

CHAIR'S CORNER

By Bill Young, CPA

The economy still teeters on the brink and our members are doing what they can to ride out the storm. In speaking with the leaders from a number of our member firms, the challenges of being properly positioned for the turnaround; identifying the next generation of leaders; creating the right formula to retain top talent (while dealing with the stresses of downsizing); and seeking ways to reduce operating costs and improve profits are what keep them up at night.

These concerns, however, exist no matter the size of the firm, no matter the geographic market — and is the reason why the spring 2009 conference in San Antonio has been developed to address these and other issues.

While it's always positive to be affiliated with a firm association and all that it offers, the importance of staying connected as a member becomes more evident during times of economic duress. The need for assistance and guidance among and between the association firms can be satisfied by enabling your staff to be more aware of Moore Stephens North America and, of course, participate.

There are a number of ways to become familiar with the initiatives and activities: the robust MSNA website whose content is an amalgam of member-provided tools and information and outside resources; the website's discussion boards; the quarterly newsletter, *The Networker*, which covers relevant topics such as practice management, organizational development, operational management and firm-specific activities; *The Moore You Know*, the frequent update on association activities and programs; and regularly scheduled special interest group teleconferences and webinars.

We know these are tough times, and like all economic cycles throughout U.S. history, this, too, shall pass. So while we must endure the current cycle, rest assured that our association is focused on developing programs, offering benefits and implementing projects that are fiscally prudent and purposefully conceived.

I look forward to seeing many of you at the spring conference in San Antonio. In the meantime, enjoy the warmer days to come.



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The Networker

INSIDE

SPRING 2009

Organizational Development

Assisting Your Firm's Leaders: Preparing for a Transition

Succession management goes beyond replacing the managing partner. Instead, it is an ongoing process that permeates the organizational structure and operations of the firm; it is the development of people — from the top to the bottom; a mindset that puts the firm first, ahead of individual agendas. Several approaches can be used to strengthen a firm through the development of its people.

Tax

IRS Regulation 7216: Get Consent for Business as Usual

IRS Regulation 7216 prohibits tax preparers from disclosing or using client tax information without consent. Unethical practices involving the use of taxpayer information led the IRS to impose new regulations designed to protect consumers. Consent must now be obtained before using client's tax information for marketing purposes.

Practice Development

When it Comes to Auditing Employee Benefit Plans, All CPAs Are Not Created Equal

The U.S. Department of Labor discovered that one-third of the employee benefit plan audits may be substandard when conducted by firms that perform fewer than one-hundred annually. Since a rejected Form 5500 filing may result in large penalties imposed on the plan sponsor, there is a need for training in this area.

Operational Management

Doing Your Job: Increasing the Effectiveness of Delegation

Delegation is both an art and a skill. Managers can focus on higher level skills if they learn how to assign responsibilities to others in a way that directions are clearly communicated; expectations are understood by all parties; progress is effectively monitored; and desired behaviors are encouraged.

Profession Roundup

AICPA Update on Ethics

The AICPA's Professional Ethics Executive Committee has been addressing a number of important issues. Among the issues: participation in an attest client's employee benefit plan; independence involving interests in or relationships with an attest client's affiliate; independence implications of assisting an attest client with the adoption of IFRS; and uniformity of state ethics rules on firm names.

Spotlight On.....

Staff Accountant Makes the Green Difference

A Mohler Nixon & Williams staff member proved that anyone in a firm can make a real difference. The firm's *Mean Green Accounting Machine* was created to promote philanthropy and social responsibility. This resulted in the firm becoming certified as an environmentally sustainable "green business."

The Networker is the official newsletter of Moore Stephens North America, Inc.

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IRS Regulation 7216: Get Consent for Business as Usual

By Christine Nelson

[Editor's Note: The recent awareness of the Internal Revenue Code Section 7216 and its impact on accounting firm marketing has caused such a furor among firm marketing directors. It appears to prevent firms from promoting their tax expertise, not to mention imposing an undue administrative burden in seeking consent for handing client data. While there have been aggressive marketing tactics, such as pushing IRA accounts and the off shoring of tax work to India, the consensus is government has stepped over the line of reasonableness. This article is the first of what we expect to be numerous writings and interpretations as firms wrestle with the regulation's restrictions.]

