

contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

#### Adoption of the amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

#### 1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

\*\*\* Effective April 17, 1980

Lawrenceville, GA—Gwinnett County, VOR Rwy 7, Amdt. 6  
Lawrenceville, GA—Gwinnett County, VOR/DME Rwy 25, Amdt. 2  
Wilmington, OH—Wilmington Industrial Airpark, VOR Rwy 4, Original  
Wilmington, OH—Wilmington Industrial Airpark, VOR Rwy 22, Original  
Wilmington, OH—Wilmington Industrial Airpark, VOR/DME Rwy 22, Original  
Aurora, NE—Aurora Muni., VOR-A, Amdt. 2  
Charlotte, NC—Douglas Municipal, VOR/DME Rwy 18R, Amdt. 1

\*\*\* Effective April 3, 1980

Oelwein, IA—Oelwein Muni., VOR/DME-A, Original  
Bowling Green, KY—Bowling Green-Warren County, VOR Rwy 3, Amdt. 10  
Bowling Green, KY—Bowling Green-Warren County, VOR/DME Rwy 21, Amdt. 1  
London, KY—London-Corbin Arpt-Magee Fld., VOR Rwy 5, Amdt. 10  
London, KY—London-Corbin Arpt-Magee Fld., VOR/DME Rwy 23, Amdt. 3  
Lafayette, LA—Lafayette Regional, VOR/DME Rwy 19, Original  
Marksville, LA—Marksville, Muni., VOR/DME-A, Original  
Stow, MA—Minute Man Airfield, VOR/DME Rwy 21, Original  
Belen, NM—Alexander Muni., VOR/DME-A, Original  
New York, NY—LaGuardia, VOR-B, Original  
Alliance, OH—Great Lakes Aero-Port, VOR-A, Amdt. 5  
Batavia, OH—Clermont County, VOR-A, Original  
East Stroudsburg, PA—Birchwood-Pocono Airpark, VOR/DME Rwy 31, Original  
Prospectville, PA—Turner Field, VOR Rwy 14, Amdt. 2  
Conway, SC—Conway-Horry County, VOR/DME-B, Original  
Orange, VA—Orange County, VOR/DME-A, Original  
Point Pleasant, WV—Mason County, VOR/DME-A, Amdt. 1  
Milwaukee, WI—Lawrence J. Timmerman, VOR Rwy 4L, Amdt. 4  
Milwaukee, WI—Lawrence J. Timmerman, VOR Rwy 15L, Amdt. 9

\*\*\* Effective March 20, 1980

Springfield, IL—Capital, VOR Rwy 22, Amdt. 18

#### 2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

\*\*\* Effective April 3, 1980

Fort Wayne, IN—Fort Wayne Municipal (Baer Fld) LOC BC Rwy 13, Amdt. 7  
Miami, FL—Miami Intl, LOC/DME Rwy 30, Original  
Butte, MT—Bert Mooney, LOC Rwy 15, Amdt. 1

\*\*\* Effective March 20, 1980

Danville, IL—Vermilion County, LOC Rwy 21, Orig., cancelled  
Springfield, IL—Capital, LOC BC Rwy 22, Amdt. 9, cancelled  
Nashua, NH—Boire Field, LOC Rwy 14, Original  
Millville, NJ—Millville Muni., LOC Rwy 10, Original

\*\*\* Effective February 8, 1980

Silver City, NM—Silver City & Grant Co., LOC/DME Rwy 26, Amdt. 1

\*\*\* Effective February 7, 1980

Hawthorne, CA—Hawthorne Muni., LOC Rwy 25, Amdt. 4

#### 3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

\*\*\* Effective May 15, 1980

Le Mars, IA—Le Mars Muni., NDB Rwy 18, Amdt. 4

\*\*\* Effective April 17, 1980

Reidsville, GA—Reidsville, NDB Rwy 11, Amdt. 3  
Wilmington, OH—Wilmington, Industrial Airpark, NDB Rwy 22, Amdt. 3  
Aurora, NE—Aurora Muni., NDB Rwy 16, Amdt. 1  
Bassett, NE—Rock County, NDB Rwy 31, Original

