoena.

1. What ethical issues should Greg be concerned about in this scenario?

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2. What best practices should Greg have used?

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SCENARIO 4 DISCUSSION

Individual	Entity	Accountant	Firm
Abby and Barbara	Renaissance Auto, LLC	Greg	CPAs Plus
	Layton Auto Sales	Samantha	CPAs Plus
Arthur	MegaCar, LLP	Marge	TaxesRUs

As an employee of CPAs Plus, Greg is required to disclose Renaissance's tax information to several other parties during tax preparation season.

DISCLOSURE OF TAX INFORMATION TO MARGE

Greg discloses Renaissance's tax information to Marge, an accountant at another firm. Marge is preparing the tax return for MegaCar, which is owned by Arthur. Arthur is the husband of Abby, one of the two sisters that owns Renaissance.

IRC §7216 regulates the disclosure of **tax information** by a **tax preparer** to other tax preparers or third parties. Generally, if a taxpayer provides a paid tax preparer with tax information, the tax preparer is subject to criminal penalties under §7216 if they knowingly or recklessly disclose the taxpayer's information to a third party (or use the information for any purpose other than preparing a return) unless such disclosure is permitted by an exception.

> **Note.** If convicted of a misdemeanor under §7216, a tax preparer may be subject to a fine of $1,000 and/or imprisonment for one year (plus the costs of prosecution).

The regulations under §7216 outline the permitted disclosures and define the tax preparers covered. Generally, for purposes of these rules, the term **tax preparer** generally refers to a person engaged in the business of preparing tax returns or providing ancillary services, such as tax software development and providing e-file services. Also included are the individuals employed to provide such services.[15] Greg's role as a tax preparer employed by CPAs Plus places him under this definition.

> **Note.** For exceptions to the tax preparer definition, see Treas. Reg. §301.7216-1(b)(v).

Tax information includes any information furnished by the taxpayer or third party to the tax preparer in connection with preparation of the taxpayer's return.[16]

Greg's disclosure of tax information for Renaissance is a preparer-to-preparer disclosure. Under Treas. Reg. §301.7216-2(c)(2), a tax preparer may disclose a taxpayer's information to another tax preparer who is located in the United States and employed by the same firm for the purpose of completing the taxpayer's return (or providing an ancillary service related to preparation of the return). Because Marge works for a different firm than Greg and because she was not involved in preparing the tax return for Renaissance (which is the return the disclosed information relates to), Greg's disclosure of Renaissance's tax information to Marge does not qualify for this exception.

The regulations also have a specific provision for preparer-to-preparer disclosures for preparers who are employed by different firms. Under Treas. Reg. §301.7216-2(d)(1), a preparer of one firm may disclose a client's tax information to another firm's employee (who is located in the United States) for the purpose of preparing a return (or related services) as long as the other firm's employee is not making "substantive determinations" or providing advice that affects the taxpayer's tax liability. A **substantive determination** includes an analysis, interpretation, or application of tax law. The regulation states that authorized disclosures under this provision include disclosure to another tax preparer to enter the necessary data into tax software to complete the return or to e-file (as long as the tax preparer the disclosure is made to is not making substantive determinations regarding the preparation of the return).

Marge, as the preparer receiving the disclosure of Renaissance's tax information, was not preparing Renaissance's return. Rather, she was preparing the return for MegaCar. Accordingly, this exception does not appear to apply to Greg's disclosure of information to Marge.

The disclosure regulations provide an exception if certain family members are involved.[17] Under this exception, Greg may be able to disclose to Marge tax information about Renaissance if the taxpayers are related. Under this rule, the tax information disclosed must be in the same form as it appears on the return Greg prepared for Renaissance or any tax return information provided by Abby or Barbara. This rule seems to permit Greg to disclose this type of information to Marge as long as all the following conditions are met.

- The clients of the tax preparers are related.
- Abby and Barbara (the owners of Renaissance) have an interest in their tax information that is not adverse to that of Arthur.

> **Observation.** The regulation does not provide any guidance about what type of adverse interest would disqualify a disclosure.

- Abby and Barbara have not expressly prohibited the disclosure.

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15. Treas. Reg. §301.7216-2(c)(2).
16. Treas. Reg. §301.7216-1(b)(3).
17. Treas. Reg. §301.7216-2(e).

Taxpayers are considered related if they have any of the following relationships.[18]

- Husband and wife
- Child and parent
- Grandchild and grandparent
- Partner and partnership
- Trust or estate and beneficiary
- Trust or estate and fiduciary
- Corporation and shareholder
- Members of a controlled group of corporations

A **controlled corporation** is generally defined as any of the following.[19]

- A parent–subsidiary corporation with at least an 80% ownership of the subsidiary by the parent
- A brother–sister corporation with five or fewer persons owning 50% or more of the stock in each corporation
- A combined group of corporations in which one corporation is a common parent of the others or in which there are brother–sister corporations

> **Note.** For further details about the definition of controlled corporations — including the nature of the required share ownership, ownership by trusts or estates, and corporations that may be considered excluded from the control group — see IRC §1563.

It could be argued that Greg's disclosure of Renaissance's tax information to Marge falls into this exception because Abby and Arthur are related as husband and wife. However, Barbara, the co-owner of Renaissance, is Arthur's sister-in-law, and this relationship is not included in the related-party definition. Both Abby and Barbara have an interest in Renaissance's tax information. Barbara may have legitimate reasons for not furnishing Renaissance tax information to Marge. Under the terms of this exception, Greg could have disclosed Renaissance tax information to another Renaissance shareholder, but Arthur was the owner of a separate entity.

Further, this exception permits a tax preparer to disclose a client's permitted information directly to a relative of that client. In contrast to the disclosure exceptions elsewhere under Treas. Reg. §301.7216-2, this provision is not a preparer-to-preparer exception. This related-party exception requires disclosure directly to the related taxpayer, not that taxpayer's preparer.

18. Treas. Reg. §301.7216-2(e)(2).

19. IRC §1563.

Observation. It is unclear under this rule whether the related party's tax preparer, viewed as a representative of the related party, may be an acceptable party for the purpose of disclosing information. Treas. Reg. §301.7216-2(e), which authorizes the disclosure of tax return information of related parties, specifically refers to disclosure of tax return information of one taxpayer to "the second taxpayer" (not another preparer). In addition, the "preparer-to-preparer" disclosure section in Treas. Reg. §301.7216-2(d) does not address preparer-to-preparer disclosures of tax return information to related tax preparers. This leaves open the question of whether the tax information of related parties may be provided by one preparer directly to another tax preparer (even though the clients of the preparers fall under the definition of related parties).

Moreover, even if both Abby and Barbara were related to Arthur in a manner that is included in the definition of **related party** under this exception, another gray area exists within the governing regulations. Although the regulation permits tax preparers to disclose tax return information to related parties, the definition of tax return information does not distinguish between personal tax information and tax information for an entity[20] owned by a related taxpayer. Many entities, such as corporations, are considered to be taxpayers separate from their owners.

Moreover, Renaissance and MegaCar do not have a parent–subsidiary, brother–sister, or combined group relationship under the definition of a controlled corporation. For this exception to apply to the disclosure of one entity's tax information to the tax preparer for another entity, Renaissance and MegaCar would need to have an ownership structure that falls under the definition of a controlled corporation.

Furthermore, Greg furnished information to Marge that does not fall within the scope of the type of information covered by the exception. Disclosure of a copy of the tax return is the type of information that is acceptable in an otherwise permitted disclosure. Permissible information includes only tax information "in the form in which it appears on the return" or other tax return information provided by the taxpayer.[21] Greg provided Marge with a copy of the Form 1120 for Renaissance, which arguably is within these information disclosure limitations. However, his disclosure of his own calculations does not fall within this limitation.

Observation. This limitation on the type of information that may be disclosed involves a significant gray area. For example, although it appears that it is acceptable to disclose the amounts shown directly on a tax return, providing additional information about how such amounts were calculated or derived appears to be outside the scope of this limitation. Even with permitted disclosures under this rule, tax preparers need to be careful about the type of information they disclose.

Treas. Reg. §301.7216-2(h) specifically permits an attorney or accountant to make a taxpayer's tax return information available to a third party in the normal course of rendering services to the taxpayer. Greg's disclosure to Marge does not fall under this exception because it was not made to further the services rendered to Renaissance or to Abby or Barbara. The information was furnished so that Marge could complete MegaCar's return.

Accordingly, Greg's disclosure of Renaissance's tax information does not fall under this related-party exception. It appears that Greg's disclosure to Marge violates §7216 and that he has exposed himself to possible criminal penalties for making this disclosure.

Note. For Greg to avoid a §7216 violation, he needs to obtain consent from both Abby and Barbara. Consent under these rules is discussed later.

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20. Treas. Reg. §301.7216-1(b)(3).

21. Treas. Reg. §301.7216-2(e).

DISCLOSURE OF TAX INFORMATION TO SAMANTHA

The preparer-to-preparer disclosure permitted by Treas. Reg. §301.7216-2(c)(2) is based on a tax preparer disclosing a taxpayer's tax information to another preparer of the same firm for the purpose of completing that taxpayer's return. This provision permits information sharing to allow a taxpayer's return to be worked on by more than one person within the same firm.

Although Greg's disclosure of Renaissance's tax information to Samantha was to a preparer of the same firm, it was not disclosed for the purpose of providing Samantha with the necessary information to assist in preparing Renaissance's return. Instead, Samantha used this information to prepare the return for another client of the same firm.

The same-firm, preparer-to-preparer exception covers disclosure of information for the purposes of completing the taxpayer's return (or to provide auxiliary services). It does not authorize the disclosure of such information, however, to complete another return for a different client of the firm.

Treas. Reg. §301.7216-2(h) also allows same-firm disclosures among attorneys or accountants for purposes of facilitating the provision of other legal or accounting services to the taxpayer the information relates to. For example, an attorney who prepares a tax return for a client may disclose that client's tax information to another attorney of the same firm to facilitate the preparation of a trust document for that taxpayer. Because Samantha was preparing work for a client other than Renaissance, Greg's disclosure of Renaissance tax information does not fall under this exception.

> **Observation.** Several types of disclosures are permitted under Treas. Reg. §301.7216-2, but each is circumscribed by specific limits. To avoid criminal penalties, the tax preparer should be aware of these limitations and construe these exceptions narrowly. All the permitted disclosures under this regulation are permitted in connection with completing a taxpayer's tax return or providing auxiliary services (or in the case of the attorney or accountant disclosure provision, to render legal or accounting services to the client by providing the client's tax information to a third party).

DISCLOSURE OF INFORMATION TO ATTORNEYS

During Greg's telephone discussion with each attorney, he mentioned that another client had also received a subpoena and discussed details of the subpoena. Because several automobile dealers were named as defendants in the class-action price-fixing lawsuit, it could be argued that Greg improperly disclosed information about each client named as a defendant by disclosing the fact that they had received a subpoena to another defendant's attorney in the same lawsuit. This disclosure of information is problematic because Greg should know that each defendant in the lawsuit may become adversarial to the other defendants.

Because the attorneys who issued the subpoenas are not rendering services in the capacity of tax preparers, the exceptions in Treas. Reg. §301.7216-2 — which involve the disclosure of tax information for the purpose of tax return completion or related services — do not apply. The exceptions in Treas. Reg. §301.7216-2 generally apply **only to the disclosure of tax information** — not information regarding the identity of a party who received a subpoena to provide information in a pending lawsuit.

Treas. Reg. §301.7216-2(h) provides an accountant with the ability to provide information to a third party in the normal course of providing services to the taxpayer. However, this provision specifically refers to the provision of tax return information. The identity of another client who received a subpoena, the particulars of such a subpoena, and the identity of the defendant are not likely to be considered tax return information (even if the subpoena requests tax or financial information).

> **Observation.** This attorney–accountant third-party disclosure exception covers disclosure to a third party as required in the normal course of providing services to the taxpayer. Arguably, addressing a subpoena request is not within the normal course of Greg's accounting or tax services to his clients. Moreover, it is unclear whether this provision would use reasonableness or some other standard to define what is "in the normal course" of providing services or whether the actual services provided by the attorney or accountant to the particular client define this limitation.