By now, every CPA firm should have heard of the changes under IRS Regulation 7216. Reading the entire regulation and understanding its impact may not be as common.

Tax engagement letters have gone out this year without any reference to obtaining consent from tax clients for use of their personal information to promote other firm services. Some firms are actually still debating whether the regulation will be enforced or even changed through industry lobbying.

Recent CPA and legal sources hosted through the Association for Accounting Marketing and BizActions, a service that custom produces newsletters for professional service firms, gave the official word right from the IRS: yes, it will be enforced, and no, don't hold your breath on changes.

Too many unethical things have happened in the past few years with private customer data and profit schemes for the IRS to back down on any regulation designed to protect consumers. Consumer watchdog groups and other CPA firms are also ready to assist if a tax preparer missteps.

In addition to fines and jail time for "knowingly or recklessly" providing private taxpayer data to third parties from the preparation of a tax return, tax preparers can also lose their license.

Third parties, such as overseas tax preparation firms, marketing firms and internal marketers, and even colleagues in other service areas of the firm, will not be penalized for using the information. Only tax preparers will face the music. Therefore, asking third parties to sign nondisclosure statements—while an added layer of protection—will not protect the tax preparer from penalties.

The burden of how third parties obtained that information rests on the firm if the IRS is alerted to any mishandling of tax client data.

Consent is Vital

When in doubt, get consent. In accordance with the AICPA, we are advising our clients to include a consent request in their tax client engagement letters or a separate letter as soon as possible. Sample request forms are available at the AICPA website by searching for Regulation 7216.

We recommend that requests are made to use tax client data for the following purposes:

- Completing the tax return
- Advising them of other beneficial services
- Sending a firm newsletter or other non-tax related news
- Conducting client interviews for market research or testimonials

Consent is only good for one year, so the request should be made at the beginning of each new tax season. Clients who refuse to give consent should be immediately removed from mailing lists for newsletters or other non-tax related service or marketing information.

"Too many unethical things have happened in the past few years with private customer data and profit schemes for the IRS to back down on any regulation designed to protect consumers."

The challenge for smaller firms to track tax clients who do not give consent is that they probably only have one database for all client mailings. Therefore, those firms should start compiling a separate client database to support sales and marketing efforts of non-tax related services.

Add any new non-tax clients to this new database as well as tax clients who have given consent. You can also obtain mailing lists from an association, such as your local Chamber of Commerce to populate a separate database and avoid unlawful use of client tax data.

If a client for a different service later becomes a tax client, you already have proof that you obtained the client's information from somewhere other than the tax return.

There is, however, an exception to the ruling in Section 301.7216-2 you should be aware of. There are situations where the taxpayer had originally provided tax return information to the tax preparer who was located outside the U.S. The overseas preparer may use or disclose the information to another employee who assists in the preparation of the taxpayer's return irrespective of where the tax preparer operates. This exception may minimize the hassles associated with seeking consent.

Marketing and Sales Need Awareness

Notify all staff members who send out non-tax related newsletters or marketing collateral, or engage in sales and business development efforts that the tax client data is off limits until the firm gains official consent for its use.

This may stall marketing and sales efforts in the short term, but controls must be in place and everyone made aware of the requirements and consequences. As tax client consents roll in, designate a champion to handle development of a non-tax database. This database will need annual updates (as you should with any database to maintain accuracy). Remove clients who have not consented for another year. Add clients who have come to the firm through non-tax services.

It is important that these records are well maintained in the event of a disgruntled client complaint about use of his or her data by another CPA firm or consumer group. In addition, your firm may be subject to Regulation 7216 scrutiny if a CPA is being investigated for other questionable conduct.

Keep Clients Well Informed

It is very important to communicate with your tax clients about the requirements and impact of this IRS regulation. Assure them that you do not provide their private data to third parties except for the uses stated above. Once they have provided consent, it would be a good idea to follow up with them and ask about which services they would be interested in hearing about. In this way, you can maintain open communication with clients about your intent, as well as inform them of beneficial firm services.

Protect your firm and your service foundation of tax preparation by abiding by IRS Regulation 7216. Ethical use of client data should be a high priority for all professional services.

About the Author

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THEY SAID IT....

“Men make history and not the other way around. In periods where there is no leadership, society stands still. Progress occurs when courageous, skillful leaders seize the opportunity to change things for the better.”

– Harry Truman