\*\*\* Effective April 3, 1980

Oelwein, IA—Oelwein Muni., NDB Rwy 13, Original  
Oelwein, IA—Oelwein Muni., NDB Rwy 13, Amdt. 2, cancelled  
Lafayette, LA—Lafayette Regional, NDB Rwy 3, Original, cancelled  
Levelland, TX—Levelland Muni., NDB Rwy 17, Original

\*\*\* Effective March 20, 1980

Springfield, IL—Capital, NDB Rwy 4, Amdt. 15  
Nashua, NH—Boire Field, NDB Rwy 14, Original  
Nashua, NH—Boire Field, NDB-B, Amdt. 9, cancelled

\*\*\* Effective February 8, 1980

Silver City, NM—Silver City & Grant Co., NDB Rwy 26, Amdt. 1

\*\*\* Effective February 7, 1980

Sioux Center, IA—Sioux Center Municipal, NDB Rwy 17, Amdt. 1

#### 4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

\*\*\* Effective April 17, 1980

Charlotte, NC—Douglas Municipal, ILS Rwy 36L, Amdt. 2

\*\*\* Effective April 3, 1980

Detroit, MI—Detroit Metropolitan Wayne County, ILS Rwy 3L, Amdt. 4  
Detroit, MI—Detroit Metropolitan Wayne County, ILS Rwy 21R, Amdt. 15  
Houston TX—Houston Intercontinental, ILS Rwy 32, Amdt. 1

\*\*\* Effective March 20, 1980

Danville, IL—Vermilion County, ILS Rwy 21, Original  
Springfield, IL—Capital, ILS Rwy 4, Amdt. 20  
Springfield, IL—Capital, ILS Rwy 22, Original  
Massena, NY—Richards Field, ILS Rwy 5, Original  
New York, NY—John F. Kennedy Int'l, ILS Rwy 4L, Amdt. 3  
New York, NY—John F. Kennedy Int'l, ILS Rwy 22L, Amdt. 19  
New York, NY—John F. Kennedy Int'l, ILS Rwy 31L, Amdt. 3

#### 5. By amending § 97.31 RADAR SIAPs identified as follows:

\*\*\* Effective March 20, 1980

Springfield, IL—Capital, RADAR-1, Amdt. 3

#### 6. By amending § 97.33 RNAV SIAPs identified as follows:

\*\*\* Effective April 3, 1980

Oelwein, IA—Oelwein Muni., RNAV Rwy 13, Original  
London, KY—London-Corbin Arpt-Magee Fld, RNAV Rwy 5, Amdt. 1

\*\*\* Effective March 20, 1980

Springfield, IL—Capital, RNAV Rwy 22, Amdt. 4  
Springfield, IL—Capital, RNAV Rwy 4, Amdt. 4

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3))

**Note.**—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C. on February 15, 1980.

John S. Kern,  
Acting Chief, Aircraft Programs Division.

**Note.**—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

[FR Doc. 80-5349 Filed 2-20-80; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 301

[T.D. 7675]

## Definition of Income Tax Return Preparer

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulation.

**SUMMARY:** This document provides a final regulation excluding certain persons from the definition of income tax return preparer. This regulation amends existing regulations as a result of changes to the applicable law made by the Revenue Act of 1978 and also the need for clarification of existing law. This regulation affects certain persons who assist others in completing their Federal income tax returns and provides guidance needed to comply with law.

**DATE:** The regulation applies with respect to documents prepared after December 31, 1976.

**FOR FURTHER INFORMATION CONTACT:** Mark L. Yecies of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (202-566-3464, not a toll-free call).

**SUPPLEMENTARY INFORMATION:****Background**

This document contains an amendment to the Regulations on Procedure and Administration (26 CFR Part 301) under section 7701(a)(36) of the Internal Revenue Code of 1954, relating to the definition of income tax return preparer.