As §10.29 of Circular 230 indicates, Greg should not represent a client if that representation will be adverse to another client or if there is a significant risk that the representation of a client will be materially limited by his responsibilities to another client, a third person, or a personal interest. However, §10.29 does not apply in this situatuon. The scope of §10.29 involves only conflicts of interest in the course of Greg's practice before the IRS. His disclosure of tax and subpoena information to an attorney is not within this scope.

Note. Greg's disclosure of confidential information about one client to the attorneys of other possibly adverse clients is not directly addressed by IRC §7216 or §10.29 of Circular 230. Nonetheless, it is likely that Greg, a CPA, may have violated Rule 1.700, Confidential Information, of the AICPA Code of Professional Conduct. To review the AICPA Code of Conduct, including Rule 1.700, see **uofi.tax/16a4x9** [www.aicpa.org/Research/Standards/CodeofConduct/DownloadableDocuments/2014December15ContentAsof2014June23CodeofConduct.pdf].

Unless exceptions apply, Greg's disclosure of one client's tax information to the attorneys of other clients violates §7216 and exposes him to criminal penalties.

Under Treas. Reg. §301.7216-2(f), disclosure of a client's tax information is permitted if it is made to comply with any of the following.

- A federal, state, or local court order
- A grand jury or U.S. Congressional subpoena
- A subpoena issued by a federal or state agency
- A written request from a professional ethics committee or board investigating tax preparer ethics
- A public company accounting oversight board's written request associated with a Sarbanes–Oxley Act investigation

Assuming that the subpoenas were orders issued by federal, state, or local courts, Greg's disclosure of tax information in compliance with these orders falls under this exception.

Observation. A tax practitioner who may be required to disclose tax information in accordance with a subpoena should review Treas. Reg. §301.7216-2(f) to ensure that the subpoena falls within the categories that qualify for the exception. Subpoenas of foreign courts and foreign government agencies do not qualify for the disclosure exception.

Note. Disclosure of tax information to the IRS is always permissible without exposure to criminal penalties under §7216.[22]

22. Treas. Reg. §301.7216-2(b).

CONSENT

Unless there is an exception under §7216 or Treas. Reg. §301.7216-2, appropriate client consent is required to make a disclosure.[23]

Greg's disclosure of tax return information to Marge is permissible under §7216 if he obtains the required consent from Barbara under the consent rules of Treas. Reg. §301.7216-3. Under these rules, a consent must meet certain requirements to be valid (as described below).

In addition, because Greg's disclosure of Renaissance tax return information to Samantha appears to be outside the scope of the same-firm, preparer-to-preparer disclosure rule under §7216, he should obtain consents from Abby and Barbara.

Requirements for Consent

Consent from the taxpayer may be obtained for **use** or for **disclosure** of **tax return information.**

Tax return information includes the taxpayer's name, address, SSN or other identifying number, and information furnished to the tax preparer in connection with preparation of the taxpayer's return. In addition, tax return information includes the following.[24]

- Tax return information furnished by either the taxpayer or a third party
- IRS correspondence or information about the processing of the taxpayer's return or a notice of acceptance or rejection of an e-filed return
- Statistical tax return information, even if the format of such information would not allow any of it to be traced back to the taxpayer's return

Use of a taxpayer's tax return information includes any circumstance in which the tax preparer relies on or refers to the taxpayer's information to take or permit some action. **Disclosure** is defined as making the tax information known to another person in any manner.[25]

In addition to being in written form, a consent for use or disclosure of a taxpayer's tax information must also meet other requirements.

Basic Requirements. Any consent for use and disclosure must include the taxpayer's name and the tax preparer's name. A consent to the use of tax return information must also describe the particular use that is authorized. A consent allowing the disclosure of tax return information must generally state the purpose of the disclosure and identify the parties who will receive the disclosed information.[26]

However, if the tax information relates to a tax return other than a Form 1040-series return, such as an entity return, there is a "descriptive class" exception. The requirement to disclose specific parties who will receive the information may be satisfied by indicating a more general, descriptive class of parties that the tax preparer may disclose information to in facilitating the preparation of tax returns.[27]

> **Note.** For examples of the wording that may be used to draft use or disclosure consents that meet these regulatory requirements, see Treas. Reg. §301.7216-3(a)(3)(iv).

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23. Treas. Reg. §301.7216-3(a).
24. Treas. Reg. §301.7216-1(b)(3)(i).
25. Treas. Reg. §301.7216-1(b)(4).
26. Treas. Reg. §301.7216-3(a)(3).
27. Treas. Reg. §301.7216-3(a)(3)(iii).

Use and disclosure consents are subject to a special **single-use rule.** The taxpayer may consent to one or more uses or one or more disclosures of tax information within the same consent document. However, a single consent form may not be used to authorize both use and disclosure. If a consent document authorizes multiple uses (or multiple disclosures), each use (or disclosure) must be separately identified (subject to the descriptive class exception mentioned earlier for non-Form 1040-series returns).[28]

> **Note.** Abby and Arthur clearly fall under the definition of related parties under the disclosure rules of §7216 because they are spouses. Even so, Greg would be adhering to best practices by obtaining consents from them and from Barbara.

Additional Rules. Following are some additional rules about consents under §7216.[29]

- The taxpayer's consent is effective for **one year** from the date they sign it, unless the consent specifies another effective period.
- The use or disclosure consent must be obtained **before** the tax preparer actually uses or discloses the taxpayer's tax return information.
- If the use or disclosure consent is requested for the purpose of soliciting business unrelated to preparation of the taxpayer's return, the request for the taxpayer's consent must be made **before** the tax preparer provides a completed return to the taxpayer for signature.
- If the use or disclosure consent is requested for the purpose of soliciting business unrelated to preparation of the taxpayer's return and the taxpayer **declines to provide the requested consent,** the tax preparer may **not make a subsequent request** for a consent with a substantially similar purpose.
- The tax preparer must **provide the taxpayer with a copy** of the consent at the time the taxpayer signs it (either in printed or electronic form).

> **Note.** For special rules associated with consents involving disclosure of an SSN to another preparer located outside the United States, see Treas. Reg. §301.7216-3(b)(4). For other rules regarding the disclosure of a taxpayer's information to another preparer located outside the United States, see Treas. Reg. §301.7216-2(c)(3).

SCENARIO 5

Melissa and Francine are CPAs who work for Intellaccount LLP (Intellaccount). Intellaccount employs 17 CPAs and several support staff members.

Melissa met with her long-time client Norman. For many years, Norman has owned PharmCo, a successful pharmaceutical sales business that is structured as an S corporation. Norman indicated to Melissa that he was ready to retire due to health reasons and that he had found a potential buyer for the business. Norman stated that he had some preliminary discussions with the potential buyer, but they had not yet reached a final agreement on the sale.

Melissa and Norman discussed the balance sheet of PharmCo, its historical earnings, and the need to obtain an appraisal to determine what the business is worth. Norman indicated that a large part of PharmCo's value is derived from his personal contacts. However, he agreed to continue his involvement for a 5- to 10-year period to retain the customer contacts he had developed, even though his health condition likely would preclude his continued involvement for that length of time.

28. Treas. Reg. §301.7216-3(c)(1).

29. Treas. Reg. §§301.7216-3(b), (c).

Melissa indicated that Norman should sell his shares because of favorable long-term capital gains tax treatment. She stated that any purchase and sale agreement that she drafts could include a 5- to 10-year period of continued service by Norman, despite his health condition. She indicated to Norman that she would begin drafting an agreement to review with him as a starting point.

The same day, Francine, another CPA at Intellaccount, enjoyed a vacation day on the golf course. The group of people golfing included Francine and her friend Larry. While on the course, Larry indicated to Francine that he was considering the purchase of a pharmaceutical sales business.

After a round of golf, Francine and Larry had lunch, and Francine asked Larry some questions about the business he was hoping to acquire. Larry indicated that he had some initial discussions with the owner and found out that the business is an S corporation. Larry indicated that the owner of the business provided some details about it, along with some historical financial statements and returns. Larry stated that he retained an appraiser to complete a business valuation, which was recently finalized. Larry showed Francine the valuation report, which placed a value on the business of about $1 million. Francine agreed to represent Larry in the purchase of the business and to assist him in the negotiations leading up to the acquisition.

The next day, Francine met with Larry in her office and reviewed the appraisal in greater detail. She indicated to Larry that it would be best to purchase the assets of the business, instead of the stock. Purchasing the assets of the business would provide basis in the assets, which could provide depreciation deductions after the purchase. Francine explained that a stock purchase, while providing basis in the shares acquired, would not provide any ongoing deductions that may be claimed against business income.

While Francine and Larry are meeting, Melissa contacted an appraiser on Norman's behalf to obtain an appraisal of PharmCo. The appraiser indicated that he had just appraised that same pharmaceutical business for an individual named Larry and agreed to complete another appraisal based on the information Melissa provided. Melissa provided the appraiser with financial statements, prior-year tax returns, and other financial data for Norman's business. She also gave him the details about Norman's health that Norman originally provided because she felt obligated to disclose them.

The following week, during an Intellaccount staff meeting attended by all 17 of the firm's CPAs, Francine announced that she had obtained a new client for the firm. Larry had retained her in an anticipated business acquisition.

Approximately two weeks later, the appraisal that Melissa requested arrived at Intellaccount's main office. A staff member recognized PharmCo's name on the cover of the appraisal as a client of Francine's and directed that copy of the appraisal to her, instead of directing it to Melissa. Francine was momentarily confused about why a second copy of the appraisal was sent to her but reviewed the document. This appraisal valued PharmCo at approximately $700,000.

Francine's further reading of the appraisal revealed that the appraiser applied a substantial discount to PharmCo's goodwill because of the seller's health. The appraisal stated that, although Norman's continued involvement for a 5-year period after the sale would be critical to the value of goodwill, it was highly questionable due to health concerns. Francine continued reading and discovered that the seller was Norman, a long-time client of Intellaccount, and that Melissa was representing him in the PharmCo sale.

Francine called Larry and informed him of Norman's health issue immediately before a staff member came into her office and apologized for misdirecting the appraisal to her. The staff member subsequently brought the appraisal to Melissa, the intended recipient.

Francine asked the staff member which CPA should have received the appraisal. The staff member indicated that the appraisal was addressed to Melissa, who is representing Norman, the seller of PharmCo.

Francine and Melissa met to discuss the details of the purchase and the sale of PharmCo and then contacted their respective clients in the negotiation process. After failing to reach a price acceptable to both parties, Megan, a supervising CPA, indicated that Intellaccount should represent only one of the parties to the transaction. Megan indicated that Larry should be retained because he appeared to be the more lucrative client from that point forward, particularly given Norman's poor health and anticipated disposition of the business to Larry.

1. What ethical issues should be of concern in this scenario?

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2. What best practices should Melissa and Francine have used?

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SCENARIO 5 DISCUSSION

Individual	Entity	Accountant	Firm
Norman (seller)	PharmCo	Melissa	Intellaccount
Larry (buyer)	PharmCo	Francine	Intellaccount

MELISSA DRAFTING PURCHASE AND SALE AGREEMENT

Melissa is likely engaging in the unauthorized practice of law by drafting the sale agreement. Norman indicated to Melissa that he would agree to a 5- to 10-year continued service period in the agreement to sell PharmCo despite knowing that his health would likely preclude him from working that long. If Melissa drafts this continued service provision into the sale agreement to be presented to a buyer, she will be misrepresenting Norman's ability to perform in connection with the continued service period (a potentially important term for the buyer that will impact the price paid for goodwill).

Circular 230, §10.22, imposes a due diligence duty on the practitioner in connection with returns and other documents prepared for or submitted to the IRS. It also requires due diligence with respect to the correctness of verbal or written representations to the U.S. Department of the Treasury and to clients regarding any IRS-administered tax matter.[30] Circular 230, §10.51(a)(4), referring to incompetence and disreputable conduct, prohibits a practitioner from giving false or misleading information to the Department of the Treasury.

