

IRC Section 301.7216 Overview and FAQs

Introduction

The purpose of this document is to help SurePrep’s current and prospective customers determine how recent revisions to section 301.7216 of the Internal Revenue Code (herein referred to as “§7216”) affect their use of SurePrep’s products and services. This document does not discuss all requirements of §7216 but rather only those that relate to the use of SurePrep products and services. **THIS DOCUMENT REPRESENTS SOLELY THE OPINIONS OF SUREPREP MANAGEMENT AND CANNOT BE RELIED ON AS AN AUTHORITATIVE GUIDE FOR COMPLIANCE WITH §7216.**

Overview of Changes to §7216

In January 2008, the IRS announced changes to §7216 that became effective January 1, 2009. The changes require tax preparers to receive taxpayer consent before disclosing taxpayer information to third party individuals who provide “substantive determinations or advice affecting the tax liability reported by taxpayers” or any individual located outside the United States. Additional guidance was provided in Revenue Procedure 2008-35, TD 9409, Reg. 121698-08, Revenue Procedure 2013-14 and Revenue Procedure 2013-19.

Impact of §7216 on SurePrep’s Products and Services

SurePrep is of the opinion that §7216 does not require SurePrep customers to receive taxpayer consent before using one of SurePrep’s software products or onshore services. We do believe such consent is required when using SurePrep’s offshore services. The table to the right summarizes how we believe §7216 affects SurePrep’s various products and services.

	Consent Required?	
Software Products	SPbinder	N
	1040SCAN ORGANIZE	N
	1040SCAN PRO	N
Offshore Services	1040SCANverify	Y
	Outsource	Y
Onshore Services	1040SCANverify	N
	Outsource	N

FAQs

1. Is taxpayer consent required when using SurePrep software products? (pg. 2)
2. Is taxpayer consent required when using SurePrep’s onshore services? (pg. 3)
3. Is taxpayer consent required when using SurePrep’s offshore services? (pg. 4)
4. Do social security numbers (SSNs) need to be masked before taxpayer information is submitted to SurePrep for processing? (pg. 4)
5. What are the specific requirements for the content, format, and timing of the consent letter? (pg. 5)

1. Is taxpayer consent required when using SurePrep software products?

No.

Summary

Because the use of SurePrep's software products does not involve the disclosure of tax return information to individuals located either inside or outside the United States, SurePrep believes such use does not constitute "disclosure" and therefore no consent is required under §7216.

Citations

§301.7216-1(b)(5) defines "disclosure" as "the act of making tax return information known to any person in any manner whatever".

§301.7216-3(a)(1) states that unless authorized by §301.7216-2, "a tax return preparer may not disclose or use a taxpayer's tax return information prior to obtaining a written consent from the taxpayer".

2. Is taxpayer consent required when using SurePrep's onshore services?

No.

Summary

Because SurePrep does not provide “substantive determinations or advice” regarding tax liability, no consent is required when using SurePrep services that are performed within the United States.

Citations

§301.7216-2(d)(1) allows a tax return preparer to disclose, without consent, the tax return information of a taxpayer to a tax return preparer from a different firm located in the United States “for the purpose of preparing or assisting in preparing a tax return, or 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 the tax liability reported by taxpayers”. A “substantive determination” is defined as “analysis, interpretation, or application of the law”.

§301.7216-2(d)(3) provides four examples to help clarify when the disclosure of tax return information requires taxpayer consent under §301.7216-2(d)(1). Examples 1 and 4, shown below, are relevant in determining whether the use of SurePrep's onshore services require taxpayer consent.

Example 1: E, an employee at Firm's State A office, receives tax return information from T for Firm's use in preparing T's income tax return. E makes substantive determinations and forwards the tax return information to P, an employee at Processor; Processor is located in State B. P places the tax return information on the income tax return and furnishes the finished product to E. E is not required to receive T's prior consent under §301.7216-3 before disclosing T's tax return information to P because Processor's services are not substantive determinations and the tax return information remained in the United States at Processor's State B office during the entire course of the tax return preparation process.

Example 4: A, an employee at Firm A, receives tax return information from T for Firm's use in preparing T's income tax return. A forwards the tax return information to B, an employee at another firm, Firm B, to obtain advice on the issue of whether T may claim a deduction for a certain business expense. A is required to receive T's prior consent under §301.7216-3 before disclosing T's tax return information to B because B's services involve a substantive determination affecting the tax liability that T will report.

SurePrep does not believe its services constitute “substantive determinations or advice” regarding tax liability because SurePrep never reviews, approves, or signs a tax return filed with the IRS, never makes final determinations on positions taken in a return, and never provides or is asked by clients for tax advice.

3. Is taxpayer consent required when using SurePrep's offshore services?

Yes.

§301.7216-2(c)(2) states that taxpayer consent under §301.7216-3 must be received prior to the disclosure of any tax return information to individuals located outside the United States. Since SurePrep's offshore services involve the disclosure of tax return information to individuals located outside the United States, prior taxpayer consent is required.