Section 163 of the Revenue Act of 1978 authorizes the Secretary of the Treasury, through the Internal Revenue Service, to enter into agreements with nonprofit agencies or organizations pursuant to which the Service will provide training and technical assistance enabling volunteers of these institutions to assist the elderly in completing their Federal income tax returns. In addition to this Tax Counseling for the Elderly program, the Internal Revenue Service has established a Volunteer Income Tax Assistance (VITA) program which provides assistance to individual taxpayers in completing their Federal income tax returns through the use of Service-trained volunteers.

Section 1203 of the Tax Reform Act of 1976 established duties for income tax return preparers and provided penalties for the breach of those duties. On November 23, 1977, the *Federal Register*

published regulations to implement most of the provisions of section 1203 (42 FR 59961). Those regulations included a provision, § 301.7701-15, relating to the definition of income tax return preparer found in section 7701(a)(36) of the Code. Only preparers as so defined in the Code and regulations are subject to the duties and penalties imposed by section 1203.

In enacting these preparer measures in the Tax Reform Act of 1976, Congress sought to subject persons preparing returns for a fee to a specific set of requirements. However, Congress did not intend those requirements to apply to persons merely assisting others to complete their returns in a nonprofit, noncommercial setting such as volunteers under the Tax Counseling for the Elderly and the VITA programs. Assistance under these programs is provided to taxpayers free of charge. In addition, volunteers under the VITA program receive no amounts from any source in participating in the program, while volunteers under the Tax Counseling for the Elderly program may receive only reimbursement of expenses from the Internal Revenue Service through the sponsoring organizations. Further, section 163(c)(2) of the Revenue Act of 1978 in general exempts these reimbursed amounts from income and social security taxes.

Accordingly, this document amends § 301.7701-15 to make clear that volunteers under the VITA and Tax Counseling for the Elderly programs are not considered income tax return preparers for purposes of section 1203 of the Tax Reform Act of 1976. Similarly, this regulation makes clear that organizations sponsoring or administering these programs are not considered preparers with respect to such sponsorship or administration.

This regulation does not meet the Treasury criteria for a significant regulation under paragraph 8 of the final Treasury directive for improving government regulations appearing in the *Federal Register* for Wednesday, November 8, 1978 (43 FR 52120).

**Drafting Information**

The principal author of this regulation is Mark L. Yecies of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

**Adoption of Amendment To The Regulations**

Accordingly, 26 CFR Part 301 is amended by adding to § 301.7701-15 a new paragraph (a)(7), reading as follows:

**§ 301.7701-15 Income tax return preparer.**

(a) *In general.* \* \* \*

(7) The following persons are not income tax return preparers:

(i) Any individual who provides tax assistance under a Volunteer Income Tax Assistance (VITA) program established by the Internal Revenue Service;

(ii) Any organization sponsoring or administering a Volunteer Income Tax Assistance (VITA) program established by the Internal Revenue Service, but only with respect to that sponsorship or administration;

(iii) Any individual who provides tax counseling for the elderly under a program established pursuant to section 163 of the Revenue Act of 1978; and

(iv) Any organization sponsoring or administering a program to provide tax counseling for the elderly established pursuant to section 163 of the Revenue Act of 1978, but only with respect to that sponsorship or administration.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

*Commissioner of Internal Revenue.*

Approved: February 5, 1980.

Donald C. Lubick,

*Assistant Secretary of the Treasury.*

26 CFR Part 301 is amended by adding to § 301.7701-15 a new paragraph (a)(7). As amended the section reads as follows:

**§ 301.7701-15 Income tax return preparer.**

(a) *In general.* An income tax return preparer is any person who prepares for compensation, or who employs (or engages) one or more persons to prepare for compensation, other than for the person, all or a substantial portion of any return of tax under subtitle A of the Internal Revenue Code of 1954 or of any claim for refund of tax under subtitle A of the Internal Revenue Code of 1954.