30. Circular 230, §10.22(a).

Circular 230 requires diligence and accuracy in communications to the IRS and other branches of the Department of the Treasury. However, it does not impose diligence and accuracy requirements on communications with other third parties. Accordingly, although Melissa's potential misrepresentation does not pose a Circular 230 concern, Melissa very likely has an ethical obligation to ensure that she does not make any misrepresentations under other professional rules of conduct.

Observation. As a CPA, Melissa may be bound by the AICPA Code of Conduct, which has several sections that may preclude misrepresentation of Norman's ability to continue his services after the sale of his business. For example, AICPA Rule 1.130.010, *Knowing Misrepresentations in the Preparation of Financial Statements or Records,* and Rule 1.100.001, *Integrity and Objectivity Rule,* are among the AICPA rules of professional conduct that Melissa needs to be aware of before she decides to include the 5 to 10 years of continued service provision in the sales agreement.

Note. Circular 230, §10.51(a)(7), prohibits a practitioner from assisting a client with tax evasion or with violating a federal tax law. However, because the misrepresentation of Norman's health and his ability to continue to serve for a period of time does not involve tax evasion or violation of a tax law, Melissa's conduct is not subject to §10.51(a)(7).

FRANCINE'S LUNCH DISCUSSION WITH LARRY

Circular 230, §10.29(a), indicates that a conflict of interest exists if the representation of one client will be adverse to another client (or if there is a significant risk that the representation of one client will be materially limited because of the practitioner's responsibility to another client or some other person). Under §10.29(a), a conflict certainly exists if the same practitioner represents both Larry and Norman as buyer and seller of the business. Larry and Norman have adverse interests in the transaction. Representing one of these clients involves providing advice that is adversarial or less advantageous to the other client.

Section §10.29(a) does not distinguish between the representations of clients with adverse interests by one practitioner or by two or more practitioners within the same firm. However, a conflict of interest does not cease to exist just because different practitioners within the same firm are representing the adverse clients. In such a case, the clients' positions remain adversarial, and as members of the same firm, the practitioners' responsibilities to both clients and to the integrity of the overall firm depend upon providing effective, independent, objective advice to both clients. These factors pose a significant risk that the representation of each client will be materially limited by responsibilities to the other client.

However, §10.29(b) generally provides a practitioner with the ability to continue client representation under circumstances involving conflicting interests if the practitioner reasonably believes that such representation will not be compromised and informed consent is obtained at the time the practitioner becomes aware of the conflict.

Accordingly, the structure of §§10.29(a) and (b) indicates that although conflicting interests may exist without the practitioner's knowledge, the practitioner must take proactive steps to ascertain the effectiveness of representation and to obtain consent once they become aware of the conflict. Section 10.29(a) does not indicate that the practitioner must be aware of a conflict for a conflict to exist. Section 10.29(b) imposes requirements on the practitioner only after they obtain knowledge of the conflict.

At the time Francine had lunch with Larry, she was unaware of Melissa's representation of Norman. Under §10.29, it could be argued that Francine's discussion with Larry does not constitute a violation of the rules of conflicting interest because Francine was not aware of the conflict. However, it could also be argued that because Intellaccount has more than one practitioner (with the possibility that the firm is already representing a client with conflicting interests), Francine should not have provided advice to Larry until she was certain that she could do so without risking any conflicting interests with any of the firm's other clients.

In addition, procedures should be in place to ensure that the firm does not accept a new client who has interests that conflict with those of an existing client. This would prevent compromised representations of clients even before the practitioner becomes aware of the conflict. It would also preclude the practitioner from representing clients who have conflicting interests and eliminate any potential §10.29 violation.

Observation. Francine and Melissa may be subject to AICPA Code of Professional Conduct Rule 1.000.020, *Ethical Conflicts*. For further information regarding the procedures used to manage conflict risks — including client-screening questionnaires, conflict databases, and training staff personnel — see the AICPA's Education Center at **uofi.tax/16a4x10** [www.cpai.com/business-insurance/professional-liability/AvoidingConflictsofInterest].

Note. The tax practitioner's malpractice insurance carrier is a good source of information on what procedures should be used to prevent representing clients with conflicting interests.

Moreover, as part of the procedures established to prevent firm practitioners from engaging in representations involving conflicting interests, new clients and relevant information should be the subjects of specific discussions at staff meetings. Ensuring that Intellaccount's accountants and staff members are aware of new clients and new issues arising for existing clients would prevent representation in situations involving conflicting interests and may have prevented the erroneous delivery of Norman's confidential appraisal information to Francine. Having proper procedures in place would prevent the firm from representing Norman and Larry as counterparties to a sale-and-purchase transaction.

MELISSA CONTACTING THE APPRAISER FOR NORMAN

When Melissa contacted the appraiser on Norman's behalf, the appraiser indicated he had just finished appraising the same business. Arguably, Melissa should have asked the appraiser about the past appraisal or its purpose to determine if a conflict existed between clients. Even asking about the purpose of the past appraisal could have indicated to Melissa that there was an active due diligence investigation regarding Norman's business by some other party. Moreover, Melissa's decision to use the same appraiser was not prudent when she knew that they had recently performed an appraisal of a business for sale.

Observation. Professional rules imposed on the appraiser, including confidentiality rules, may determine what information they could provide to Melissa. The appraiser may also have a conflict of interest when completing an appraisal for counterparties of the same transaction.

Melissa provided Norman's tax information to the appraiser. She must be aware that providing such information may have implications under IRC §7216. However, under the applicable regulation,[31] Melissa can provide Norman's tax information to a third party (such as an appraiser) for the purpose of providing other accounting services to Norman, such as representation in the sale of a business.

[31] Treas. Reg. §301.7216-2(h).

Representing a client in a transaction, such as the sale or purchase of a business, may result in Melissa engaging in the unauthorized practice of law. Melissa should be aware of her state's definition of what constitutes the practice of law and ensure that she does not engage in such activity.

Observation. The definition of what constitutes the practice of law varies among states, and there is a substantial gray area on what practitioner activity falls under such definitions. The Illinois Supreme Court has defined the practice of law as the "giving of advice or rendition of any sort of service by any person, firm or corporation when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill."[32]

Observation. Circular 230, §10.32, indicates that nothing within Circular 230 should be interpreted to authorize a person to engage in the practice of law if they are not a member of the bar.

FRANCINE REVIEWING NORMAN'S APPRAISAL INFORMATION

At some point during her review of Norman's appraisal, Francine became aware of a conflict because information was contained in the appraisal that normally would not have been revealed. Under §10.29(b), when Francine became aware of the conflicting interests, she was then required to obtain each client's waiver and informed consent because the two clients had conflicting interests and were being represented by the same firm.

Waivers and consents are valid only if Francine reasonably believes that competent and diligent representation may be provided to both Norman and Larry. It is highly unlikely that such representation can be provided to two clients with the directly conflicting interests that exist as seller and buyer of a business. Francine's phone call to Larry to disclose the discount applied by the appraiser due to Norman's poor health violated §10.29. This action compromised the representational responsibilities owed by Francine (as a practitioner and an employee of Intellaccount) to Norman.

32. *People ex rel. Illinois State Bar Association v. Schafer*, 87 N.E.2d 773 (1949).

APPENDIX

For the reader's convenience in studying this chapter, this section contains the following items of reference material.

- Selected sections of Circular 230, as published in June 2014
  - §10.2
  - §10.20
  - §10.22
  - §10.29
  - §10.33
  - §10.34
  - §10.35
  - §10.37
- IRC §7216
- Treas. Reg. §301.7216-1
- Treas. Reg. §301.7216-2
- Treas. Reg. §301.7216-3

CIRCULAR 230 §10.32 — DEFINITIONS

a. As used in this part, except where the text provides otherwise —

1. *Attorney* means any person who is a member in good standing of the bar of the highest court of any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

2. *Certified public accountant* means any person who is duly qualified to practice as a certified public accountant in any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

3. *Commissioner* refers to the Commissioner of Internal Revenue.

4. *Practice before the Internal Revenue Service* comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings.

5. *Practitioner* means any individual described in paragraphs (a), (b), (c), (d), (e), or (f) of §10.3.

6. A *tax return* includes an amended tax return and a claim for refund.

7. *Service* means the Internal Revenue Service.

8. *Tax return preparer* means any individual within the meaning of section 7701(a)(36) and 26 CFR 301.7701-15.

b. *Effective/applicability date.* This section is applicable on August 2, 2011.

CIRCULAR 230 §10.20 — INFORMATION TO BE FURNISHED

a. *To the Internal Revenue Service.*

1. A practitioner must, on a proper and lawful request by a duly authorized officer or employee of the Internal Revenue Service, promptly submit records or information in any matter before the Internal Revenue Service unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged.

2. Where the requested records or information are not in the possession of, or subject to the control of, the practitioner or the practitioner's client, the practitioner must promptly notify the requesting Internal Revenue Service officer or employee and the practitioner must provide any information that the practitioner has regarding the identity of any person who the practitioner believes may have possession or control of the requested records or information. The practitioner must make reasonable inquiry of his or her client regarding the identity of any person who may have possession or control of the requested records or information, but the practitioner is not required to make inquiry of any other person or independently verify any information provided by the practitioner's client regarding the identity of such persons.

3. When a proper and lawful request is made by a duly authorized officer or employee of the Internal Revenue Service, concerning an inquiry into an alleged violation of the regulations in this part, a practitioner must provide any information the practitioner has concerning the alleged violation and testify regarding this information in any proceeding instituted under this part, unless the practitioner believes in good faith and on reasonable grounds that the information is privileged.

b. *Interference with a proper and lawful request for records or information.* A practitioner may not interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service, its officers or employees, to obtain any record or information unless the practitioner believes in good faith and on reasonable grounds that the record or information is privileged.

c. *Effective/applicability date.* This section is applicable beginning August 2, 2011.

CIRCULAR 230 §10.22 — DILIGENCE AS TO ACCURACY

a. *In general.* A practitioner must exercise due diligence —

1. In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;

2. In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and

3. In determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.

b. *Reliance on others.* Except as modified by §§10.34 and 10.37, a practitioner will be presumed to have exercised due diligence for purposes of this section if the practitioner relies on the work product of another person and the practitioner used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the practitioner and the person.

c. *Effective/applicability date.* Paragraph (a) of this section is applicable on September 26, 2007. Paragraph (b) of this section is applicable beginning June 12, 2014.

CIRCULAR 230 §10.29 — CONFLICTING INTERESTS

a. Except as provided by paragraph (b) of this section, a practitioner shall not represent a client before the Internal Revenue Service if the representation involves a conflict of interest. A conflict of interest exists if —

1. The representation of one client will be directly adverse to another client; or

2. There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner.

b. Notwithstanding the existence of a conflict of interest under paragraph (a) of this section, the practitioner may represent a client if —

1. The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client;

2. The representation is not prohibited by law; and

3. Each affected client waives the conflict of interest and gives informed consent, confirmed in writing by each affected client, at the time the existence of the conflict of interest is known by the practitioner. The confirmation may be made within a reasonable period of time after the informed consent, but in no event later than 30 days.

a. Copies of the written consents must be retained by the practitioner for at least 36 months from the date of the conclusion of the representation of the affected clients, and the written consents must be provided to any officer or employee of the Internal Revenue Service on request.

b. *Effective/applicability date.* This section is applicable on September 26, 2007.

CIRCULAR 230 §10.33 — BEST PRACTICES FOR TAX ADVISORS

a. *Best practices.* Tax advisors should provide clients with the highest quality representation concerning Federal tax issues by adhering to best practices in providing advice and in preparing or assisting in the preparation of a submission to the Internal Revenue Service. In addition to compliance with the standards of practice provided elsewhere in this part, best practices include the following:

1. Communicating clearly with the client regarding the terms of the engagement. For example, the advisor should determine the client's expected purpose for and use of the advice and should have a clear understanding with the client regarding the form and scope of the advice or assistance to be rendered.

