December 11, 2006

Hon. Mark W. Everson
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Comments Concerning Proposed Regulations under Code Section 7216

Dear Commissioner Everson:

Enclosed are Comments concerning Proposed Regulations under Code Section 7216. These Comments represent the views of the American Bar Association Section of Taxation. They have not been approved by the Board of Governors or the House of Delegates of the American Bar Association and should not be construed as representing the policy of the American Bar Association.

Sincerely,

Susan P. Serota
Chair, Section of Taxation

Enclosure

cc: Donald L. Korb, Chief Counsel, Internal Revenue Service
    Eric Solomon, Acting Deputy Assistant Secretary (Tax Policy), Treasury Department
    Michael J. Desmond, Tax Legislative Counsel, Treasury Department

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COMMENTS CONCERNING
PROPOSED REGULATIONS UNDER CODE SECTION 7216

These comments concerning the rules regarding the disclosure and use of tax return information by tax return preparers (the “Comments”) are submitted on behalf of the American Bar Association Section of Taxation and have not been approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

Principal responsibility for preparing these Comments was exercised by Ian M. Comisky of the Committee on Special Projects (the “Committee”). Substantive contributions were made by Anita Nellen, Charles Pulaski, Elizabeth Atkinson, Frederic L. Ballard, Gersham Goldstein, Mary Elizabeth Rinaldi, Miriam L. Fisher, Robert E. McKenzie, Rochelle Hodes, and Tom Callahan. The Comments were reviewed Larry A. Campagna of the Section’s Committee on Government Submissions and Charles A. Pulaski, Council Director for the Committee.

Although the members of the Section of Taxation who participated in preparing these Comments have clients who would be affected, by the federal tax principles addressed by these Comments or have advised clients on the application of such principles, no such member (or the firm or organization to which such member belongs) has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these Comments.

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Date: December 11, 2006
EXECUTIVE SUMMARY

These Comments address proposed regulations (the “Proposed Regulations”) relating to the rules regarding the disclosure and use of tax return information by tax return preparers. The Proposed Regulations provide guidelines for tax return preparers using or disclosing information obtained in the process of preparing income tax returns.

The American Bar Association’s Section of Taxation (the “Section”) commends the Internal Revenue Service (the “IRS”) for its extensive efforts to strengthen the protection of taxpayers’ rights against unauthorized disclosure of their sensitive tax return information. In particular, the Section applauds the IRS for recognizing and addressing the specific disclosure and use concerns raised by the increased and pervasive use of electronic technology.

These Comments focus on the Section’s concerns regarding the Proposed Regulations’ technical changes to the disclosure and use rules. We may provide separate comments addressing more fundamental policy concerns raised by the Proposed Regulations.

Generally, the Section agrees with and supports the majority of the Proposed Regulations’ technical changes. However, we are concerned that some of the rules provided in the Proposed Regulation are too restrictive and unduly burdensome, particularly with respect to multinational taxpayers and taxpayers with complex tax positions, and do not take into account the business realities of the firms that provide return preparation services for these taxpayers. On the other hand, we are also concerned that some of the rules in the Proposed Regulations are not stringent enough to protect taxpayers. These Comments identify our areas of concern and provide suggestions for balancing the Proposed Regulations’ goal of increasing taxpayer protection while simultaneously allowing the tax return preparers to provide efficient service to their clients.

Also, we believe that some of the provisions in the Proposed Regulations do not warrant criminal sanction even though we agree that they may be disclosure violations. Therefore, the Section strongly recommends that the IRS propose regulations specifically for IRC § 6713 in order to give necessary guidance on the distinction between civil and criminal violations of the disclosure rules.
COMMENTS CONCERNING PROPOSED REGULATIONS UNDER §7216

1. Prop. Reg. § 301.7216-1: Penalty for Disclosure or Use of Tax Return Information.

   A. General

   The Internal Revenue Code of 1986, as amended, ("IRC") provides that civil and criminal sanctions are to be applied against tax return preparers who, knowingly or recklessly, improperly disclose tax return information. These Proposed Regulations provide guidance and clarification regarding the types of conduct that constitute improper disclosures of taxpayer information punishable by criminal sanctions pursuant to IRC § 7216. The Proposed Regulations state that conduct violative of IRC § 7216 may also be punished by a civil penalty under IRC § 6713(c). However, some conduct may be covered by IRC § 6713 even though it is not covered by IRC § 7216 because, technically, unlike IRC § 7216(a), IRC § 6713(a) includes no requirement that the tax return preparer act "knowingly or recklessly." We recommend that the Treasury issue separate regulations under IRC § 6713(a) to clarify that even if committed knowingly or willfully, certain technical violations of the non-permissible use/disclosure rules will only subject the tax return preparer to civil penalties.