(1) A person who furnishes to a taxpayer or other preparer sufficient information and advice so that completion of the return or claim for refund is largely a mechanical or clerical

matter is considered an income tax return preparer, even though that person does not actually place or review placement of information on the return or claim for refund. See also paragraph (b) of this section.

(2) A person who only gives advice on specific issues of law shall not be considered an income tax return preparer, unless—

(i) The advice is given with respect to events which have occurred at the time the advice is rendered and is not given with respect to the consequences of contemplated actions; and

(ii) The advice is directly relevant to the determination of the existence, characterization, or amount of an entry on a return or claim for refund. For example, if a lawyer gives an opinion on a transaction which a corporation has consummated, solely to satisfy an accountant (not at the time a preparer of the corporation's return) who is attempting to determine whether the reserve for taxes set forth in the corporation's financial statement is reasonable, the lawyer shall not be considered a tax return preparer solely by reason of rendering such opinion.

(3) A person may be an income tax return preparer without regard to educational qualifications and professional status requirements.

(4) A person must prepare a return or claim for refund for compensation to be an income tax return preparer. A person who prepares a return or claim for refund for a taxpayer with no explicit or implicit agreement for compensation is not a preparer, even though the person receives a gift or return service or favor.

(5) A person who prepares a return or claim for refund outside the United States is an income tax return preparer, regardless of his nationality, residence, or the locations of his places of business, if the person otherwise satisfies the definition of income tax return preparer. Notwithstanding the provisions of § 301.6109-1(g), the person shall secure an employer identification number if he is an employer of another preparer, is a partnership in which one or more of the general partners is a preparer, or is an individual not employed (or engaged) by another preparer. The person shall comply with the provisions of section 1203 of the Tax Reform Act of 1976 and the regulations thereunder.

(6) An official or employee of the Internal Revenue Service performing his official duties is not an income tax return preparer.

(7) The following persons are not income tax return preparers:

(i) Any individual who provides tax assistance under a Volunteer Income

Tax Assistance (VITA) program established by the Internal Revenue Service;

(ii) Any organization sponsoring or administering a Volunteer Income Tax Assistance (VITA) program established by the Internal Revenue Service, but only with respect to that sponsorship or administration;

(iii) Any individual who provides tax counseling for the elderly under a program established pursuant to section 163 of the Revenue Act of 1978; and

(iv) Any organization sponsoring or administering a program to provide tax counseling for the elderly established pursuant to section 163 of the Revenue Act of 1978, but only with respect to that sponsorship or administration.

(b) *Substantial preparation.* (1) Only a person (or persons acting in concert) who prepares all or a substantial portion of a return or claim for refund shall be considered to be a preparer (or preparers) of the return or claim for refund. A person who renders advice which is directly relevant to the determination of the existence, characterization, or amount of an entry on a return or claim for refund, will be regarded as having prepared that entry. Whether a schedule, entry, or other portion of a return or claim for refund is a substantial portion is determined by comparing the length and complexity of, and the tax liability or refund involved in, that portion to the length and complexity of, and tax liability or refund involved in, the return or claim for refund as a whole.

(2) For purposes of applying the rule of paragraph (b)(1) of this section, if the schedule, entry, or other portion of the return or claim for refund involves amounts of gross income, amounts of deductions, or amounts on the basis of which credits are determined which are—

(i) Less than \$2,000; or

(ii) Less than \$100,000, and also less than 20 percent of the gross income (or adjusted gross income if the taxpayer is an individual) as shown on the return or claim for refund,

then the schedule or other portion is not considered to be a substantial portion. If more than one schedule, entry or other portion is involved, they shall be aggregated in applying the rule of this subparagraph (2). Thus, if a person, for an individual taxpayer's return, prepares a schedule for dividend income which totals \$1,500 and gives advice making him a preparer of a schedule of medical expenses which results in a deduction for medical expenses of \$1,500, the person is not a preparer if the taxpayer's adjusted gross income shown

on the return is more than \$15,000. This subparagraph shall not apply to a person who prepares all of a return or claim for refund.