2. Establishing the facts, determining which facts are relevant, evaluating the reasonableness of any assumptions or representations, relating the applicable law (including potentially applicable judicial doctrines) to the relevant facts, and arriving at a conclusion supported by the law and the facts.

3. Advising the client regarding the import of the conclusions reached, including, for example, whether a taxpayer may avoid accuracy-related penalties under the Internal Revenue Code if a taxpayer acts in reliance on the advice.

4. Acting fairly and with integrity in practice before the Internal Revenue Service.

b. Procedures to ensure best practices for tax advisors. Tax advisors with responsibility for overseeing a firm's practice of providing advice concerning Federal tax issues or of preparing or assisting in the preparation of submissions to the Internal Revenue Service should take reasonable steps to ensure that the firm's procedures for all members, associates, and employees are consistent with the best practices set forth in paragraph (a) of this section.

c. *Applicability date.* This section is effective after June 20, 2005.

CIRCULAR 230 §10.34 — STANDARDS WITH RESPECT TO TAX RETURNS AND DOCUMENTS

a. *Tax returns.*

1. A practitioner may not willfully, recklessly, or through gross incompetence —

i. Sign a tax return or claim for refund that the practitioner knows or reasonably should know contains a position that —

A. Lacks a reasonable basis;

B. Is an unreasonable position as described in section 6694(a)(2) of the Internal Revenue Code (Code) (including the related regulations and other published guidance); or

C. Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).

ii. Advise a client to take a position on a tax return or claim for refund, or prepare a portion of a tax return or claim for refund containing a position, that —

A. Lacks a reasonable basis;

B. Is an unreasonable position as described in section 6694(a)(2) of the Code (including the related regulations and other published guidance); or

C. Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).

1. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted willfully, recklessly, or through gross incompetence.

b. *Documents, affidavits and other papers —*

1. A practitioner may not advise a client to take a position on a document, affidavit or other paper submitted to the Internal Revenue Service unless the position is not frivolous.

2. A practitioner may not advise a client to submit a document, affidavit or other paper to the Internal Revenue Service —

i. The purpose of which is to delay or impede the administration of the Federal tax laws;

ii. That is frivolous; or

iii. That contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation unless the practitioner also advises the client to submit a document that evidences a good faith challenge to the rule or regulation.

c. *Advising clients on potential penalties —*

1. A practitioner must inform a client of any penalties that are reasonably likely to apply to the client with respect to —

i. A position taken on a tax return if —

A. The practitioner advised the client with respect to the position; or

B. The practitioner prepared or signed the tax return; and

ii. Any document, affidavit or other paper submitted to the Internal Revenue Service.

2. The practitioner also must inform the client of any opportunity to avoid any such penalties by disclosure, if relevant, and of the requirements for adequate disclosure.

3. This paragraph (c) applies even if the practitioner is not subject to a penalty under the Internal Revenue Code with respect to the position or with respect to the document, affidavit or other paper submitted.

d. *Relying on information furnished by clients.* A practitioner advising a client to take a position on a tax return, document, affidavit or other paper submitted to the Internal Revenue Service, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client. The practitioner may not, however, ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

e. *Effective/applicability date.* Paragraph (a) of this section is applicable for returns or claims for refund filed, or advice provided, beginning August 2, 2011. Paragraphs (b) through (d) of this section are applicable to tax returns, documents, affidavits, and other papers filed on or after September 26, 2007.

CIRCULAR 230 §10.35 — COMPETENCE

a. A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged. A practitioner may become competent for the matter for which the practitioner has been engaged through various methods, such as consulting with experts in the relevant area or studying the relevant law.

b. *Effective/applicability date.* This section is applicable beginning June 12, 2014.

CIRCULAR 230 §10.37 — REQUIREMENTS FOR WRITTEN ADVICE

a. *Requirements.*

1. A practitioner may give written advice (including by means of electronic communication) concerning one or more Federal tax matters subject to the requirements in paragraph (a)(2) of this section. Government submissions on matters of general policy are not considered written advice on a Federal tax matter for purposes of this section. Continuing education presentations provided to an audience solely for the purpose of enhancing practitioners' professional knowledge on Federal tax matters are not considered written advice on a Federal tax matter for purposes of this section. The preceding sentence does not apply to presentations marketing or promoting transactions.

2. The practitioner must —

i. Base the written advice on reasonable factual and legal assumptions (including assumptions as to future events);

ii. Reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know;

iii. Use reasonable efforts to identify and ascertain the facts relevant to written advice on each Federal tax matter;

iv. Not rely upon representations, statements, findings, or agreements (including projections, financial forecasts, or appraisals) of the taxpayer or any other person if reliance on them would be unreasonable;

v. Relate applicable law and authorities to facts; and

vi. Not, in evaluating a Federal tax matter, take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit.

3. Reliance on representations, statements, findings, or agreements is unreasonable if the practitioner knows or reasonably should know that one or more representations or assumptions on which any representation is based are incorrect, incomplete, or inconsistent.

b. *Reliance on advice of others.* A practitioner may only rely on the advice of another person if the advice was reasonable and the reliance is in good faith considering all the facts and circumstances. Reliance is not reasonable when —

1. The practitioner knows or reasonably should know that the opinion of the other person should not be relied on;

2. The practitioner knows or reasonably should know that the other person is not competent or lacks the necessary qualifications to provide the advice; or

3. The practitioner knows or reasonably should know that the other person has a conflict of interest in violation of the rules described in this part.

c. *Standard of review.*

1. In evaluating whether a practitioner giving written advice concerning one or more Federal tax matters complied with the requirements of this section, the Commissioner, or delegate, will apply a reasonable practitioner standard, considering all facts and circumstances, including, but not limited to, the scope of the engagement and the type and specificity of the advice sought by the client.

2. In the case of an opinion the practitioner knows or has reason to know will be used or referred to by a person other than the practitioner (or a person who is a member of, associated with, or employed by the practitioner's firm) in promoting, marketing, or recommending to one or more taxpayers a partnership or other entity, investment plan or arrangement a significant purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code, the Commissioner, or delegate, will apply a reasonable practitioner standard, considering all facts and circumstances, with emphasis given to the additional risk caused by the practitioner's lack of knowledge of the taxpayer's particular circumstances, when determining whether a practitioner has failed to comply with this section.

d. *Federal tax matter.* A Federal tax matter, as used in this section, is any matter concerning the application or interpretation of —

1. A revenue provision as defined in section 6110(i)(1)(B) of the Internal Revenue Code;

2. Any provision of law impacting a person's obligations under the internal revenue laws and regulations, including but not limited to the person's liability to pay tax or obligation to file returns; or

3. Any other law or regulation administered by the Internal Revenue Service.

e. *Effective/applicability date.* This section is applicable to written advice rendered after June 12, 2014.

IRC §7216. DISCLOSURE OR USE OF INFORMATION BY PREPARERS OF RETURNS

7216(a) General rule. — Any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of the tax imposed by chapter 1, or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly —

7216(a)(1) discloses any information furnished to him for, or in connection with, the preparation of any such return, or

7216(a)(2) uses any such information for any purpose other than to prepare, or assist in preparing, any such return, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

7216(b) Exceptions. —

7216(b)(1) Disclosure. — Subsection (a) shall not apply to a disclosure of information if such disclosure is made —

7216(b)(1)(A) pursuant to any other provision of this title, or

7216(b)(1)(B) pursuant to an order of a court.

7216(b)(2) Use. — Subsection (a) shall not apply to the use of information in the preparation of, or in connection with the preparation of, State and local tax returns and declarations of estimated tax of the person to whom the information relates.

7216(b)(3) Regulations. — Subsection (a) shall not apply to a disclosure or use of information which is permitted by regulations prescribed by the Secretary under this section. Such regulations shall permit (subject to such conditions as such regulations shall provide) the disclosure or use of information for quality or peer reviews.

TREAS. REG. §301.7216-1 — INTERNAL REVENUE SERVICE, PENALTY FOR DISCLOSURE OR USE OF TAX RETURN INFORMATION

a. ***In general.*** — Section 7216(a) prescribes a criminal penalty for tax return preparers who knowingly or recklessly disclose or use tax return information for a purpose other than preparing a tax return. A violation of section 7216 is a misdemeanor, with a maximum penalty of up to one year imprisonment or a fine of not more than $1,000, or both, together with the costs of prosecution. Section 7216(b) establishes exceptions to the general rule in section 7216(a) prohibiting disclosure and use. Section 7216(b) also authorizes the Secretary to promulgate regulations prescribing additional permitted disclosures and uses. Section 6713(a) prescribes a related civil penalty for disclosures and uses that constitute a violation of section 7216. The penalty for violating section 6713 is $250 for each prohibited disclosure or use, not to exceed a total of $10,000 for a calendar year. Section 6713(b) provides that the exceptions in section 7216(b) also apply to section 6713. Under section 7216(b), the provisions of section 7216(a) will not apply to any disclosure or use permitted under regulations prescribed by the Secretary.

b. ***Definitions.*** — For purposes of section 7216 and §§301.7216-1 through 301.7216-3:

1. ***Tax return.*** — The term tax return means any return (or amended return) of income tax imposed by chapter 1 of the Internal Revenue Code.

2. ***Tax return preparer***

i. ***In general.*** — The term tax return preparer means:

A. Any person who is engaged in the business of preparing or assisting in preparing tax returns;

B. Any person who is engaged in the business of providing auxiliary services in connection with the preparation of tax returns, including a person who develops software that is used to prepare or file a tax return and any Authorized IRS e-file Provider;

C. Any person who is otherwise compensated for preparing, or assisting in preparing, a tax return for any other person; or

D. Any individual who, as part of their duties of employment with any person described in paragraph (b)(2)(i)(A), (B), or (C) of this section performs services that assist in the preparation of, or assist in providing auxiliary services in connection with the preparation of, a tax return.

ii. ***Business of preparing returns.*** — A person is engaged in the business of preparing tax returns as described in paragraph (b)(2)(i)(A) of this section if, in the course of the person's business, the person holds himself out to tax return preparers or taxpayers as a person who prepares tax returns or assists in preparing tax returns, whether or not tax return preparation is the person's sole business activity and whether or not the person charges a fee for tax return preparation services.

iii. ***Providing auxiliary services.*** — A person is engaged in the business of providing auxiliary services in connection with the preparation of tax returns as described in paragraph (b)(2)(i)(B) of this section if, in the course of the person's business, the person holds himself out to tax return preparers or to taxpayers as a person who performs auxiliary services, whether or not providing the auxiliary services is the person's sole business activity and whether or not the person charges a fee for the auxiliary services. Likewise, a person is engaged in the business of providing auxiliary services if, in the course of the person's business, the person receives a taxpayer's tax return information from another tax return preparer pursuant to the provisions of §301.7216-2(d)(2).

iv. ***Otherwise compensated.*** — A tax return preparer described in paragraph (b)(2)(i)(C) of this section includes any person who —

A. Is compensated for preparing a tax return for another person, but not in the course of a business; or

B. Is compensated for helping, on a casual basis, a relative, friend, or other acquaintance to prepare their tax return.

v. ***Exclusions.*** — A person is not a tax return preparer merely because he leases office space to a tax return preparer, furnishes credit to a taxpayer whose tax return is prepared by a tax return preparer, furnishes information to a tax return preparer at the taxpayer's request, furnishes access (free or otherwise) to a separate person's tax return preparation website through a hyperlink on his own website, or otherwise performs some service that only incidentally relates to the preparation of tax returns.

vi. ***Examples.*** — The application of §301.7216-1(b)(2) may be illustrated by the following examples:

Example 1. Bank B is a tax return preparer within the meaning of paragraph (b)(2)(i)(A) of this section, and an Authorized IRS e-file Provider. B employs one individual, Q, to solicit the necessary tax return information for the preparation of a tax return; another individual, R, to prepare the return on the basis of the information that is furnished; a secretary, S, who types the information on the returns into a computer; and an administrative assistant, T, who uses a computer to file electronic versions of the tax returns. Under these circumstances, only R is a tax return preparer for purposes of section 7701(a)(36), but all four employees are tax return preparers for purposes of section 7216, as provided in paragraph (b) of this section.