4. Do Social Security Numbers (SSNs) need to be masked before taxpayer information is submitted to SurePrep for processing?

No.

On January 14, 2013, the Treasury and IRS issued Revenue Procedure 2013-14, which update the rules regarding disclosure of tax return information by tax return preparers included within Revenue Procedure 2008-35, TD 9409, and Reg. 121698-08. These new rules allow tax preparers to obtain consent from a taxpayer to disclose the taxpayer's SSN to a non-U.S. tax return preparer when: The U.S. preparer makes the disclosure through the use of an "adequate data return safeguard;" the non-U.S. preparer receives the SSN via an "adequate data protection safeguard;" and the U.S. preparer verifies the maintenance of the adequate data protection safeguards in the request for the taxpayer's consent.

An "adequate data protection safeguard" is defined in Rev. Proc. 2013-14 as "a security program, policy and practice that has been approved by management and implemented that includes administrative, technical and physical safeguards to protect tax return information from misuse or unauthorized access or disclosure and that meets or conforms to one of the following privacy or data security frameworks:

- (1) The United States Department of Commerce "safe harbor" framework for data protection (or a successor program);
- (2) A foreign law data protection safeguard that includes a security component (e.g., the European Commissions' Directive on Data Protection);
- (3) A framework that complies with the requirements of a financial or similar industry-specific standard that is generally accepted as best practices for technology and security related to that industry (e.g., the BITS, Financial Services Roundtable, Financial Institution Share Assessment Program);
- (4) The requirements of the AICPA/CICA Privacy Framework;
- (5) The requirements of the most recent version of IRS Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies and Entities; or
- (6) Any other data security framework that provides the same level of privacy protection as contemplated by one or more of the frameworks described in (1) through (5)

SurePrep believes its security policies and procedures provide "adequate data protection safeguards" as defined by Rev. Proc. 2013-14.

5. What are the specific requirements for the content, format, and timing of the consent letter?

§301.7216-3(a)(3) requires all consents to include the name of the taxpayer, the name of the tax return preparer, the name of the recipient, the intended purpose of the disclosure, the specific tax return information to be disclosed, and that the consent must be signed and dated by the taxpayer.

§301.7216-3(b)(1) prohibits retroactive consent (i.e., consent must be received before tax return information is disclosed).

§301.7216-3(b)(5) states that the consent document may specify the duration of the taxpayer's consent and that if such duration is not specified the consent will be effective for a period of one year from the date the taxpayer signed the consent. There is no time limit for the duration of the consent specified in the consent document. If the taxpayer wants to provide consent for 10 years, that is permissible under this section.

Revenue Procedure 2013-19 requires that all consents be provided on sheets of 8.5 inch by 11 inch or larger paper, that all text on each page be at least 12-point type (no more than 12 characters per inch) and pertains solely to the disclosure the consent authorizes, and that certain text be included verbatim based on the type of disclosure made. The Sample Consent Letters on the following two pages provide examples of consent letters that could be used in conjunction with SurePrep's offshore services. The text in the box labeled "Revenue Procedure 2013-19 Required Disclosure" on Sample Letter 1 is required to be inserted verbatim by Revenue Procedure 2013-19. This text is also in Sample Letter 2 but does not have a border around it. Although this text needs to be included as provided by the revenue procedure, other explanatory text can be provided by the tax return preparer as shown in the Sample Consent Letters.

Sample Consent Letter 1 (to be printed on firm's letterhead)

Dear [Title] [Taxpayer Last Name],

To provide you with the best service and value possible, [Firm Name] continuously evaluates opportunities to streamline the preparation of your return. One such opportunity involves our use of an offshore data entry service that enables us to complete your return more quickly and cost effectively. By signing and returning this form, you are electing to have us use this service to assist in the preparation of your return and will receive a reduced tax preparation fee. For your convenience we request that this consent be valid until December 31, 2026. If you would like the consent to be valid for a different period please indicate so in the space provided below.

If you elect to have us use this service we will disclose the information you provide us to SurePrep LLC for the sole purpose of preparing your tax return. SurePrep is a U.S. based service bureau and a recognized leader in the field of tax preparation automation. We have evaluated SurePrep's security procedures and are satisfied they adequately safeguard all information we disclose to them. We have also entered into a non-disclosure agreement with SurePrep which legally establishes their obligation to maintain the privacy of your information. Whether or not this service is used, we are your tax preparer and take full responsibility for the correctness of your return and the security of your personal information.

The IRS requires that the general disclosure below be included in any consent form of this type. We are not allowed to alter its text in any way. Nevertheless, much of it does not apply to the consent sought by this form as explained in the footnotes below the disclosure. If you have any questions regarding this form, please do not hesitate to call [tax preparer name] at [tax preparer phone number].

(Continued on following page)

Required Disclosure under Revenue Procedure 2013-19

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 those related to the preparation and filing of your tax return without your consent¹. If you consent to the disclosure of your tax return information, Federal law may not protect your tax return information from further use or distribution².

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 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 form³. 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.