(3) A preparer of a return is not considered to be a preparer of another return merely because an entry or entries reported on the return may affect an entry reported on the other return, unless the entry or entries reported on the prepared return are directly reflected on the other return and constitute a substantial portion of the other return. For example, the sole preparer of a partnership return of income or a small business corporation income tax return is considered a preparer of a partner's or a shareholder's return if the entry or entries on the partnership or small business corporation return reportable on the partner's or shareholder's return constitute a substantial portion of the partner's or shareholder's return.

(c) *Return and claim for refund.*—(1) *Return.* A return of tax under subtitle A is a return filed by or on behalf of a taxpayer reporting the liability of the taxpayer for tax under subtitle A. A return of tax under subtitle A also includes an information return filed by or on behalf of a person or entity that is not a taxable entity and which reports information which is or may be reported on the return of a taxpayer of tax under subtitle A.

(i) A return of tax under subtitle A includes an individual or corporation income tax return, a fiduciary income tax return (for a trust or estate), a regulated investment company undistributed capital gains tax return, a return of a charitable remainder trust, a return by a transferor of stock or securities to a foreign corporation, foreign trust, or foreign partnership, a partnership return of income, a small business corporation income tax return, and a DISC return.

(ii) A return of tax under subtitle A does not include an estate tax return, a gift tax return, any other return of excise taxes or income taxes collected at source on wages, an individual or corporation declaration of estimated tax, an application for an extension of time to file an individual or corporation income tax return, or an information statement on Form 990, any Form 1099, or similar form.

(2) *Claim for refund.* A claim for refund of tax under subtitle A includes a claim for credit against any tax under subtitle A.

(d) *Persons who are not preparers.* A person shall not be considered to be a preparer of a return or claim for refund if the person performs only one or more of the following services:

(1) Typing, reproduction, or other mechanical assistance in the preparation of a return or claim for refund.

(2) Preparation of a return or claim for refund of a person, or an officer, a general partner, or employee of a person, by whom the individual is regularly and continuously employed or in which the individual is a general partner.

(3) Preparation of a return or claim for refund for a trust or estate of which the person either is a fiduciary or is an officer, general partner, or employee of the fiduciary.

(4) Preparation of a claim for refund for a taxpayer in response to—

(i) A notice of deficiency issued to the taxpayer; or

(ii) A waiver of restriction after initiation of an audit of the taxpayer or another taxpayer if a determination in the audit of the other taxpayer affects, directly or indirectly, the liability of the taxpayer for tax under subtitle A.

For purposes of paragraph (d) (2) of this section, the employee of a corporation owning more than 50 percent of the voting power of another corporation, or the employee of a corporation more than 50 percent of the voting power of which is owned by another corporation, is considered the employee of the other corporation as well. For purposes of paragraph (d)(3) of this section, an estate, guardianship, conservatorship, committee, and any similar arrangement for a taxpayer under a legal disability (such as a minor, an incompetent, or an infirm individual) is considered a trust or estate.

[FR Doc. 80-5359 Filed 2-20-80; 8:45 am]

BILLING CODE 4830-01-M

## 26 CFR Part 301

[T.D. 7676]

### Allowable Disclosure or Use of Tax Return Information Under Section 7216

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Adoption of final regulations.

**SUMMARY:** This document provides final Regulations on Procedure and Administration relating to allowable disclosure or use of tax return information by tax return preparers under section 7216 of the Internal Revenue Code of 1954. These regulations provide necessary guidance to tax return preparers for compliance with the law.

**DATE:** These regulations are effective on January 1, 1972.

### FOR FURTHER INFORMATION CONTACT:

Catherine Kelly Bouknight of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3289, not a toll-free call.