   B. Prop. Reg. § 301.7216-1(b): Definitions

   The Proposed Regulations amend several existing definitions and add some entirely new ones. Many of the new proposed definitions were added to address the use of computers and the internet to facilitate the return preparation and filing process. We applaud the government’s recognition that the widespread use of computers and the internet in connection with the tax return preparation and filing process poses special concerns that require additional taxpayer protection. We support the Service’s efforts to protect taxpayers’ privacy. In particular, we agree that tax return preparers need to be vigilant to prevent taxpayer information disclosure – either intentionally or accidentally – over the internet as the growing reliance on computers and the internet has led to a rapid increase in the potential for identity theft and unauthorized dissemination of personal information.

   i. Tax Return Preparer

   We generally agree with the proposed expansions of the definition of “tax return preparer.” The proposed definition of “tax return preparer” specifies that any “person who develops software that is used to prepare or file a tax return and any authorized IRS e-file Provider” will be a tax return preparer. However, a person will not be considered a tax return preparer if he only furnishes access (free or otherwise) to an unaffiliated person’s tax return preparation website through a hyperlink on his own website. We agree that software developers fall within the general definition of “tax return preparer” since many electronic forms contain instructions and formulas that make assumptions and apply tax law to guide the taxpayer regarding what to input, or how the information entered by the taxpayer should be interpreted in the overall tax return. We agree that
electronic return transmitters and electronic return originators who are not also income tax return preparers under IRC § 7701(a)(36) have an obligation to protect taxpayer information.

We also support including as tax return preparers persons who are 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 disclosure to contractors provisions of Prop. Reg. § 301.7216-2(d)(2). However, particularly because the Proposed Regulations are intended to implement a criminal statute, we recommend that the IRS clarify what the term “auxiliary services” includes.

The definition of “tax return preparer” in Prop. Reg. § 301.7216-1(b)(2) includes persons who are described in IRC § 7701(a)(36), which defines “income tax return preparer.” The Proposed Regulations, however, define a far larger group of people as “tax return preparers,” for purposes of applying criminal sanctions for disclosure of return information, than IRC § 7701 includes for other purposes of applying all other sections of the IRC. The Proposed Regulations state that a person who is an income tax return preparer for purposes of IRC § 7701(a)(36) is automatically an income tax return preparer for IRC § 7216. However, just because a person is not an income tax return preparer as defined in IRC § 7701(a)(36) does not preclude him or her from being a return preparer under IRC § 7216. Under the Proposed Regulations, a person who is otherwise not a return preparer under any other part of the IRC could be subject to criminal prosecution as a tax return preparer under IRC § 7216.

The Examples illustrate that many persons are “tax return preparers” under IRC § 7216 who are not considered tax return preparers under IRC §7701(a)(36). Traditionally, under IRC §7701(a)(36), secretaries, administrative assistants and people who usually have no decision-making role in the return preparation process and do little more than transcribe information or process it for submission are not considered to be return preparers. However, Prop. Reg. § 301.7216-1(b)(2) proposes to classify these individuals as return preparers and subject them to criminal sanctions. We support the government’s efforts to hold accountable all individuals who are involved in the process of preparing and filing tax returns or providing auxiliary services. However, we reiterate our earlier comment that the Service should consider publishing regulations under the civil penalty section to ensure that only violations that warrant criminal sanctions are subject to such extreme consequences.

ii. Tax Return Information

In general, we agree with the proposed definition of “tax return information.” We also agree with the provision in the Proposed Regulations that includes a statistical compilation of tax return information within the definition, even if the compilation takes a form that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer. Recognizing the long-standing policy of Rev. Rul. 79-114, we
believe that this provision adds a necessary layer of protection against inappropriate use or disclosure of taxpayer information.