This consent to disclose may result in your tax return information being disclosed to a tax return preparer located outside the United States, including your personally identifiable information such as your Social Security Number (“SSN”). Both the tax return preparer in the United States that will disclose your SSN and the tax return preparer located outside the United States that will receive your SSN maintain an adequate data protection safeguard (as required by the regulations under 26 U.S.C. Section 7216) to protect privacy and prevent unauthorized access of tax return information. If you consent to the disclosure of your tax return information, federal agencies may not be able to enforce United States laws that protect the privacy of your tax return information against a tax return preparer located outside of the United States to whom the information is disclosed.

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.

¹ Signing this consent form will not result in the disclosure of your personal information to anyone for any reason other than the preparation and filing of your return.
² Your tax return information is protected from further use or distribution by a legally enforceable non-disclosure agreement between us and SurePrep LLC.
³ We will provide you service regardless of whether you sign this consent form.

Signature

Date Signed

December 31, 2029
Consent Valid Until

Sample Consent Letter 2 (to be printed on firm's letterhead)

Dear [Title] [Taxpayer Last Name],

In order to provide you with the best service and value possible, we request your consent to disclose the tax return information you provide us to SurePrep, LLC so they may provide us data entry services that assist with the preparation of your return. For your convenience we request that this consent be valid until December 31, 2026. If you would like the consent to be valid for a different period please indicate so in the space provided below.

The IRS requires that the following three paragraphs be included in any consent form of this type. We are not allowed to alter them in any way. Nevertheless, much of their text does not apply to the consent sought by this form. Specifically, signing this consent form will not result in the disclosure of your personal information to anyone for any reason other than the preparation and filing of your return. Furthermore, your tax return information is protected from further use or distribution by a legally enforceable non-disclosure agreement between us and SurePrep LLC. Finally, we will provide you service regardless of whether you sign this consent form.

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 and, in certain limited circumstances, for purposes involving tax return preparation. 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 service that we provide to you and its cost, we may decline to provide you with tax preparation services or change the terms of service 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. This consent to disclose may result in your tax return information being disclosed to a tax return preparer located outside the United States, including your personally identifiable information such as your Social Security Number (“SSN”). Both the tax return preparer in the United States that will disclose your SSN and the tax return preparer located outside the United States that will receive your SSN maintain an adequate data protection safeguard (as required by the regulations under 26 U.S.C. Section 7216) to protect privacy and prevent unauthorized access of tax return information. If you consent to the disclosure of your tax return information, Federal agencies may not be able to enforce US laws that protect the privacy of your tax return information against a tax return preparer located outside of the US to which the information is disclosed.

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

If you have any questions regarding this form, please do not hesitate to call [tax preparer name] at [tax preparer phone number].

Signature

Date Signed

December 31, 2029
Consent Valid Until

Sample Consent Letter 3 (to be printed on firm's letterhead)

We work with a California based service provider, SurePrep LLC, to provide us with the data entry services required in the preparation of personal income tax returns. This has allowed us to provide our clients with the most cost effective, quality, and timely services they have come to enjoy. Effective January 1, 2009, the Internal Revenue Service requires that we obtain your consent to disclose the tax return information, you provide to us, to SurePrep, LLC. The IRS requires that the information, in the box below, be conveyed to you as it is with no alterations in any way. Nevertheless, much of the required text does not apply to the consent sought by this form. Specifically, signing this consent form will not result in the disclosure of your personal information to anyone for any reason other than the preparation and filing of your return. Furthermore, your tax return information is protected from further use or distribution by a legally enforceable non-disclosure agreement between us and SurePrep, LLC. Finally, we will provide you service regardless of whether you sign this consent form. We just would not use SurePrep to prepare your return.

Required Disclosure under Revenue Procedure 2013-19

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 those related to the preparation and filing of your tax return without your consent¹. If you consent to the disclosure of your tax return information, Federal law may not protect your tax return information from further use or distribution².

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 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 form³. 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.

This consent to disclose may result in your tax return information being disclosed to a tax return preparer located outside the United States, including your personally identifiable information such as your Social Security Number ("SSN"). Both the tax return preparer in the United States that will disclose your SSN and the tax return preparer located outside the United States that will receive your SSN maintain an adequate data protection safeguard (as required by the regulations under 26 U.S.C. Section 7216) to protect privacy and prevent unauthorized access of tax return information. If you consent to the disclosure of your tax return information, federal agencies may not be able to enforce United States laws that protect the privacy of your tax return information against a tax return preparer located outside of the United States to whom the information is disclosed.

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.

Required Disclosure under Revenue Procedure 2013-19 Consent Page

If you have any questions regarding this form, please do not hesitate to call [tax preparer name] at [tax preparer phone number].

Client Signature (spouse's signature not necessary)

Date Signed

December 31, 2029
Consent Valid Until (can be
changed by you, if you wish)

Required: print name of you and your spouse, if any

If we prepare the tax returns for any of your children under the age of 18 (for the given tax year), list their names below to indicate consent for them as well.