Example 2. Tax return preparer P contracts with department store D to rent space in D's store. D advertises that taxpayers who use P's services may charge the cost of having their tax return prepared to their charge account with D. Under these circumstances, D is not a tax return preparer because it provides space, credit, and services only incidentally related to the preparation of tax returns.

3. *Tax return information*

i. ***In general.*** — The term tax return information means any information, including, but not limited to, a taxpayer's name, address, or identifying number, which is furnished in any form or manner for, or in connection with, the preparation of a tax return of the taxpayer. This information includes information that the taxpayer furnishes to a tax return preparer and information furnished to the tax return preparer by a third party. Tax return information also includes information the tax return preparer derives or generates from tax return information in connection with the preparation of a taxpayer's return.

A. Tax return information can be provided directly by the taxpayer or by another person. Likewise, tax return information includes information received by the tax return preparer from the IRS in connection with the processing of such return, including an acknowledgment of acceptance or notice of rejection of an electronically filed return.

B. Tax return information includes statistical compilations of tax return information, even in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. See §301.7216-2(o) for limited use of tax return information to make statistical compilations without taxpayer consent and to use the statistical compilations for limited purposes.

C. Tax return information does not include information identical to any tax return information that has been furnished to a tax return preparer if the identical information was obtained otherwise than in connection with the preparation of a tax return.

D. Information is considered "in connection with tax return preparation," and therefore tax return information, if the taxpayer would not have furnished the information to the tax return preparer but for the intention to engage, or the engagement of, the tax return preparer to prepare the tax return.

ii. ***Examples.*** — The application of this paragraph (b)(3) may be illustrated by the following examples:

Example 1. Taxpayer A purchases computer software designed to assist with the preparation and filing of her income tax return. When A loads the software onto her computer, it prompts her to register her purchase of the software. In this situation, the software provider is a tax return preparer under paragraph (b)(2)(i)(B) of this section and the information that A provides to register her purchase is tax return information because she is providing it in connection with the preparation of a tax return.

Example 2. Corporation A is a brokerage firm that maintains a website through which its clients may access their accounts, trade stocks, and generally conduct a variety of financial activities. Through its website, A offers its clients free access to its own tax preparation software. Taxpayer B is a client of A and has furnished A his name, address, and other information when registering for use of A's website to use A's brokerage services. In addition, A has a record of B's brokerage account activity, including sales of stock, dividends paid, and IRA contributions made. B uses A's tax preparation software to prepare his tax return. The software populates some fields on B's return on the basis of information A already maintains in its databases. A is a tax return preparer within the meaning of paragraph (b)(2)(i)(B) of this section because it has prepared and provided software for use in preparing tax returns. The information in A's databases that the software accesses to populate B's return, i.e., the registration information and brokerage account activity, is not tax return information because A did not receive that information in connection with the preparation of a tax return. Once A uses the information to populate the return, however, the information associated with the return becomes tax return information. If A retains the information in a form in which A can identify that the information was used in connection with the preparation of a return, the information in that form is tax return information. If, however, A retains the information in a database in which A cannot identify whether the information was used in connection with the preparation of a return, then that information is not tax return information.

4. *Use*

   i. ***In general.*** — Use of tax return information includes any circumstance in which a tax return preparer refers to, or relies upon, tax return information as the basis to take or permit an action.

   ii. ***Example.*** — The application of this paragraph (b)(4) may be illustrated by the following example:

   Example. Preparer G is a tax return preparer as defined by paragraph (b)(2)(i)(A) of this section. If G determines, upon preparing a return, that the taxpayer is eligible to make a contribution to an individual retirement account (IRA), G will ask whether the taxpayer desires to make a contribution to an IRA. G does not ask about IRAs in cases in which the taxpayer is not eligible to make a contribution. G is using tax return information when it asks whether a taxpayer is interested in making a contribution to an IRA because G is basing the inquiry upon knowledge gained from information that the taxpayer furnished in connection with the preparation of the taxpayer's return.

5. ***Disclosure.*** — The term disclosure means the act of making tax return information known to any person in any manner whatever. To the extent that a taxpayer's use of a hyperlink results in the transmission of tax return information, this transmission of tax return information is a disclosure by the tax return preparer subject to penalty under section 7216 if not authorized by regulation.

6. ***Hyperlink.*** — For purposes of section 7216, a hyperlink is a device used to transfer an individual using tax preparation software from a tax return preparer's webpage to a webpage operated by another person without the individual having to separately enter the web address of the destination page.

7. ***Request for consent.*** — A request for consent includes any effort by a tax return preparer to obtain the taxpayer's consent to use or disclose the taxpayer's tax return information. The act of supplying a taxpayer with a paper or electronic form that meets the requirements of a revenue procedure published pursuant to §301.7216-3(a) is a request for a consent. When a tax return preparer requests a taxpayer's consent, any associated efforts of the tax return preparer, including, but not limited to, verbal or written explanations of the form, are part of the request for consent.

c. ***Gramm-Leach-Bliley Act.*** — Any applicable requirements of the Gramm-Leach-Bliley Act, Public Law 106-102 (113 Stat. 1338), do not supersede, alter, or affect the requirements of section 7216 and §§301.7216-1 through 301.7216-3. Similarly, the requirements of section 7216 and §§301.7216-1 through 301.7216-3 do not override any requirements or restrictions of the Gramm-Leach-Bliley Act, which are in addition to the requirements or restrictions of section 7216 and §§301.7216-1 through 301.7216-3.

d. ***Effective/applicability date.*** — This section applies to disclosures or uses of tax return information occurring on or after January 1, 2009. [Reg. §301.7216-1.]

TREAS. REG. §301.7216-2 — INTERNAL REVENUE SERVICE, PERMISSIBLE DISCLOSURES OR USES WITHOUT CONSENT OF THE TAXPAYER

a. ***Disclosure pursuant to other provisions of the Internal Revenue Code.*** — The provisions of section 7216(a) and §301.7216-1 shall not apply to any disclosure of tax return information if the disclosure is made pursuant to any other provision of the Internal Revenue Code or the regulations thereunder.

b. ***Disclosures to the IRS.*** — The provisions of section 7216(a) and §301.7216-1 shall not apply to any disclosure of tax return information to an officer or employee of the IRS.

c. *Disclosures or uses for preparation of a taxpayer's return*

1. ***Updating Taxpayers' Tax Return Preparation Software.*** — If a tax return preparer provides software to a taxpayer that is used in connection with the preparation or filing of a tax return, the tax return preparer may use the taxpayer's tax return information to update the taxpayer's software for the purpose of addressing changes in IRS forms, e-file specifications and administrative, regulatory and legislative guidance or to test and ensure the software's technical capabilities without the taxpayer's consent under §301.7216-3.

2. ***Tax return preparers located within the same firm in the United States.*** — If a taxpayer furnishes tax return information to a tax return preparer located within the United States, including any territory or possession of the United States, an officer, employee, or member of a tax return preparer may use the tax return information, or disclose the tax return information to another officer, employee, or member of the same tax return preparer, for the purpose of performing services that assist in the preparation of, or assist in providing auxiliary services in connection with the preparation of, the taxpayer's tax return. If an officer, employee, or member to whom the tax return information is to be disclosed is located outside of the United States or any territory or possession of the United States, the taxpayer's consent under §301.7216-3 prior to any disclosure is required.

3. ***Furnishing tax return information to tax return preparers located outside the United States.*** — If a taxpayer initially furnishes tax return information to a tax return preparer located outside of the United States or any territory or possession of the United States, an officer, employee, or member of a tax return preparer may use tax return information, or disclose any tax return information to another officer, employee, or member of the same tax return preparer, for the purpose of performing services that assist in the preparation of, or assist in providing auxiliary services in connection with the preparation of, the tax return of a taxpayer by or for whom the information was furnished without the taxpayer's consent under §301.7216-3.

4. ***Examples.*** — The following examples illustrate this paragraph (c):

Example 1. Preparer P provides tax return preparation software to Taxpayer T for T to use in the preparation of its 2009 income tax return. For the 2009 tax year, and using T's tax return information furnished while registering for the software, P would like to update the tax return preparation software that T is using to account for last minute changes made to the tax laws for the 2009 tax year. P is not required to obtain T's consent to update the tax return preparation software. P may perform a software update regardless of whether the software update will affect T's particular return preparation activities.

Example 2. T is a client of Firm, which is a tax return preparer. E, an employee at Firm's State A office, receives tax return information from T for use in preparing T's income tax return. E discloses the tax return information to P, an employee in Firm's State B office; P uses the tax return information to process T's income tax return. Firm is not required to receive T's consent under §301.7216-3 prior to E's disclosure of T's tax return information to P because the tax return information is disclosed to an employee employed by the same tax return preparer located within the United States.

Example 3. Same facts as Example 2 except T's tax return information is disclosed to FE who is located in Firm's Country F office. FE uses the tax return information to process T's income tax return. After processing, FE returns the processed tax return information to E in Firm's State A office. Because FE is outside of the United States, Firm is required to obtain T's consent under §301.7216-3 prior to E's disclosure of T's tax return information to FE.

Example 4. T, Firm's client, is temporarily located in Country F. She initially furnishes her tax return information to employee FE in Firm's Country F office for the purpose of having Firm prepare her U.S. income tax return. FE makes the substantive determinations concerning T's tax liability and forwards T's tax return information to FP, an employee in Firm's Country P office, for the purpose of processing T's tax return information. FP processes the return information and forwards it to Partner at Firm's State A office in the United States for review and delivery to T. Because T initially furnished the tax return information to a tax return preparer outside of the United States, T's prior consent for disclosure or use under §301.7216-3 was not required. An officer, employee, or member of Firm in the United States may use T's tax return information or disclose the tax return information to another officer, employee, or member of Firm without T's prior consent under §301.7216-3 as long as any disclosure or use of T's tax return information is within the United States. Firm is required to receive T's consent under §301.7216-3 prior to any subsequent disclosure of T's tax return information to a tax return preparer located outside of the United States.

d. ***Disclosures to other tax return preparers***

1. ***Preparer-to-preparer disclosures.*** — Except as limited in paragraph (d)(2) of this section, an officer, employee, or member of a tax return preparer may disclose tax return information of a taxpayer to another tax return preparer (other than an officer, employee, or member of the same tax return preparer) located in the United States (including any territory or possession of the United States) for the purpose of preparing or assisting in preparing a tax return, or obtaining or providing auxiliary services in connection with the preparation of any tax return, so long as the services provided are not substantive determinations or advice affecting the tax liability reported by taxpayers. A substantive determination involves an analysis, interpretation, or application of the law. The authorized disclosures permitted under this paragraph (d)(1) include one tax return preparer disclosing tax return information to another tax return preparer for the purpose of having the second tax return preparer transfer that information to, and compute the tax liability on, a tax return of the taxpayer by means of electronic, mechanical, or other form of tax return processing service. The authorized disclosures permitted under this paragraph (d)(1) also include disclosures by a tax return preparer to an Authorized IRS e-file Provider for the purpose of electronically filing the return with the IRS. Authorized disclosures also include disclosures by a tax return preparer to a second tax return preparer for the purpose of making information concerning the return available to the taxpayer. This would include, for example, whether the return has been accepted or rejected by the IRS, or the status of the taxpayer's refund. Except as provided in paragraph (c) of this section, a tax return preparer may not disclose tax return information to another tax return preparer for the purpose of the second tax return preparer providing substantive determinations without first receiving the taxpayer's consent in accordance with the rules under §301.7216-3.

2. ***Disclosures to contractors.*** — A tax return preparer may disclose tax return information to a person under contract with the tax return preparer in connection with the programming, maintenance, repair, testing, or procurement of equipment or software used for purposes of tax return preparation only to the extent necessary for the person to provide the contracted services, and only if the tax return preparer ensures that all individuals who are to receive disclosures of tax return information receive a written notice that informs them of the applicability of sections 6713 and 7216 to them and describes the requirements and penalties of sections 6713 and 7216. Contractors receiving tax return information pursuant to this section are tax return preparers under section 7216 because they are performing auxiliary services in connection with tax return preparation. See §301.7216-1(b)(2)(i)(B) and (D).

