

Ethics for Tax Professionals - 2017

Margaret "Margy" Dunn, EA

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Objectives

- ▶ §7216
- ▶ Circular 230
- ▶ Limited Practice Rights
- ▶ Annual Filing Season Program (AFSP)
- ▶ California Tax Education Council (CTEC)

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§7216

- ▶ Criminal provision enacted by US Congress in 1971.
- ▶ Prohibits tax return preparers from knowingly or recklessly disclosing or using tax return information.
- ▶ Penalty can be \$1,000 or up to one year in prison, or both, for each violation.
- ▶ Updated regulations published in 2008, effective Jan. 1, 2009.
- ▶ Tax return information is all information tax return preparers obtain from taxpayers or other sources.

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§7216

- ▶ Tax return preparers include:
 - ▶ Return preparers, including programs like VITA and TCE.
 - ▶ Casual preparers that are compensated.
 - ▶ Electronic return originators (e-file providers).
 - ▶ Electronic return transmitters (e-file providers).
 - ▶ Intermediate Service Providers (e-file providers).
 - ▶ Software developers (e-file providers).
 - ▶ Reporting agents (e-file providers).
 - ▶ Anyone assisting any of the above.

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What is §7216 Permissible Disclosure?

- ▶ Certain permissible disclosures without taxpayer consent.
 - ▶ To IRS, other tax jurisdictions or the courts.
 - ▶ To other US based preparers assisting in the preparation of the return.
 - ▶ For the purpose of obtaining legal advice.

- ▶ See Treas. Reg. §301.7216.2

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What §7216 Disclosures Require Consent?

- ▶ Everything else!!!
 - ▶ Banks and mortgage companies
 - ▶ Financial aid advisors
 - ▶ Financial planners
 - ▶ Other tax professionals

- ▶ Specific language is required.
- ▶ See Treas. Reg. §301.7216-3(a)(3) and Revenue Procedures 2013-14 and 2013-19 for details.
- ▶ Consent must be obtained for each tax return (multiple years, different entities, etc.)

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Comments About EITC Due Diligence Audits

- ▶ What preparers must share with examiner during EITC due diligence Audits:
 - ▶ Preparer's due diligence records.
 - ▶ The probing questions asked and the client's responses.
 - ▶ All questionnaires, checklists and worksheets.
 - ▶ Copies of any client provided documents relied on to determine eligibility for EITC or to compute the amount of EITC.

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Rev. Proc. 2013-14 Highlights

- ▶ Consent must be a separate written document.
- ▶ Can be attached to an engagement letter.
- ▶ Consent must be on one or more sheets 8 ½" x 11" or larger.
- ▶ Consent must contain only consent information.
- ▶ All text on consent must be at least 12-point type.
- ▶ If electronic, consent must be on one or more computer screens.

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Mandatory Statements

Third Party Disclosure

- ▶ Federal law requires this consent form be provided to you. Unless authorized by law, we cannot disclose your tax return information to third parties for purposes other than the preparation and filing of your tax return without your consent. If you consent to the disclosure of your tax return information, Federal law may not protect your tax return information from further use or distribution.
- ▶ You are not required to complete this form to engage our tax return preparation services. If we obtain your signature on this form by conditioning our tax return preparation services on your consent, your consent will not be valid. If you agree to the disclosure of your tax return information, your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, your consent is valid for one year from the date of signature.

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Mandatory Statements

Auxiliary Services

- ▶ Federal law requires this consent form be provided to you. Unless authorized by law, we cannot disclose your tax return information to third parties for purposes other than the preparation and filing of your tax return without your consent. If you consent to the disclosure of your tax return information, Federal law may not protect your tax return information from further use or distribution.
- ▶ You are not required to complete this form. Because our ability to disclose your tax return information to another tax return preparer affects the tax return preparation service(s) that we provide to you and its (their) cost, we may decline to provide you with tax return preparation services or change the terms (including the cost) of the tax return preparation services that we provide to you if you do not sign this form. If you agree to the disclosure of your tax return information, your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, your consent is valid for one year from the date of signature.

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Mandatory Statements

Consent to Use

- ▶ Federal law requires this consent form be provided to you. Unless authorized by law, we cannot disclose your tax return information to third parties for purposes other than the preparation and filing of your tax return without your consent.
- ▶ You are not required to complete this form to engage our tax return preparation services. If we obtain your signature on this form by conditioning our tax return preparation services on your consent, your consent will not be valid. Your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, your consent is valid for one year from the date of signature.