We generally agree with the clarification that tax return information is limited to information that the taxpayer would not have furnished but for his intention to engage, or his engagement of, the tax return preparer to prepare his tax return. We note this definition appears to protect taxpayers who engage a tax return preparer, but ultimately do not have their return prepared by that preparer. We are concerned, however, that the intended application of this definition is overbroad, as evidenced by the Examples. In Example 1, a software provider who sells software to assist taxpayers in preparing their returns is a tax return preparer if the software prompts the taxpayer to register with the provider. According to the proposed Example, the taxpayer purchased the software to prepare her return. Thus, the taxpayer’s registration information is “tax return information.” However, it is not apparent that the taxpayer has engaged the software provider or anyone else to prepare her return. Indeed, the Example suggests that the taxpayer’s registration information is protected “tax return information” whether or not the taxpayer actually uses the software to prepare her return. We recommend that the Example be modified to limit the application of IRC § 7216 to taxpayer information.

iii. Request for consent

We generally agree with the proposed definition of “request for consent.” We agree that a request for consent includes the act of supplying a taxpayer with a paper or electronic form that meets the requirements of a revenue procedure published pursuant to Prop. Reg. § 301.7216-3(a) as well as any associated efforts of the tax return preparer, including but not limited to, verbal or written explanations of the form. We believe, however, that the definition of consent is too narrow and that there should be more flexibility for professional relationships where the sophistication of the client does not require this form of consent. An engagement letter should be an appropriate vehicle for attorneys and certified public accountants to use to obtain consent for sophisticated taxpayers.

2. Prop. Reg. § 301.7216-2: Permissible Disclosures or Uses Without the Consent of the Taxpayer

A. Prop. Reg. § 301.7216-2(c): Disclosures or Uses for Preparation of a Taxpayer's Return - Tax Return Preparers Working for the Same Firm

Prop. Reg. § 301.7216-2(c) treats disclosures between tax return preparers working for the same firm in the United States (“U.S.”) as authorized disclosures as long as such disclosures generally assist in the preparation of a tax return. However, it requires taxpayer consent if tax return information is to be disclosed to members of the same firm located outside of the U.S. This provision does not recognize the business realities of large firms. Tax return preparers should not be required to request consent from a taxpayer to share tax return information within the firm when the taxpayer has retained
the firm to provide return preparation services. The current draft of the Proposed Regulations will cause significant logistical problems for taxpayers and tax return preparers when the taxpayer has international issues, and the proposed language also ignores the concept that information known to one member of a firm is imputed to the entire firm. A general consent signed by the taxpayer upon retaining the firm (e.g., the engagement letter) should suffice for sophisticated taxpayers as consent for disclosure of return information as necessary within the firm, regardless of whether the actual providers are within or without the U.S. Furthermore, it is an unnecessarily disruptive condition on U.S.-based preparers, especially considering that the same condition does not apply when the taxpayer initially provides his or her information to a preparer outside of the U.S. There is no reason to restrict the flow of information among members of the same firm when the information is going from a U.S. office to a foreign office, but not the reverse.

B. Prop. Reg. § 301.7216-2(d): Disclosures to Other Tax Return Preparers

Under Prop. Reg. § 301.7216-2(d), a tax return preparer may generally disclose tax return information of a taxpayer to another preparer located within the U.S. if the disclosure is for the purpose of (1) preparing a tax return or (2) 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 a taxpayer's reported tax liability."

We have concerns about what is meant by services that are "substantive determinations or advice affecting a taxpayer's reported tax liability." While we are supportive of a well-balanced rule that provides notice to a taxpayer regarding a disclosure by one preparer to a second preparer for the purpose of obtaining substantive determinations or advice impacting upon the taxpayer's return, we are concerned that the phrase "substantive determinations or advice" is vague, especially under circumstances that may be the subject of potential criminal sanctions. We believe that taxpayers and tax preparers would greatly benefit from the inclusion of examples in the regulations which adequately define this phrase.

C. Prop. Reg. § 301.7216-2(f): Disclosures Relating to Certain Ethics Investigations of Attorneys and CPAs

Prop. Reg. § 301.7216-2(f) recognizes that, to varying degrees, bar associations, state boards of accountancy, the Internal Revenue Service ("IRS") Office of Professional Responsibility, and the American Institute of Certified Public Accountants’ Professional Ethics Executive Committee are authorized to investigate potential ethics violations of attorneys or CPAs. In this context the Proposed Regulation states that IRC § 7216(a) and Reg. § 301.7216-1 will not apply to the disclosure of tax return information made pursuant to inter alia: (1) an administrative order, demand, summons, or subpoena issued by a state agency or body charged with the licensing, registration, or regulation of tax return preparers, (2) a written request by a professional ethics board, or (3) a formal
demand from the Public Company Accounting Oversight Board. We support these provisions because they can expedite the investigations of unethical professionals. However, in order to ensure confidentiality of the taxpayer information in the hands of these third parties, protections similar to those contemplated by Prop. Reg. § 301.7216-2(p) regarding quality and peer reviews should be added to this Proposed Regulation.

