

Legislative Recommendation #65**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 disclose or use tax return information for any purpose other than preparing or assisting in the preparation of a tax return, except as expressly permitted by statute or regulation. IRC § 7216 requires that a disclosure or use be knowing or reckless to constitute a criminal violation. IRC § 6713 does not require knowledge or recklessness for a civil violation.

Exceptions to the broad prohibition in IRC § 6713 are provided in IRC § 6713(c), 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. As one would expect, the criminal penalty under IRC § 7216 is substantially harsher than the civil penalty under IRC § 6713.¹ For that reason, 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 § 7216.²

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 due to negligence or 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, if a prohibited disclosure or use is not egregious in nature (*e.g.*, negligent noncompliance with form-and-content requirements for taxpayer consents), it is generally tolerated. The Treasury Department and the IRS will 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 separate regulations applicable to the civil penalty, without concern that the criminal penalty will also apply.³

RECOMMENDATION

- Amend IRC § 6713 to authorize the Secretary to prescribe regulations under IRC § 6713.

1 IRC § 6713 imposes a \$250 penalty for each improper disclosure or use, with total penalties not to exceed \$10,000 per calendar year. The penalty amount increases to \$1,000 for each disclosure and use related to identity theft, with total penalties not to exceed \$50,000 per calendar year. By contrast, IRC § 7216 makes the preparer guilty of a misdemeanor, and upon conviction, the preparer will be fined not more than \$1,000 (\$100,000 if the disclosure or use is related to identity theft) or imprisoned for not more than one year, or both, and liable for the costs of prosecution.

2 See Treas. Reg. § 301.7216-2.

3 As a general matter, IRC § 7805(a) grants the Secretary the broad authority to promulgate regulations under the Internal Revenue Code. However, because IRC § 6713(c) provides that exceptions to IRC § 6713 are governed by the rules of IRC § 7216(b), it is not clear that the IRS may establish separate sets of exceptions for the two Code provisions.