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Mandatory Statements on **All** Consents

- ▶ If you believe your tax return information has been disclosed or used improperly in a manner unauthorized by law or without your permission, you may contact the Treasury Inspector General for Tax Administration (TIGTA) by telephone at 1-800-366-4484, or by email at complaints@tigta.treas.gov.

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Mandatory Statements – Preparer Outside U.S.

- ▶ Special language is required for disclosures to parties outside of the U.S. See §301.7216-3(a)(3)(i)(D) and § 301.7216-2(c) and (d).

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Electronic Consents

- ▶ **Must be done in one of the following ways:**
 - ▶ (a) Assign a personal identification number (PIN) that is at least 5 characters long to the taxpayer. To consent to the disclosure or consent to the use of the taxpayer's tax return information, the taxpayer may type in the pre-assigned PIN as the taxpayer's signature authorizing the disclosure or use. A PIN may not be automatically furnished by the software so that the taxpayer only has to click a button for consent to be furnished. The taxpayer must affirmatively enter the PIN for the electronic signature to be valid;
 - ▶ (b) Have the taxpayer type in the taxpayer's name and then hit "enter" to authorize the consent. The software must not automatically furnish the taxpayer's name so that the taxpayer only has to click a button to consent. The taxpayer must affirmatively type the taxpayer's name for the electronic consent to be valid; or
 - ▶ (c) Any other manner in which the taxpayer affirmatively enters 5 or more characters unique to the taxpayer that the tax return preparer uses to verify the taxpayer's identity. For example, entry of a response to a question regarding a shared secret could be the type of information by which the taxpayer authorizes disclosure or use of tax return information.

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ABC TAX SERVICES, INC.
111 Main Street
Monterey CA 93940
phone 831-555-1234 fax 831-555-4321

Consent to Release Tax Return Information

Federal law requires this consent form be provided to you. Unless authorized by law, we cannot disclose, without your consent, your tax return information to third parties for purposes other than the preparation and filing of your tax return. If you consent to the disclosure of your tax return information, Federal law may not protect your tax return information from further use or distribution.

You are not required to complete this form. If we obtain your signature on this form by conditioning our services on your consent, your consent will not be valid. If you agree to the disclosure of your tax return information, your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, then the consent is valid for one year.

If you believe your tax return information has been disclosed or used improperly in a manner unauthorized by law or without your permission, you may contact the Treasury Inspector General for Tax Administration (TIGTA) by telephone at 1-800-366-4484 or e-mail at complaints@tigta.treas.gov.

Please provide the following authorization for the release of information to the person(s) designated.

Name _____
 Address _____
 Phone _____ Fax _____
 E-mail _____

Provide the person with:

Any information requested
 A copy of my federal tax return(s) for years: _____
 Only the following information _____

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Disclosure Authorization	2016
<p>ABC TAX SERVICES Printed Name _____ 111 Main Street Monterey CA 93940 (831)555-1234</p>	
Authorization for use of tax return information for other purposes	
<p><i>Federal law requires this consent form be provided to you. Unless authorized by law, we cannot use, without your consent, your tax return information for purposes other than the preparation and filing of your tax return. You are not required to complete this form. If we obtain your signature on this form by conditioning our services on your consent, your consent will not be valid. Your consent is valid for the same time as the Federal statute of limitations for filing your return, including extensions (generally three years).</i></p>	
<p>I am aware that ABC Tax Services is in the business of providing tax services beyond tax return preparation and tax representation, specifically year round consultation, tax planning and financial planning services. I hereby consent to the use of my tax information, at my request, for the purpose of making recommendations to me including but not limited to the following:</p>	
<p>Tax advice related to life events Tax advice and planning related to investments and real estate Tax advice and planning related to tax payments, income and pension distributions Responding to any other tax and financial questions I may have, either personal or business.</p>	
<p>Having full knowledge of my rights in these matters, I agree that such services are an integral part of the total tax services for which I have contracted with ABC Tax Services, to include receiving any newsletter or mailing provided by them.</p>	
<p>I understand that no tax return information will be disclosed to any other person or for any other purpose not specifically allowed by law unless authorized by me.</p>	
<p>Your Signature _____ Date _____</p>	
<p>Spouse's Signature _____ Date _____</p>	
<p>If you believe your tax return information has been disclosed or used improperly in a manner unauthorized by law or without your permission, you may contact the Treasury Inspector General for Tax Administration (TIGTA) by telephone at 1-800-366-4484 or by e-mail at complaints@tigta.treas.gov</p>	
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Circular 230

- ▶ Publication of certain US Treasury Regulations.
- ▶ Codified as Title 31 of the Code of Federal Regulations, Subtitle A, Part 10.
- ▶ First created in 1921.
- ▶ Major revisions in 2014.
- ▶ Provides rules of conduct for certain tax professionals
 - ▶ Enrolled Agents
 - ▶ Attorneys
 - ▶ Certified Public Accountants
 - ▶ AFSP participants

- ▶ http://www.ecfr.gov/cgi-bin/text-idx?SID=09e492732fb3b82837602048c75e1d2d&mc=true&tpl=/ecfrbrowse/Title31/31cfr10_main_02.tpl

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§10.0 Scope of part.