Prop. Reg. § 301.7216-2(f)(3) also provides that IRC § 7216(a) and Treas. Reg. § 301.7216-1 do not apply with respect to a disclosure made pursuant to a subpoena issued by the U.S. Congress ("Congress"). This provision would permit the disclosure of tax return information to a Congressional committee outside of very specific and narrow circumstances in which the IRS would be permitted to disclose similar information. IRC § 6103(f) provides detailed rules covering IRS disclosures to Congress. In general, and with limited exceptions, only the Chairmen of the House Ways and Means and Senate Finance Committees, or the Joint Committee on Taxation, may authorize disclosures of tax information by the IRS to the Congress. We are concerned that the broad standard of disclosure contemplated by the Proposed Regulation is inconsistent with the Congressional policies underlying the protection of confidential taxpayer return information implicit in IRC § 6103. Moreover, the Proposed Regulation could have the effect of inappropriately thrusting tax return preparers into the center of political issues should committees of Congress attempt to use this new regulatory authority to sidestep the statutory limitations contained in IRC § 6103(f). We believe the IRS should not dilute taxpayers protection by allowing Congress to obtain from return preparers what it cannot obtain from the IRS.

D. Prop. Reg. § 301.7216-2(g): Disclosures for Use in Treasury Investigations or Court Proceedings

Currently, Treas. Reg. § 301.7216-2(c) provides that a return preparer may lawfully disclose a tax return or tax return information without the formal consent of the taxpayer pursuant to (1) an order of a court, (2) subpoena issued by a grand jury, or (3) an order, etc., issued by any federal agency or state agency charged with regulating return preparers. Currently, under Treas. Reg. § 301.7216-2(c), a return preparer who receives a subpoena from a litigant in a civil case not involving the return preparer, but to which the return preparer's client is a party, may not disclose tax return information without the client's consent since that subpoena was not issued by a grand jury, a federal agency, or a state agency charged with regulating return preparers.

In addition, Treas Reg. § 301.7216-2(d) currently provides that "A tax return preparer may disclose tax return information * * * (2) to his attorney or to any officer of the court, for use in connection with proceedings involving such tax return preparer before the court * * * "

In the preamble to the Proposed Regulations, IRS states that:

“Proposed section 301.7216-2(g), governing disclosures for use in Treasury investigations or court proceedings, amends current section 301.7216-2(d), which limits
disclosures to IRS investigations and court proceedings. Disclosures are also authorized to officers of a court in court proceedings in which a taxpayer-client of a return preparer is a party. The Proposed Regulations clarify that the return preparer need not be a party to a court proceeding for disclosure to be authorized under this section.”

Prop. Reg. § 301.7216-2(g) provides that "A tax return preparer may disclose tax return information--(2) * * * to any officer of the court, for use in connection with proceedings involving * * * the return preparer's client, before the court * * *." This Proposed Regulation could be construed to allow a return preparer to disclose tax return information without the taxpayer's consent to an officer of the court for use in connection with proceedings not involving the return preparer, but involving the taxpayer, even if the IRS or the government is not a party to the proceedings, such as civil litigation between the return preparer's client and an individual or other entity. We find this provision particularly troubling since it puts the tax advisor in the middle of a dispute between its client and a third party. The current rules require the client to consent to disclosure in such cases. If the client refuses to consent to disclosure, the court has sufficient tools to deal with the situation. Although the preamble to the Proposed Regulations has addressed this change, we believe further clarification is warranted.

E. Prop. Reg. § 301.7216-2(h): Certain Disclosures Made by Attorneys and Accountants

Under Prop. Reg. § 301.7216-2(h), a tax return preparer who is lawfully engaged in the practice of law or accounting is generally permitted to disclose a taxpayer's tax return information to another member of the preparer's law or accounting firm for the purpose of potentially providing other legal or accounting services to the taxpayer. The Proposed Regulation also states that "[i]n 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 * * * unless the taxpayer directs otherwise." We appreciate the IRS’s recognition of the way law firms and accounting firms operate on behalf of their clients. This provision is important to law firms’ and other professional firms’ continued ability to serve their clients’ various needs.