### SUPPLEMENTARY INFORMATION:

#### Background

On December 12, 1974, the Federal Register published proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under section 7216 of the Internal Revenue Code of 1954 (39 FR 43312). The amendments in the appendix to the notice of proposed rulemaking expand and augment the list of disclosures or uses of tax return information which can be made without violating section 7216(a) and § 301.7216-1. There was no request for a public hearing, and none was held.

After consideration of all comments regarding the proposed amendments, this Treasury decision adopts the amendments, as set forth in full below, to the Regulations on Procedure and Administration. Section 301.7216-2(n), as proposed, has been revised to make clear that a disclosure made in a bona fide though erroneous belief that a crime has been committed is excepted from section 7216(a) and § 301.7216-1.

In addition, a further notice of proposed rulemaking is being published contemporaneously with this Treasury decision. This further notice contains two proposed amendments to certain regulations under section 7216, which regulations are the subject of this Treasury decision.

#### Explanation of Provisions

Section 7216(a) of the Code provides that, as a general rule, any tax return preparer who discloses or uses any tax return information other than for the specific purpose of preparing, or assisting in the preparation of, any tax return of the taxpayer by or for whom the information was made available to a tax return preparer shall be guilty of a misdemeanor. Section 7612(b)(3) provides that subsection (a) shall not apply to a disclosure or use of information which is permitted by regulations.

These amendments to § 301.7216-2 expand the list of disclosures or uses of tax return information to which the criminal sanction of section 7216(a) does not apply. The propriety of such disclosures or uses under ethical rules of conduct governing the practice of law or accountancy is beyond the scope of the proposed amendments.

Paragraph (c) of § 301.7216-2 is expanded to permit disclosure pursuant to an administrative order, demand, summons, or subpoena issued by any Federal regulatory agency.

Paragraph (e) of § 301.7216-2 expands allowable disclosure and use of tax return information by attorneys and accountants preparing tax returns. An attorney or accountant can use such information, or disclose it to another person in his firm who may use it, to render other legal or accounting services for the taxpayer, or, with the taxpayer's express or implied consent, make the information available to third parties. An attorney or accountant can take tax return information into account and act upon it, or disclose it to another person in his firm to take it into account and act upon it, while performing legal or accounting services for a client other than the taxpayer, where such information is or may be relevant to the services for such other client and its consideration by those performing the services is necessary to perform those services properly, but disclosure or use under this provision is limited to members or employees of the firm, unless such disclosure to an outsider is specifically excepted by another provision of § 301.7216-2 or § 301.7216-3.

Paragraph (n) of § 301.7216-2 permits disclosure of tax return information to Federal or State officials to inform them of activities which may constitute, or may have constituted, a violation of Federal or State criminal laws.

#### Comments

A number of commenters requested clarification in § 301.7216-2(e) of the scope of a term used in the existing regulations, "lawfully engaged in the practice of law or accountancy." The suggestion was made that disclosure by employees of law or accounting firms who are not themselves lawyers or accountants but who receive tax return information should expressly be excepted from section 7216(a). The reason that lawyers and accountants are excepted from the criminal sanctions of section 7216 is because they are bound by codes of professional conduct and legal strictures that do not apply to nonprofessional employees. Moreover, paragraph (e), by expressly permitting attorneys and accountants to disclose tax return information to employees of their firms, so that such employees may make specified use of such information, by implication permits these employees to disclose such information to an attorney or accountant of the firm.

Another suggestion was to limit "lawfully engaged" to include only those

licensed or registered with local authorities or, alternatively, to include only those admitted to practice before the Internal Revenue Service. This phrase as now used is intended to include only those licensed or registered locally and it is not considered necessary to state this expressly. Expanding the term to include tax return preparers admitted to Internal Revenue Service practice would except from section 7216 persons frequently not bound by professional canons of ethics or local laws, in violation of the rationale of the attorney/accountant exception.