Subpart A—RULES GOVERNING AUTHORITY TO PRACTICE

§10.1	Offices.
§10.2	Definitions.
§10.3	Who may practice.
§10.4	Eligibility to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.
§10.5	Application to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.
§10.6	Term and renewal of status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.
§10.7	Representing oneself; participating in rulemaking; limited practice; and special appearances.
§10.8	Return preparation and application of rules to other individuals.
§10.9	Continuing education providers and continuing education programs.

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Subpart B—DUTIES AND RESTRICTIONS RELATING TO PRACTICE BEFORE
THE INTERNAL REVENUE SERVICE

§10.20	Information to be furnished.
§10.21	Knowledge of client's omission.
§10.22	Diligence as to accuracy.
§10.23	Prompt disposition of pending matters.
§10.24	Assistance from or to disbarred or suspended persons and former Internal Revenue Service employees.
§10.25	Practice by former government employees, their partners and their associates.
§10.26	Notaries.
§10.27	Fees.
§10.28	Return of client's records.
§10.29	Conflicting interests.
§10.30	Solicitation.
§10.31	Negotiation of taxpayer checks.
§10.32	Practice of law.
§10.33	Best practices for tax advisors.
§10.34	Standards with respect to tax returns and documents, affidavits and other papers.
§10.35	Competence.
§10.36	Procedures to ensure compliance.
§10.37	Requirements for written advice.
§10.38	Establishment of advisory committees.

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Circular 230

▶ Prohibits:

- ▶ Frivolous tax positions.
- ▶ Positions with no realistic possibility of merit.
- ▶ Delay in prompt disposition of matters before IRS.
- ▶ Unconscionable fees for representation.
- ▶ Conflicts of interest.
- ▶ False statements in solicitations.
- ▶ Cashing or negotiating client refunds.

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Circular 230

- ▶ **Requires:**
 - ▶ Disclosure of certain positions taken on tax return.
 - ▶ Return all records to clients.
 - ▶ Preparer must sign all returns they prepare.
 - ▶ Provide taxpayer with a copy of tax return prepared.
 - ▶ Notify taxpayer of errors promptly.
 - ▶ Comply with IRS requests promptly.
 - ▶ Exercise due diligence.
 - ▶ Use best practices.

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Limited Practice Rights

- ▶ Preparers who are NOT enrolled agents, attorneys or CPA have limited practice rights.
- ▶ Can only represent clients before revenue agents or customer service representatives and similar IRS employees on returns they prepared.
 - ▶ No collections or appeals work allowed.
 - ▶ Working with Taxpayer Advocate Service okay.
- ▶ Effective Jan, 1, 2016, non-Circular 230 preparers must be enrolled in AFSP for both year of tax return preparation AND year of limited representation work.

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Annual Filing Season Program

- ▶ **Non-credentialed preparers must:**
 - ▶ Complete 18 hours of continuing education from an IRS approved provider by December 31 each year.
 - ▶ 10 hours federal tax law
 - ▶ 6 hours federal tax law updates
 - ▶ 2 hours ethics
 - ▶ Preparers who passed the RTRP exam or are licensed or registered by any state, territory or possession of the U.S. must complete 15 hours of continuing education from an IRS approved provider by December 31 each year.
 - ▶ 10 hours federal tax law
 - ▶ 3 hours federal tax law updates
 - ▶ 2 hours ethics

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Ineligible Individuals for AFSP

- ▶ Disbarred, suspended or disqualified from practice before IRS under Circular 230.
- ▶ Convicted of a felony involving a financial matter, tax matter or other matter involving public trust within 5 prior years.
- ▶ Not in compliance with personal federal tax obligations (including employment taxes).
Installment agreements okay.

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AFSP General

- ▶ AFSP Participants may not use “certified”, “enrolled” or “licensed” to describe designation.
- ▶ AFSP participants must agree to abide by rules in Circular 230.

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AFSP and CTEC

- ▶ If registered with CTEC by December 31, CRTPs will automatically qualify for AFSP and receive an email from RPO.
- ▶ Once email is received, must log in to PTIN site* to check the box to agree to abide by Circular 230 rules.
- ▶ *Pending RPO decision on PTIN ruling.