We are concerned, however, with the limitation in Prop. Reg. § 301.7216-2(h)(1)(ii). That section states that a tax return preparer's law or accounting firm does not include any related or affiliated firms. This limitation significantly reduces the application of the same firm exceptions for organizations that are structured in separate related legal entities. Many firms operate via related but separately licensed entities, such as partnerships or corporations or partnerships of professional corporations. We recommend that Prop. Reg. § 301.7216-2(h)(1)(ii) be revised to provide that the "same firm" be determined in a manner that more accurately reflects these current business practices.

Similarly, we commend the IRS for the scope of Prop. Reg. § 301.7216-2(i). In general, this provision provides that disclosures of tax return information by corporate fiduciaries
to the taxpayer's attorney, accountant, or investment advisor are "authorized" unless the taxpayer directs otherwise.

In general, we view Prop. Reg. §§ 301.7216-2(h) and 301.7216-2(i) as a reaffirmation by the IRS of its longstanding recognition that attorneys and accountants are subject to legal and ethical standards beyond those that which apply to many other tax return preparers. Based upon their compliance with those legal and ethical standards, as well as the skills and knowledge required to maintain accreditation, attorneys and accountants have been permitted to offer their tax return clients other legal and accounting services.

It is important to note that under the implied consent aspect of Prop. Reg. § 301.7216-2(h), the Proposed Regulations recognize that clients generally expect their attorneys and accountants to act upon the information obtained during return preparation to ensure that the client is properly advised both with respect to specific return positions and other aspects of the client's tax planning and compliance. However, while these sections are intended to facilitate the normal course of rendering accounting and legal services, they do not fully take into account the modern global business environment. For example, a non-U.S. member of an international accounting firm in the course of an audit of a foreign multinational corporation may request tax return information from a U.S. member of the firm in order to render an opinion on a financial statement that is part of a registration statement to be filed with the Securities and Exchange Commission. Since the exceptions under Prop. Reg. §§ 301.7216-2(h) and 301.7216-2(i) do not apply, the U.S. tax preparer would need to obtain separate written consent prior to disclosing the information. In some cases, the time required to obtain the required consent might adversely impact the timely filing of the registration statement.

Accordingly, in recognition of the professional relationship that exists between clients and their attorneys and accountants, we recommend that the Proposed Regulations be redrafted to permit accountants and attorneys to obtain any required consents as part of an engagement letter using language that is appropriate to the particular facts and circumstances of the situation, rather than requiring the use of the specific format for consents prescribed in Prop. Reg. § 301.7216-3 and the proposed revenue procedure. Moreover, taxpayers should not be required to grant specific consent for tax return information to be disclosed to a non-US officer, member or employee of the same law or accounting firm that the taxpayer has engaged, so long as the purpose of the disclosure is in furtherance of the work the taxpayer has already authorized.

F. Prop. Reg. § 301.7216-2(p): Disclosure or Use of Information for Quality or Peer Reviews

IRC § 7216(b)(3) generally permits the disclosure of tax return information by a person engaged in the business of preparing tax returns or in providing related tax return preparation services for purposes of quality or peer reviews. Prop. Reg. § 301.7216-2(p) readopts the exception contained in the current regulations, thereby carrying out the statutory intent of IRC § 7216(b)(3). We strongly support IRC § 7216(b)(3) and Prop.
Reg. § 301.7216-2(p). These provisions are consistent with professional ethics standards established by the American Bar Association for its members.

3. Prop. Reg. § 301.7216-3: Disclosure or Uses Permitted Only with the Taxpayer's Consent

Consistent with the current regulations, Prop. Reg. § 301.7216-3(b)(2) provides that a request for consent may not be made after the completed return is provided to the taxpayer. However, Prop. Reg. § 301.7216-3(a)(1) also adds a new requirement that consent must be obtained from the taxpayer before any disclosure or use is made and Prop. Reg. § 301.7216-3(b)(1) provides that no retroactive consent will be permitted. We agree with these additions in that they seem consistent with the goals of the Proposed Regulations. We are concerned, however, that criminalizing a violation of this provision may be too harsh in some circumstances, such as when consent is given orally but not documented until later. Given filing deadlines and other timing requirements, the tax return preparer may not be able to obtain written consent in time to meet the taxpayer's filing requirements. Criminal sanctions are not appropriate in these situations.