3. *Examples.* — The following examples illustrate this paragraph (d):

Example 1. E, an employee at Firm's State A office, receives tax return information from T for Firm's use in preparing T's income tax return. E makes substantive determinations and forwards the tax return information to P, an employee at Processor; Processor is located in State B. P places the tax return information on the income tax return and furnishes the finished product to E. E is not required to receive T's prior consent under §301.7216-3 before disclosing T's tax return information to P because Processor's services are not substantive determinations and the tax return information remained in the United States at Processor's State B office during the entire course of the tax return preparation process.

Example 2. Firm, a tax return preparer, offers income tax return preparation services. Firm's contract with its software provider, Contractor, requires Firm to periodically randomly select certain taxpayers' tax return information solely for the purpose of testing the reliability of the software sold to Firm. Under its agreement with Contractor, Firm discloses tax return information to Contractor's employee, C, who services Firm's contract without providing Contractor or C with a written notice that describes the requirements of and penalties under sections 7216 and 6713. C uses the tax return information solely for quality assurance purposes. Firm's disclosure of tax return information to C was an impermissible disclosure because Firm failed to ensure that C received a written notice that describes the requirements and penalties of sections 7216 and 6713.

Example 3. E, an employee of Firm in State A in the United States, receives tax return information from T for use in preparing T's income tax return. After E enters T's tax return information into Firm's computer, that information is stored on a computer server that is physically located in State A. Firm contracts with Contractor, located in Country F, to prepare its clients' tax returns. FE, an employee of Contractor, uses a computer in Country F and inputs a password to view T's income tax information stored on the computer server in State A to prepare T's tax return. A computer program permits FE to view T's tax return information, but prohibits FE from downloading or printing out T's tax return information from the computer server. Because Firm is disclosing T's tax return information outside of the United States, Firm is required to obtain T's consent under §301.7216-3 prior to the disclosure to FE. As provided in §301.7216-3(b) (5), however, Firm may not obtain consent to disclose T's social security number (SSN) to a tax return preparer located outside of the United States or any territory or possession of the United States.

Example 4. A, an employee at Firm A, receives tax return information from T for Firm's use in preparing T's income tax return. A forwards the tax return information to B, an employee at another firm, Firm B, to obtain advice on the issue of whether T may claim a deduction for a certain business expense. A is required to receive T's prior consent under §301.7216-3 before disclosing T's tax return information to B because B's services involve a substantive determination affecting the tax liability that T will report.

e. ***Disclosure or use of information in the case of related taxpayers***

1. In preparing a tax return of a second taxpayer, a tax return preparer may use, and may disclose to the second taxpayer in the form in which it appears on the return, any tax return information that the tax return preparer obtained from a first taxpayer if —

   i. The second taxpayer is related to the first taxpayer within the meaning of paragraph (e)(2) of this section;

   ii. The first taxpayer's tax interest in the information is not adverse to the second taxpayer's tax interest in the information; and

   iii. The first taxpayer has not expressly prohibited the disclosure or use.

2. For purposes of paragraph (e)(1)(i) of this section, a taxpayer is related to another taxpayer if they have any one of the following relationships: husband and wife, child and parent, grandchild and grandparent, partner and partnership, trust or estate and beneficiary, trust or estate and fiduciary, corporation and shareholder, or members of a controlled group of corporations as defined in section 1563.

3. See §301.7216-3 for disclosure or use of tax return information of the taxpayer in preparing the tax return of a second taxpayer when the requirements of this paragraph are not satisfied.

f. ***Disclosure pursuant to an order of a court, or an administrative order, demand, request, summons or subpoena which is issued in the performance of its duties by a Federal or State agency, the United States Congress, a professional association ethics committee or board, or the Public Company Accounting Oversight Board.*** — The provisions of section 7216(a) and §301.7216-1 will not apply to any disclosure of tax return information if the disclosure is made pursuant to any one of the following documents:

1. The order of any court of record, Federal, State, or local.

2. A subpoena issued by a grand jury, Federal or State.

3. A subpoena issued by the United States Congress.

4. An administrative order, demand, summons or subpoena that is issued in the performance of its duties by —

   i. Any Federal agency as defined in 5 U.S.C. 551(1) and 5 U.S.C. 552(f), or

   ii. A State agency, body, or commission charged under the laws of the State or a political subdivision of the State with the licensing, registration, or regulation of tax return preparers.

5. A written request from a professional association ethics committee or board investigating the ethical conduct of the tax return preparer.

6. A written request from the Public Company Accounting Oversight Board in connection with an inspection under section 104 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7214, or an investigation under section 105 of such Act, 15 U.S.C. 7215, for use in accordance with such Act.

g. ***Disclosure for use in securing legal advice, Treasury investigations or court proceedings.*** — A tax return preparer may disclose tax return information —

1. To an attorney for purposes of securing legal advice;

2. To an employee of the Treasury Department for use in connection with any investigation of the tax return preparer (including investigations relating to the tax return preparer in its capacity as a practitioner) conducted by the IRS or the Treasury Department; or

3. To any officer of a court for use in connection with proceedings involving the tax return preparer (including proceedings involving the tax return preparer in its capacity as a practitioner), or the return preparer's client, before the court or before any grand jury that may be convened by the court.

h. ***Certain disclosures by attorneys and accountants.*** **—** The provisions of section 7216(a) and §301.7216-1 shall not apply to any disclosure of tax return information permitted by this paragraph (h).

1.

i. A tax return preparer who is lawfully engaged in the practice of law or accountancy and prepares a tax return for a taxpayer may use the taxpayer's tax return information, or disclose the information to another officer, employee or member of the tax return preparer's law or accounting firm, consistent with applicable legal and ethical responsibilities, who may use the tax return information for the purpose of providing other legal or accounting services to the taxpayer. As an example, a lawyer who prepares a tax return for a taxpayer may use the tax return information of the taxpayer for, or in connection with, rendering legal services, including estate planning or administration, or preparation of trial briefs or trust instruments, for the taxpayer or the estate of the taxpayer. In addition, the lawyer who prepared the tax return may disclose the tax return information to another officer, employee or member of the same firm for the purpose of providing other legal services to the taxpayer. As another example, an accountant who prepares a tax return for a taxpayer may use the tax return information, or disclose it to another officer, employee or member of the firm, for use in connection with the preparation of books and records, working papers, or accounting statements or reports for the taxpayer. In the normal course of rendering the legal or accounting services to the taxpayer, the attorney or accountant may make the tax return information available to third parties, including stockholders, management, suppliers, or lenders, consistent with the applicable legal and ethical responsibilities, unless the taxpayer directs otherwise. For rules regarding disclosures outside of the United States, see §301.7216-2(c) and (d).

ii. A tax return preparer's law or accounting firm does not include any related or affiliated firms. For example, if law firm A is affiliated with law firm B, officers, employees and members of law firm A must receive a taxpayer's consent under §301.7216-3 before disclosing the taxpayer's tax return information to an officer, employee or member of law firm B.

2. A tax return preparer who is lawfully engaged in the practice of law or accountancy and prepares a tax return for a taxpayer may, consistent with the applicable legal and ethical responsibilities, take the tax return information into account, and may act upon it, in the course of performing legal or accounting services for a client other than the taxpayer, or disclose the information to another officer, employee or member of the tax return preparer's law or accounting firm to enable that other officer, employee or member to take the information into account, and act upon it, in the course of performing legal or accounting services for a client other than the taxpayer. This is permissible when the information is, or may be, relevant to the subject matter of the legal or accounting services for the other client, and consideration of the information by those performing the services is necessary for the proper performance of the services. In no event, however, may the tax return information be disclosed to a person who is not an officer, employee or member of the law or accounting firm, unless the disclosure is exempt from the application of section 7216(a) and §301.7216-1 by reason of another provision of §§301.7216-2 or 301.7216-3.

3. ***Examples.*** — The application of this paragraph may be illustrated by the following examples:

Example 1. A, a member of an accounting firm, renders an opinion on a financial statement of M Corporation that is part of a registration statement filed with the Securities and Exchange Commission. After the registration statement is filed, but before its effective date, B, a member of the same accounting firm, prepares an income tax return for N Corporation. In the course of preparing N's income tax return, B discovers that N does business with M and concludes that the information given by N should be considered by A to determine whether the financial statement opined on by A contains an untrue statement of material fact or omits a material fact required to keep the statement from being misleading. B discloses to A the tax return information of N for this purpose. A determines that there is an omission of material fact and that an amended statement should be filed. A so advises M and the Securities and Exchange Commission. A explains that the omission was revealed as a result of confidential information that came to A's attention after the statement was filed, but A does not disclose the identity of the taxpayer or the tax return information itself. Section 7216(a) and §301.7216-1 do not apply to B's disclosure of N's tax return information to A and A's use of the information in advising M and the Securities and Exchange Commission of the necessity for filing an amended statement. Section 7216(a) and §301.7216-1 would apply to a disclosure of N's tax return information to M or to the Securities and Exchange Commission unless the disclosure is exempt from the application of section 7216(a) and §301.7216-1 by reason of another provision of either this section or §301.7216-3.

Example 2. A, a member of an accounting firm, is conducting an audit of M Corporation, and B, a member of the same accounting firm, prepares an income tax return for D, an officer of M. In the course of preparing the return, B obtains information from D indicating that D, pursuant to an arrangement with a supplier doing business with M, has been receiving from the supplier a percentage of the amounts that the supplier invoices to M. B discloses this information to A who, acting upon it, searches in the course of the audit for indications of a kickback scheme. As a result, A discovers information from audit sources that independently indicate the existence of a kickback scheme. Without revealing the tax return information A has received from B, A brings to the attention of officers of M the audit information indicating the existence of the kickback scheme. Section 7216(a) and §301.7216-1 do not apply to B's disclosure of D's tax return information to A, A's use of D's information in the course of the audit, and A's disclosure to M of the audit information indicating the existence of the kickback scheme. Section 7216(a) and §301.7216-1 would apply to a disclosure to M, or to any other person not an employee or member of the accounting firm, of D's tax return information furnished to B.

i. ***Corporate fiduciaries.*** — A trust company, trust department of a bank, or other corporate fiduciary that prepares a tax return for a taxpayer for whom it renders fiduciary, investment, or other custodial or management services may, unless the taxpayer directs otherwise —

1. Disclose or use the taxpayer's tax return information in the ordinary course of rendering such services to or for the taxpayer; or

2. Make the information available to the taxpayer's attorney, accountant, or investment advisor.

j. ***Disclosure to taxpayer's fiduciary.*** — If, after furnishing tax return information to a tax return preparer, the taxpayer dies or becomes incompetent, insolvent, or bankrupt, or the taxpayer's assets are placed in conservatorship or receivership, the tax return preparer may disclose the information to the duly appointed fiduciary of the taxpayer or his estate, or to the duly authorized agent of the fiduciary.

k. ***Disclosure or use of information in preparation or audit of State or local tax returns or assisting a taxpayer with foreign country tax obligations.*** — The provisions of paragraphs (c) and (d) of this section shall apply to the disclosure by any tax return preparer of any tax return information in the preparation of, or in connection with the preparation of, any tax return of the taxpayer under the law of any State or political subdivision thereof, of the District of Columbia, of any territory or possession of the United States, or of a country other than the United States. The provisions of section 7216(a) and §301.7216-1 shall not apply to the use by any tax return preparer of any tax return information in the preparation of, or in connection with the preparation of, any tax return of the taxpayer under the law of any State or political subdivision thereof, of the District of Columbia, of any territory or possession of the United States, or of a country other than the United States. The provisions of section 7216(a) and §301.7216-1 shall not apply to the disclosure or use by any tax return preparer of any tax return information in the audit of, or in connection with the audit of, any tax return of the taxpayer under the law of any State or political subdivision thereof, the District of Columbia, or any territory or possession of the United States.