Commenters also criticized another phrase in existing paragraph (e) as overly broad and vague. This paragraph provides that an accountant (and proposed paragraph (e) that an attorney as well) may make disclosure to third parties with the "implied consent" of the taxpayer. The term "implied consent" has been construed with adequate specificity in other areas of law and has sufficiently precise meaning to be commonly understood. This Treasury decision is not intended to alter these phrases, "lawfully engaged in the practice of law or accountancy" and "implied consent", as used in existing § 301.7216-2(e).

Other suggestions concerned the similar treatment of attorneys and accountants. A suggestion was made that the two professions should not be treated identically. While the attorney-client privilege has no exact counterpart in the accounting profession in most States, nonetheless State-licensed accountants are subject to sufficient professional discipline and legal restraint to be excepted with State-licensed attorneys from the sanctions of section 7216(a) and § 301.7216-1. Another proposal was that attorneys and State-licensed accountants should be completely excepted from the criminal provisions of section 7216(a) since professional ethics and State regulation insure "the highest standard of professional conduct." It is believed that this Treasury decision will not unduly hamper the conduct of these professionals and that they should not be completely excepted.

It was suggested that the proposed limit on disclosure pursuant to an administrative order, summons or subpoena in being limited to orders, etc., issued by a regulatory agency would probably exclude Internal Revenue Service orders, as well as other nonregulatory agency orders. This proposal has been taken into account in new proposed regulations under § 301.7216-2 contained in the notice of

proposed rulemaking published contemporaneously with this Treasury decision. New proposed paragraph (c) would broaden the types of administrative bodies whose orders for disclosure of tax return information will be excepted from the criminal sanction of section 7216(a).

One criticism made was that the proposed rules could easily be construed as mandating unethical conduct by permitting disclosure by tax return preparers notwithstanding confidential relationships and constitutional rights. Code section 7216 and regulations issued thereunder do not mandate but rather decriminalize certain disclosures and uses. The propriety of such action under other laws or under ethical rules of conduct governing the practice of law or accountancy is beyond the scope of the amendments.

With regard to proposed paragraph (n) of § 301.7216-2, concern was expressed that this paragraph might be construed to impose an affirmative duty to disclose the commission of a crime. It is again emphasized that these proposed amendments are merely exceptions to a criminal provision and are not intended to authorize conduct forbidden elsewhere.

Commenters also suggested with respect to paragraph (n) that disclosure made in the bona fide though mistaken belief that a crime has been committed should be excepted. Language has been added to this paragraph to clarify that such good faith disclosure in fact comes under the protection of paragraph (n).

Finally, it was observed that paragraph (n) on disclosure to Federal and State officials omits disclosure to local officials, although disclosure pursuant to the order of a local court is permissible under § 301.7216-2(c). This matter is a subject of the new proposed regulations under § 301.7216-2 contained in the notice of proposed rulemaking published contemporaneously with this Treasury decision.

#### Drafting Information

The principal author of these regulations is Catherine Kelly Bouknight of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended by revising § 301.7216-2 (c) and (e) and by adding a new paragraph (n) thereto, to read as follows:

#### § 301.7216-2 Disclosure or use without formal consent of the taxpayer.

(c) *Disclosure pursuant to an order of a court or of a Federal regulatory agency.* The provisions of section 7216(a) and § 301.7216-1 do not apply to any disclosure of tax return information if such disclosure is made pursuant to any one of the following documents:

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

(2) An administrative order, demand, summons, or subpoena issued by any Federal regulatory agency in the performance of its duties.

Information must be clearly identified in the document in order to be disclosed under this paragraph (c).

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

(1) 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 tax return information of the taxpayer, or disclose such information to another employee or member of the preparer's law or accounting firm who may use it, to render other legal or accounting services to or for such taxpayer. Thus, for 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, such as estate planning or administration, or preparation of trial briefs or trust instruments, for the taxpayer or the estate of the taxpayer; or if another member of the same firm renders the other legal services for the taxpayer, the lawyer who prepared the tax return may disclose the tax return information to that other member for use in rendering those services for the taxpayer. In further illustration, an accountant who prepares a tax return for a taxpayer may use the tax return information, or disclose it to another member of the firm for use, for, or in connection with, the preparation of books of account, working papers, or accounting statements or reports to or for the taxpayer. Further, in the normal course of rendering such legal or accounting services to or for the

taxpayer, the attorney or accountant may, with the express or implied consent of the taxpayer, make such tax return information available to third parties, such as stockholders, management, suppliers, or lenders.