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ANY TAX SERVICE
203 Main Street
Any Town CA 55555
phone 831-555-1234 fax 831-555-4321

**THIRD PARTY
CONSENT**

Consent to Release Tax Return Information

Federal law requires this consent form be provided to you. Unless authorized by law, we cannot disclose, without your consent, your tax return information to third parties for purposes other than the preparation and filing of your tax return. If you consent to the disclosure of your tax return information, Federal law may not protect your tax return information from further use or distribution.

You are not required to complete this form. If we obtain your signature on this form by conditioning our services on your consent, your consent will not be valid. If you agree to the disclosure of your tax return information, your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, then the consent is valid for one year.

If you believe your tax return information has been disclosed or used improperly in a manner unauthorized by law or without your permission, you may contact the Treasury Inspector General for Tax Administration (TIGTA) by telephone at 1-800-366-4484 or e-mail at complaints@tigta.treas.gov.

Please provide the following authorization for the release of information to the person(s) designated :

Name _____
Address _____
Phone _____ Fax _____
E-mail _____

Provide the person with:

- ___ Any information requested
- ___ A copy of my federal tax return(s) for years; _____
- ___ Only the following information _____

Print Your Name

Print Spouse's Name

Your Signature

Spouse's Signature

Date

Disclaimer: If this disclosure is for the purposes of a loan application, it will include a disclaimer to the fact that our firm has not audited or otherwise verified the information provided and therefore are not in a position to make any conclusions or assurances regarding the accuracy or completeness of the information nor your future ability to repay the loan.

ANY TAX SERVICE
203 Main Street
Any Town, CA 55555
(831) 555-1234

Printed Name _____

**ANNUAL
CONSENT**

Authorization for use of tax return information for other purposes

Federal law requires this consent form be provided to you. Unless authorized by law, we cannot use, without your consent, your tax return information for purposes other than the preparation and filing of your tax return. You are not required to complete this form. If we obtain your signature on this form by conditioning our services on your consent, your consent will not be valid. Your consent is valid for the same time as the Federal statute of limitations for filing your return, including extensions (generally three years)

I am aware that **Any Tax Service** is in the business of providing tax services beyond tax return preparation and tax representation, specifically year round consultation, tax planning and financial planning services. I hereby consent to the use of my tax information, at my request, for the purpose of making recommendations to me including but not limited to the following:

Tax advice related to life events.

Tax advice and planning related to investments and real estate.

Tax advice and planning related to tax payments, income and pension distributions.

Responding to any other tax and financial questions I may have, either personal or business.

Having full knowledge of my rights in these matters, I agree that such services are an integral part of the total tax services for which I have contracted with **Any Tax Service**, to include receiving any newsletter or mailing provided by them.

I understand that no tax return information will be disclosed to any other person or for any other purpose not specifically allowed by law unless authorized by me.

Your Signature _____ Date _____

Spouse's Signature _____ Date _____

If you believe your tax return information has been disclosed or used improperly in a manner unauthorized by law or without your permission, you may contact the Treasury Inspector General for Tax Administration (TIGTA) by telephone at 1-800-366-4484 or by e-mail at complaints@tigta.treas.gov

**MARRIED
CONSENT**

ABC TAX SERVICES, INC.

**111 Main Street
Monterey CA 93940
831-555-1234**

Preparing returns for individuals who were previously married to each other or still married individuals who wish to file separately, can involve potential conflicts of interest for the return preparer when we are asked to prepare the returns for both parties. Before we can prepare your return we must have your acknowledgement of the following:

1. We cannot place information on your return in conflict with information used in preparing a return for your spouse/former spouse. If our firm represents both parties, any conversations or other communications between either party and our firm are not considered confidential (by law) and are available for either party. In fact, our firm may be required to disclose any oral or written communications between our firm and one party to the other if needed to prepare a correct return.
2. The most common areas of conflict involve filing status, dependents, spousal support and income from and sales of jointly held assets.
3. We will not share any of your information directly with your spouse/former spouse. If we do find any inconsistency of information we are provided, we will simultaneously make the disclosure to both of you and ask that you work it out between you before we proceed with filing the returns. If your return has already been filed by you, then we will explain the alternatives involved to resolve the conflict.
4. If you have any questions about this process, please ask immediately, as we do not wish for you to have a problem with your filing.
5. If we have prepared a joint return for you that is later challenged by the IRS, we will not be allowed to represent either of you separately, and may only represent you both if we believe we can do so objectively.

Client Name

Signature

Date