l. ***Payment for tax preparation services.*** — A tax return preparer may use and disclose, without the taxpayer's written consent, tax return information that the taxpayer provides to the tax return preparer to pay for tax preparation services to the extent necessary to process or collect the payment. For example, if the taxpayer gives the tax return preparer a credit card to pay for tax preparation services, the tax return preparer may disclose the taxpayer's name, credit card number, credit card expiration date, and amount due for tax preparation services to the credit card company, as necessary, to process the payment. Any tax return information that the taxpayer did not give the tax return preparer for the purpose of making payment for tax preparation services may not be used or disclosed by the tax return preparer without the taxpayer's prior written consent, unless otherwise permitted under another provision of this section.

m. ***Retention of records.*** — A tax return preparer may retain tax return information of a taxpayer, including copies of tax returns, in paper or electronic format, prepared on the basis of the tax return information, and may use the information in connection with the preparation of other tax returns of the taxpayer or in connection with an examination by the Internal Revenue Service of any tax return or subsequent tax litigation relating to the tax return. The provisions of paragraph (n) of this section regarding the transfer of a taxpayer list also apply to the transfer of any records and related papers to which this paragraph applies.

n. ***Lists for solicitation of tax return preparation business***

1. A tax return preparer, other than a person who is a tax return preparer solely because the person provides auxiliary services as defined in §301.7216-1(b)(2)(iii), may compile and maintain a separate list containing solely items of tax return information. The following items of tax return information are permissible: the names, mailing addresses, e-mail addresses, phone numbers, taxpayer entity classification (including "individual" or the specific type of business entity), and income tax return form number (for example, Form 1040-EZ) of taxpayers whose tax returns the tax return preparer has prepared or processed. The Internal Revenue Service may issue guidance, by publication in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter), describing other types of information that may be included in a list compiled and maintained pursuant to this paragraph. This list may be used by the compiler solely to contact the taxpayers on the list for the purpose of providing tax information and general business or economic information or analysis for educational purposes, or soliciting additional tax return preparation services. The list may not be used to solicit any service or product other than tax return preparation services. The compiler of the list may not transfer the taxpayer list, or any part thereof, to any other person unless the transfer takes place in conjunction with the sale or other disposition of the compiler's tax return preparation business. Due diligence conducted prior to a proposed sale of a compiler's tax return preparation business is in conjunction with the sale or other disposition of a compiler's tax return preparation business and will not constitute a transfer of the list if

conducted pursuant to a written agreement that requires confidentiality of the tax return information disclosed and expressly prohibits the further disclosure or use of the tax return information for any purpose other than that related to the purchase of the tax return preparation business. A person who acquires a taxpayer list, or a part thereof, in conjunction with a sale or other disposition of a tax return preparation business falls under the provisions of this paragraph with respect to the list. The term list, as used in this paragraph (n), includes any record or system whereby the types of information expressly authorized for inclusion in a taxpayer list pursuant to the terms of this paragraph (n) are retained. The provisions of this paragraph (n) also apply to the transfer of any records and related papers to which this paragraph (n) applies.

2. ***Examples.*** — The following examples illustrate this paragraph (n):

Example 1. Preparer A is a tax return preparer as defined by §301.7216-1(b)(2)(i)(A). Preparer A's office is located in southeast Pennsylvania, and Preparer A prepares federal and state income tax returns for taxpayers who live in Pennsylvania, New Jersey, Maryland, and Delaware. Preparer A maintains a list of taxpayer clients containing the information allowed by this paragraph (n). Preparer A provides quarterly state income tax information updates to his individual taxpayer clients by e-mail or U.S. mail. To ensure that his clients only receive the information updates that are relevant to them, Preparer A uses his list to direct his outreach efforts towards the relevant clients by searching his list to filter it by zip code and income tax return form number (Form 1040 and corresponding state income tax return form number). Preparer A may use the list information in this manner without taxpayer consent because he is providing tax information for educational or informational purposes and is targeting clients based solely upon tax return information that is authorized by this paragraph (n) (by zip code, which is part of a taxpayer's address, and by income tax return form number). Without taxpayer consent, Preparer A also may deliver this information to his clients by e-mail, U.S. mail, or other method of delivery that uses only information authorized by this paragraph (n).

Example 2. Preparer B is a tax return preparer as defined by §301.7216-1(b)(2)(i)(A). Preparer B maintains a list of taxpayer clients containing the information allowed by this paragraph (n). Preparer B provides monthly federal income tax information updates in the form of a newsletter to all of her taxpayer clients by e-mail or U.S. mail. When Preparer B hires a new employee who participates or assists in tax return preparation, she announces that hire in the newsletter for the month that follows the hiring. Each announcement includes a photograph of the new employee, the employee's name, the employee's telephone number, a brief listing of the employee's qualifications, and a brief listing of the employee's employment responsibilities. Preparer B may use the tax return information described in this paragraph (n) in this manner without taxpayer consent because she is providing tax information for educational or informational purposes to provide general federal income tax information updates. Preparer B may include the new employee announcements in the form described because this is considered tax information for informational purposes, provided the announcements do not contain solicitations for non-tax return preparation services. Without taxpayer consent, Preparer B also may deliver this information to her clients by e-mail, U.S. mail, or other method of delivery that uses only information authorized by this paragraph (n).

o. Producing statistical information in connection with tax return preparation business

1. A tax return preparer may use tax return information, subject to the limitations specified in this paragraph (o), to produce a statistical compilation of data described in §301.7216-1(b)(3)(i)(B). The purpose for and disclosure or use of the statistical compilation requiring data acquired during the tax return preparation process must relate directly to the internal management or support of the tax return preparer's tax return preparation business, or to bona fide research or public policy discussions concerning state or federal taxation. A tax return preparer may not disclose the statistical compilation, or any part thereof, to any other person unless disclosure of the statistical compilation is anonymous as to taxpayer identity, does not disclose an aggregate figure containing data from fewer than ten tax returns, and is in direct support of the tax return preparer's tax return preparation business or of bona fide research or public policy discussions concerning state or federal taxation. A statistical compilation is anonymous as to taxpayer identity if it is in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. For purposes of this paragraph, marketing and advertising is in direct support of the tax return preparer's tax return preparation business provided the marketing and advertising is not false, misleading, or unduly influential. This paragraph, however, does not authorize the disclosure or use in marketing or advertising of any statistical compilations, or part thereof, that identify dollar amounts of refunds, credits, or deductions associated with tax returns, or percentages relating thereto, whether or not the data are statistical, averaged, aggregated, or anonymous. Disclosures made in support of fundraising activities conducted by volunteer return preparation programs and other organizations described in section 501(c) of the Internal Revenue Code (Code) in direct support of their tax return preparation businesses are not marketing and advertising under this paragraph. A tax return preparer who produces a statistical compilation of data described in §301.7216-1(b)(3)(i)(B) may disclose the compilation to comply with financial accounting or regulatory reporting requirements whether or not the statistical compilation is anonymous as to taxpayer identity or discloses an aggregate figure containing data from fewer than ten tax returns.

2. A tax return preparer may not sell or exchange for value a statistical compilation of data described in §301.7216-1(b)(3)(i)(B), in whole or in part, except in conjunction with the transfer of assets made pursuant to the sale or other disposition of the tax return preparer's tax return preparation business. The provisions of paragraph (n) of this section regarding the transfer of a taxpayer list also apply to the transfer of any statistical compilations of data to which this paragraph applies. A person who acquires a statistical compilation, or a part thereof, pursuant to the operation of this paragraph (o) or in conjunction with a sale or other disposition of a tax return preparation business is subject to the provisions of this paragraph with respect to the compilation.

3. ***Examples.*** — The following examples illustrate this paragraph (o):

Example 1. Preparer A is a tax return preparer as defined by §301.7216-1(b)(2)(i)(A). In 2009, A used tax return information to produce a statistical compilation of data for both internal management purposes and to support A's tax return preparation business. The statistical compilation included an aggregate figure containing the information that A prepared 32 S corporation tax returns in 2009. In 2010, A decided to embark upon a new marketing campaign emphasizing its experience preparing small business tax returns. In the campaign, A discloses the aggregate figure containing the number of S corporation tax returns prepared in 2009. A's disclosure does not include any information that can be associated with or identify any specific taxpayers. A may disclose the anonymous statistical compilation without taxpayer consent.

Example 2. Preparer B is a tax return preparer as defined by §301.7216-1(b)(2)(i)(A). In 2010, in support of B's tax return preparation business, B wants to advertise that the average tax refund obtained for its clients in 2009 was $2,800. B may not disclose this information because it contains a statistical compilation reflecting average refund amounts.

Example 3. Preparer C is a tax return preparer as defined by §301.7216-1(b)(2)(i)(A) and is a volunteer income tax assistance program. In 2010, in support of C's tax return preparation business, C submits a grant application to a charitable foundation to fund C's operations providing free tax return preparation services to low- and moderate-income families. In support of C's request, C includes anonymous statistical data consisting of aggregated figures containing data from ten or more tax returns showing that, in 2009, C provided services to 500 taxpayers, that 95 percent of the taxpayer population served by C received the Earned Income Tax Credit (EITC), and that the average amount of the EITC received was $3,300. Despite the fact that this information constitutes an average credit amount, C may disclose the information to the charitable foundation because disclosures made in support of fundraising activities conducted by volunteer income tax assistance programs and other organizations described in section 501(c) of the Code in direct support of their tax return preparation business are not considered marketing and advertising for purposes of §301.7216-2(o)(1).

Example 4. Preparer D is a tax return preparer as defined by §301.7216-1(b)(2)(i)(A). In December 2009, D produced an anonymous statistical compilation of tax return information obtained during the 2009 filing season. In 2010, D wants to disclose portions of the anonymous statistical compilation from aggregated figures containing data from ten or more tax returns in connection with the marketing of its financial advisory and asset planning services. D is required to receive taxpayer consent under §301.7216-3 before disclosing the tax return information contained in the anonymous statistical compilation because the disclosure is not being made in support of D's tax return preparation business.

p. ***Disclosure or use of information for quality, peer, or conflict reviews***

1. The provisions of section 7216(a) and §301.7216-1 shall not apply to any disclosure for the purpose of a quality or peer review to the extent necessary to accomplish the review. A quality or peer review is a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation, accounting, or auditing services. A quality or peer review may be conducted only by attorneys, certified public accountants, enrolled agents, and enrolled actuaries who are eligible to practice before the Internal Revenue Service. See Department of the Treasury Circular 230, 31 CFR part 10. Tax return information may also be disclosed to persons who provide administrative or support services to an individual who is conducting a quality or peer review under this paragraph (p), but only to the extent necessary for the reviewer to conduct the review. Tax return information gathered in conducting a review may be used only for purposes of a review. No tax return information identifying a taxpayer may be disclosed in any evaluative reports or recommendations that may be accessible to any person other than the reviewer or the tax return preparer being reviewed. The tax return preparer being reviewed will maintain a record of the review, including the information reviewed and the identity of the persons conducting the review. After completion of the review, no documents containing information that may identify any taxpayer by name or identification number may be retained by a reviewer or by the reviewer's administrative or support personnel.

2. The provisions of section 7216(a) and §301.7216-1 shall not apply to any disclosure necessary to accomplish a conflict review. A conflict review is a review undertaken to comply with requirements established by any federal, state, or local law, agency, board or commission, or by a professional association ethics committee or board, to either identify, evaluate, or monitor actual or potential legal and ethical conflicts of interest that may arise when a tax return preparer is employed or acquired by another tax return preparer, or to identify, evaluate, or monitor actual or potential legal and ethical conflicts of interest that may arise when a tax return preparer is considering engaging a new client. Tax return information gathered in conducting a conflict review may be used only for purposes of a conflict review. No tax return information identifying a taxpayer may be disclosed in any evaluative reports or recommendations that may be accessible to any person other than those responsible for identifying, evaluating, or monitoring legal and ethical conflicts of interest. No tax return information identifying a taxpayer may be disclosed outside of the United States or a territory or possession of the United States unless the disclosing and receiving tax return preparers have procedures in place that are consistent with good business practices and designed to maintain the confidentiality of the disclosed tax return information.