Prop. Reg. § 301.7216-3(b)(3) provides that, if a taxpayer declines to provide consent, a preparer cannot make another request for consent. This provision may be too restrictive. In many cases, a taxpayer will decline to provide consent solely because the taxpayer does not fully understand the purpose and extent of the consent. In these cases, we believe that it is appropriate to allow the preparer to contact the taxpayer, even after the taxpayer has declined to provide consent, in order to explain the purpose and extent of the consent being requested. The Proposed Regulations should be clarified to provide that contacting the taxpayer to explain the purpose and extent of a requested consent will not be treated as an inappropriate second request for consent. Rather, such a follow-up contact should be treated as part of the initial request, particularly since Prop. Reg. § 301.7216-1(b)(7) defines a request for consent as including verbal or written explanations of the form.

Prop. Reg. § 301.7216-3(b)(4) provides that the consent cannot be effective for a period longer than one year from the date the consent is signed by the taxpayer. However, there are special situations in which it may be appropriate to permit the use or disclosure of the taxpayer tax return information for a longer period. For example, in the case of an expatriate, the due date for a foreign return or other related document may be more than one year after the taxpayer signs the consent. Although we agree that a consent should not be effective forever, at least in connection with tax return preparation services, the duration of the consent should, at a minimum, correspond to the duration of the tax return preparation engagement and the services encompassed by that engagement. Therefore, in such cases, we recommend against imposing a blanket limitation on the effectiveness of the taxpayer's consent. Rather, we suggest that the regulations provide that, with respect to tax return preparation services, taxpayer’s consent may be effective for a fixed period greater than one year if the time period is clearly stated in the consent and if appropriate to the circumstances surrounding the use or disclosure authorized in the consent. For instance, the revenue procedure should permit the consent to be applicable to the
performance of all services with respect to the preparation of the income tax return at issue, including preparation of extensions, the tax return, and audit by tax authorities.

Prop. Reg. § 301.7216-3(c)(2) provides that a consent to disclose an entire return must contain an explanation of why a more limited disclosure is unsatisfactory. We believe that this provision is too restrictive given that disclosure of the entire return may be warranted in certain circumstances. We recommend that the Proposed Regulations be modified to allow the consent to state that the entire federal income tax return may be required to be disclosed in situations where it is warranted, rather than requiring a specific explanation of why a more limited disclosure is unsatisfactory.

4. **Notice 2005-93: Consents to Use and Disclose Tax Return Information**

In addition to publishing the Proposed Regulations, the IRS also published Notice 2005-93 which contains a proposed revenue procedure regarding the format and content of consents. In general, we support the issuance of this guidance. However, we have a few important concerns.

Sections 4.06 and 4.07 of the proposed revenue procedure require that mandatory statements be included in the consent to disclose tax return information. Section 4.06 specifically includes a warning that "once your tax return information is disclosed to a third party per your consent, we have no control over what that third party does with your tax return information * * *." Section 4.07 requires that the consent state that disclosure "will result in your tax return information being disclosed to a tax return preparer located outside the U.S." We are very concerned that, in its current form, Section 4.07 is inaccurate and misleading. Specifically, it fundamentally mischaracterizes the relationship between many professional service firms and their related firms and third party support contractors. A consent regime, requiring the professional service firm to warn its client that once "tax return information is disclosed to a third party per your consent, we have no control over what that third party does with your tax return information * * *," results in the service provider putting the client on notice that it essentially has no responsibility for any misuses that might be made of the taxpayer's information by the third party. While it might be very true that the criminal sanctions of the IRC might not reach a third party in a foreign country, that is quite a bit different than a regime that requires a service provider to disavow any responsibility for the actions of its agents, partners, and contractors. Firms with global capabilities have adopted an entire range of sophisticated business protocols to ensure that they can enter and enforce an entire range of contractual obligations and duties. To suggest otherwise -- particularly in the explicit fashion described by the proposed revenue procedure -- is, we believe, a bad misrepresentation of the capabilities and motivations of the vast majority of firms engaged in providing tax services and filing support across international boundaries.

The proposed revenue procedure also sets forth standards for electronic signatures on the taxpayer consent. To permit maximum flexibility, keep up with current technology, and accommodate existing acceptable practices, the IRS should utilize its private letter ruling process to approve electronic signature alternatives. Electronic signature alternatives
approved by the IRS under this process should be permissible under the proposed revenue procedure. In addition, existing letter rulings approving signature alternatives should be honored under the proposed revenue procedure.