(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 (i) take such 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 (ii) disclose such information to another employee or member of the preparer's law or accounting firm to enable that other 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, when such information is or may be relevant to the subject matter of such legal or accounting services for the other client and its consideration by those performing the services is necessary for the proper performance by them of such services. In no event, however, may such tax return information be disclosed to a person who is not an employee or member of the law or accounting firm unless such disclosure is exempt from the application of section 7216(a) and § 301.7216-1 by reason of another provision, other than this paragraph, of § 301.7216-2 or § 301.7216-3.

(3) 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 filing of such registration statement, 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 such income tax return, B discovers that N does business with M and concludes that information he is given by N should be considered by A to determine whether the financial statement reported on by A contains an untrue statement of material fact or omitted to state 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 which 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 the foregoing disclosure of N's tax return information by B to A and the use of such

information by A 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 such disclosure is exempt from the application of section 7216(a) and § 301.7216-1 by reason of another provision of either § 301.7216-2 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 such 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 which 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 such a kickback scheme. As a result, A discovers information from audit sources which also, but independently, indicates the existence of such a 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 the foregoing disclosure of D's tax return information by B to A, the use by A of such information in the course of the audit, and the disclosure by A to M of the audit information indicating the existence of the kickback scheme. See also § 301.7216-2(j). 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.

\* \* \* \* \*

(n) *Disclosure to report the commission of a crime.* The provisions of section 7216(a) and § 301.7216-1 do not apply to the disclosure of any tax return information to the proper Federal or State official in order, and to the extent necessary, to inform the official of activities which may constitute, or may have constituted, a violation of Federal or State criminal laws. In addition, such 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.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

Jerome Kurtz,  
Commissioner of Internal Revenue.

Approved: January 22, 1980.

Donald C. Lubick,  
Assistant Secretary of the Treasury.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL 1416-7]

### Illinois; Approval and Promulgation of Implementation Plans

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The United States Environmental Protection Agency (USEPA) announces today final rulemaking on revisions to the Illinois State Implementation Plan (SIP). These revisions were submitted to USEPA by the State to satisfy the requirements of part D of the Clean Air Act (Act). USEPA published a notice of proposed rulemaking on these revisions on July 2, 1979 (44 FR 38587) and a correction notice on September 20, 1979 (44 FR 54500). The notice of proposed rulemaking described the nature of the SIP revisions, discussed provisions which in USEPA's judgment did not comply with the requirements of the Act and requested comments from the State and public. Numerous public comments were received. In addition, on August 29, 1979, the State submitted additional information for inclusion in the SIP and clarified some of the SIP's provisions. Based on its review of the State's response and the public comments, USEPA takes final rulemaking action to approve, conditionally approve, and disapprove specific portions of the Illinois submittal as revisions to the federally approved Illinois State Implementation Plan. This Final Rulemaking action does not address the adequacy of State rules to control particulate emissions from the iron and steelmaking industry. These rules will be addressed in a separate Notice of Proposed Rulemaking.

**EFFECTIVE DATE:** This final rulemaking becomes effective on February 21, 1980. USEPA has determined that good cause exists for making these revisions immediately effective and deviating from the requirement of 5 U.S.C. Section 553(d) (the Administrative Procedures Act) that substantive rules be published thirty days before their effective date. By making this final rulemaking immediately effective, some of the restrictions on industrial growth contained in section 110(a)(2)(I) of the Clean Air Act will be lifted from the State of Illinois. These restrictions are imposed for failure to have a State Implementation Plan which meets the requirements of Part D after the final date for SIP approval specified in the