3. Any person (including administrative and support personnel) receiving tax return information in connection with a quality, peer, or conflict review is a tax return preparer for purposes of sections 7216(a) and 6713(a). Tax return information disclosed and used for purposes of a quality, peer, or conflict review shall not be disclosed or used for any other purpose.

q. ***Disclosure to report the commission of a crime.*** — The provisions of section 7216(a) and §301.7216-1 shall not apply to the disclosure of any tax return information to the proper Federal, State, or local official in order, and to the extent necessary, to inform the official of activities that may constitute, or may have constituted, a violation of any criminal law or to assist the official in investigating or prosecuting a violation of criminal law. A disclosure made in the bona fide but mistaken belief that the activities constituted a violation of criminal law is not subject to section 7216(a) and §301.7216-1.

r. ***Disclosure of tax return information due to a tax return preparer's incapacity or death.*** — In the event of incapacity or death of a tax return preparer, disclosure of tax return information may be made for the purpose of assisting the tax return preparer or his legal representative (or the representative of a deceased tax return preparer's estate) in operating the business. Any person receiving tax return information under the provisions of this paragraph (r) is a tax return preparer for purposes of sections 7216(a) and 6713(a).

s. ***Effective/applicability date.*** — Paragraphs (n), (o), and (p) of this section apply to disclosures or uses of tax return information occurring on or after December 28, 2012. All other paragraphs of this section apply to disclosures or uses of tax return information occurring on or after January 1, 2009. [Reg. §301.7216-2.]

TREAS. REG. §301.7216-3 — INTERNAL REVENUE SERVICE, DISCLOSURE OR USE PERMITTED ONLY WITH THE TAXPAYER'S CONSENT

a. ***In general***

1. ***Taxpayer consent.*** — Unless section 7216 or §301.7216-2 specifically authorizes the disclosure or use of tax return information, a tax return preparer may not disclose or use a taxpayer's tax return information prior to obtaining a written consent from the taxpayer, as described in this section. A tax return preparer may disclose or use tax return information as the taxpayer directs as long as the preparer obtains a written consent from the taxpayer as provided in this section. The consent must be knowing and voluntary. Except as provided in paragraph (a)(2) of this section, conditioning the provision of any services on the taxpayer's furnishing consent will make the consent involuntary, and the consent will not satisfy the requirements of this section.

2. ***Taxpayer consent to a tax return preparer furnishing tax return information to another tax return preparer***

   i. A tax return preparer may condition its provision of preparation services upon a taxpayer's consenting to disclosure of the taxpayer's tax return information to another tax return preparer for the purpose of performing services that assist in the preparation of, or provide auxiliary services in connection with the preparation of, the tax return of the taxpayer.

   ii. ***Example.*** — The application of this paragraph (a)(2) may be illustrated by the following example:

   Example. Preparer P, who is located within the United States, is retained by Company C to provide tax return preparation services for employees of Company C. An employee of Company C, Employee E, works for C outside of the United States. To provide tax return preparation services for E, P requires the assistance of and needs to disclose E's tax return information to a tax return preparer who works for P's affiliate located in the country where E works. P may condition its provision of tax return preparation services upon E consenting to the disclosure of E's tax return information to the tax return preparer in the country where E works.

3. ***The form and contents of taxpayer consents***

   i. ***In general.*** — All consents to disclose or use tax return information must satisfy the following requirements —

      A. A taxpayer's consent to a tax return preparer's disclosure or use of tax return information must include the name of the tax return preparer and the name of the taxpayer.

      B. If a taxpayer consents to a disclosure of tax return information, the consent must identify the intended purpose of the disclosure. Except as provided in §301.7216-3(a)(3)(iii), if a taxpayer consents to a disclosure of tax return information, the consent must also identify the specific recipient (or recipients) of the tax return information. If the taxpayer consents to use of tax return information, the consent must describe the particular use authorized. For example, if the tax return preparer intends to use tax return information to generate solicitations for products or services other than tax return preparation, the consent must identify each specific type of product or service for which the tax return preparer may solicit use of the tax return information. Examples of products or services that must be identified include, but are not limited to, balance due loans, mortgage loans, mutual funds, individual retirement accounts, and life insurance.

      C. The consent must specify the tax return information to be disclosed or used by the return preparer.

      D. If a tax return preparer to whom the tax return information is to be disclosed is located outside of the United States, the taxpayer's consent under §301.7216-3 prior to any disclosure is required. See §301.7216-2(c) and (d).

      E. A consent to disclose or use tax return information must be signed and dated by the taxpayer.

   ii. ***The form and contents of taxpayer consents with respect to taxpayers filing a return in the Form 1040 series – guidance describing additional requirements for taxpayer consents with respect to Form 1040 series filers.*** — The Secretary may issue guidance, by publication in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter), describing additional requirements for tax return preparers regarding the format and content of consents to disclose and use tax return information with respect to taxpayers filing a return in the Form 1040 series, e.g., Form 1040, Form 1040NR, Form 1040A, or Form 1040EZ.

iii. ***The form and contents of taxpayer consents with respect to all other taxpayers.*** — A consent to disclose or use tax return information with respect to a taxpayer not filing a return in the Form 1040 series may be in any format, including an engagement letter to a client, as long as the consent complies with the requirements of §301.7216-3(a)(3)(i). Additionally, the requirements of §301.7216-3(c)(1) are inapplicable to consents to disclose or use tax return information with respect to taxpayers not filing a return in the Form 1040 series. Solely for purposes of a consent issued under §301.7216-3(a)(3)(iii), in lieu of identifying specific recipients of an intended disclosure under §301.7216-3(a)(3)(i)(B), a consent may allow disclosure to a descriptive class of entities engaged by a taxpayer or the taxpayer's affiliate for purposes of services in connection with the preparation of tax returns, audited financial statements, or other financial statements or financial information as required by a government authority, municipality or regulatory body.

iv. ***Examples.*** — The application of §301.7216-3(a)(3)(iii) may be illustrated by the following examples:

Example 1. Consistent with applicable legal and ethical responsibilities, Preparer Z sends its client, a corporation, Taxpayer C, an engagement letter. Part of the engagement letter requests the consent of Taxpayer C for the purpose of disclosing tax return information to an investment banking firm to assist the investment banking firm in securing long term financing for Taxpayer C. The engagement letter includes language and information that meets the requirements of §301.7216-3(a)(3)(i), including: (I) Preparer Z's name, Taxpayer C's name, and a signature and date line for Taxpayer C; and (II) a statement that "Taxpayer C authorizes Preparer Z to disclose the portions of Taxpayer C's 2009 tax return information to the firm retained by Taxpayer C necessary for the purposes of assisting Taxpayer C secure long term financing." The engagement letter satisfies the requirements of §301.7216-3(a)(3) for the disclosure of the information provided therein for the specific purpose stated.

Example 2. Consistent with applicable legal and ethical responsibilities, Preparer N sends its client, a corporation, Taxpayer D, an engagement letter. Part of the engagement letter requests the consent of Taxpayer D for the purpose of disclosing tax return information to Preparer N's affiliated firms located outside of the United States for the purposes of preparation of Taxpayer D's 2009 tax return. The engagement letter includes language and information that meets the requirements of §301.7216-3(a)(3)(i), including: (I) Preparer N's name, Taxpayer D's name, and a signature and date line for Taxpayer D; (II) a statement that "Taxpayer D authorizes Preparer N to disclose Taxpayer D's 2009 tax return information to Preparer N's affiliates located outside of the United States for the purposes of assisting Preparer N prepare Taxpayer D's 2009 tax return"; and (III) a statement that, in providing consent, Taxpayer D acknowledges that its tax return information for 2009 will be disclosed to tax return preparers located abroad. The engagement letter satisfies the requirements of §301.7216-3(a)(3) for the disclosure of the information provided therein for the specific purpose stated.

b. ***Timing requirements and limitations***

1. ***No retroactive consent.*** — A taxpayer must provide written consent before a tax return preparer discloses or uses the taxpayer's tax return information.

2. ***Time limitations on requesting consent in solicitation context.*** — A tax return preparer may not request a taxpayer's consent to disclose or use tax return information for purposes of solicitation of business unrelated to tax return preparation after the tax return preparer provides a completed tax return to the taxpayer for signature.

3. ***No requests for consent after an unsuccessful request.*** — With regard to tax return information for each income tax return that a tax return preparer prepares, if a taxpayer declines a request for consent to the disclosure or use of tax return information for purposes of solicitation of business unrelated to tax return preparation, the tax return preparer may not solicit from the taxpayer another consent for a purpose substantially similar to that of the rejected request.

4. ***No consent to the disclosure of a taxpayer's social security number to a return preparer outside of the United States with respect to a taxpayer filing a return in the Form 1040 Series***

   i. ***In general.*** — Except as provided in paragraph (b)(4)(ii) of this section, a tax return preparer located within the United States, including any territory or possession of the United States, may not obtain consent to disclose the taxpayer's social security number (SSN) with respect to a taxpayer filing a return in the Form 1040 Series, for example, Form 1040, Form 1040NR, Form 1040A, or Form 1040EZ, to a tax return preparer located outside of the United States or any territory or possession of the United States. Thus, if a tax return preparer located within the United States (including any territory or possession of the United States) obtains consent from an individual taxpayer to disclose tax return information to another tax return preparer located outside of the United States, as provided under §§301.7216-2(c) and 301.7216-2(d), the tax return preparer located in the United States may not disclose the taxpayer's SSN, and the tax return preparer must redact or otherwise mask the taxpayer's SSN before the tax return information is disclosed outside of the United States. If a tax return preparer located within the United States initially receives or obtains a taxpayer's SSN from another tax return preparer located outside of the United States, however, the tax return preparer within the United States may, without consent, retransmit the taxpayer's SSN to the tax return preparer located outside the United States that initially provided the SSN to the tax return preparer located within the United States. For purposes of this section, a tax return preparer located outside of the United States does not include a tax return preparer who is continuously and regularly employed in the United States or any territory or possession of the United States and who is in a temporary travel status outside of the United States.

   ii. ***Exception.*** — A tax return preparer located within the United States, including any territory or possession of the United States, may obtain consent to disclose the taxpayer's SSN to a tax return preparer located outside of the United States or any territory or possession of the United States only if the tax return preparer within the United States discloses the SSN to a tax return preparer outside of the United States through the use of an adequate data protection safeguard as defined by the Secretary in guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter) and verifies the maintenance of the adequate data protection safeguards in the request for the taxpayer's consent pursuant to the specifications described by the Secretary in guidance published in the Internal Revenue Bulletin.

5. ***Duration of consent.*** — A consent document may specify the duration of the taxpayer's consent to the disclosure or use of tax return information. If a consent agreed to by the taxpayer does not specify the duration of the consent, the consent to the disclosure or use of tax return information will be effective for a period of one year from the date the taxpayer signed the consent.

c. ***Special rules***

1. ***Multiple disclosures within a single consent form or multiple uses within a single consent form.*** — A taxpayer may consent to multiple uses within the same written document, or multiple disclosures within the same written document. A single written document, however, cannot authorize both uses and disclosures; rather one written document must authorize the uses and another separate written document must authorize the disclosures. Furthermore, a consent that authorizes multiple disclosures or multiple uses must specifically and separately identify each disclosure or use. See §301.7216-3(a)(3)(iii) for an exception to this rule for certain taxpayers.

2. ***Disclosure of entire return.*** — A consent may authorize the disclosure of all information contained within a return. A consent authorizing the disclosure of an entire return must provide that the taxpayer has the ability to request a more limited disclosure of tax return information as the taxpayer may direct.

3. ***Copy of consent must be provided to taxpayer.*** — The tax return preparer must provide a copy of the executed consent to the taxpayer at the time of execution. The requirements of this paragraph (c)(3) may also be satisfied by giving the taxpayer the opportunity, at the time of executing the consent, to print the completed consent or save it in electronic form.

d. ***Effective/applicability date.*** — This section applies to disclosures or uses of tax return information occurring on or after January 1, 2009. [Reg. §301.7216-3.]