

#40 AUTHORIZE THE TREASURY DEPARTMENT TO ISSUE GUIDANCE SPECIFIC TO IRC § 6713 REGARDING THE DISCLOSURE OR USE OF TAX RETURN INFORMATION BY PREPARERS

Present Law

IRC §§ 7216 and 6713 impose criminal and civil sanctions, respectively, on preparers who, with the requisite level of intent,¹³⁸ disclose or use tax return information, except where they are expressly permitted to do so by an exception provided in the statute or regulations. Exceptions to the broad prohibition in IRC § 6713 are provided in IRC § 6713(b), which states that the rules of IRC § 7216(b) apply. IRC § 7216(b) authorizes the Secretary to create regulatory exceptions to the criminal penalty statute. Thus, the current statutory framework seemingly requires that exceptions be made either to both the criminal and civil statutes or to neither.

Reasons for Change

IRC § 6713 has historically been identified as the civil counterpart to the criminal penalty imposed on tax return preparers under IRC § 7216. The penalty regime under IRC § 7216 is significantly harsher than under IRC § 6713.¹³⁹ The Treasury Department is understandably reluctant to subject preparers to criminal sanctions except for egregious conduct, so it has used its regulatory authority to carve out broad exceptions from the general prohibition on the disclosure or use of tax return information set forth in IRC § 7216.¹⁴⁰ Because the exceptions under IRC § 7216 (criminal statute) are deemed to apply to IRC § 6713 (civil statute), there is no room for the Treasury Department and the IRS to designate the disclosure or use of tax return information for certain questionable business practices or the sale of certain products with high-abuse potential as civil violations without also making them criminal violations. Therefore, such disclosures and uses are generally permitted. The Treasury Department and the IRS would be more likely to strengthen taxpayer protections against the improper disclosure or use of taxpayer return information by return preparers if they are given the flexibility to promulgate regulations applicable only to the civil penalty, without concern that the criminal penalty would also apply.¹⁴¹

Recommendation

The National Taxpayer Advocate recommends that Congress amend IRC § 6713 to authorize the Secretary to prescribe regulations under IRC § 6713.

138 Unlike IRC § 7216, IRC § 6713 does not require that the disclosure or use be knowing or reckless.

139 IRC § 6713 imposes a \$250 penalty for each improper disclosure or use. In contrast, IRC § 7216 makes the preparer guilty of a misdemeanor, and upon conviction, the preparer will be fined not more than \$1000 or imprisoned not more than one year, or both, together with the costs of prosecution.

140 See Treas. Reg. § 301.7216-2.

141 IRC § 7805(a) provides the Secretary general authority to promulgate regulations under Code provisions. However, because IRC § 7216(b)(3) provide the Secretary express authority to carve out exceptions, IRC § 6713 should provide similar authority.