

PROPOSED AMENDMENT: TAX PRIVACY STATUTES

Synopsis of Amendment: *This amendment proposes to address several offenses relating to unlawful disclosure and/or inspection of tax return information. The amendment proposes to (1) amend the Statutory Index to refer most of those offenses to the guideline covering eavesdropping and interception of communications, §2H3.1; and (2) amend §2H3.1 to add a three-level decrease in the base offense level for the least serious types of offense behavior.*

The pertinent offenses are:

(1) 26 U.S.C. § 7213(a)(1)-(3), and (5), which make it unlawful for federal and state employees and certain other people willfully to disclose any tax return or tax return information (for a maximum term of imprisonment of five years);

(2) 26 U.S.C. § 7213(d), which makes it unlawful for any person to willfully divulge tax-related computer software (for a maximum term of imprisonment of five years);

(3) 26 U.S.C. § 7213A, which makes it unlawful for federal employees and certain other persons willfully to inspect any tax return or tax return information (for a maximum term of imprisonment of one year);

(4) 26 U.S.C. § 7216, which makes it unlawful for any person engaged in the business of preparing tax returns knowingly or recklessly to disclose any information furnished to that person in connection with preparation of a return (for a maximum term of imprisonment of one year).

At the August 2000 working session, Commissioners requested that the staff prepare an amendment option that would refer tax information disclosure offenses to §2H3.1. The following proposed amendment refers these offenses to that guideline and provides for a three-level downward adjustment in the base offense level for the least serious types of offense behavior, i.e., the inspection (but not disclosure) of tax return information, and the reckless or knowing disclosure of information collected by a tax preparer in preparation of a tax return. The proposed amendment also (1) adds an application note to make clear that an adjustment for abuse of position of trust may apply; and (2) makes a technical change in subsection (b)(1) that is not intended to have substantive effect.

Proposed Amendment:

§2H3.1. Interception of Communications or; Eavesdropping; Disclosure of Tax Return Information

- (a) Base Offense Level:
- (1) 9; or
 - (2) 6, if the offense involved only (A) inspection, but not disclosure, of a tax return or tax return information; or (B) a knowing or reckless disclosure of information furnished to a tax return preparer in connection with the preparation of a tax return.
- (b) Specific Offense Characteristic
- (1) If the purpose of the conduct offense was to obtain direct or indirect commercial advantage or economic gain, increase by 3 levels.
- (c) Cross Reference
- (1) If the purpose of the conduct was to facilitate another offense, apply the guideline applicable to an attempt to commit that offense, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. § 2511; 26 U.S.C. §§ 7213(a)(1)-(a)(3),(a)(5),(d), 7213A, 7216; 47 U.S.C. § 605. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. Definitions.—For purposes of this guideline, "tax return" and "tax return information" have the meaning given the terms "return" and "return information" in 26 U.S.C. § 6013(b)(1) and (2), respectively.
2. Satellite Cable Transmissions.—If the offense involved interception of satellite cable transmissions for purposes of commercial advantage or private financial gain (including avoiding payment of fees), apply §2B5.3 (Criminal Infringement of Copyright) rather than this guideline.
3. Abuse of Position of Trust.—A defendant who used a special skill or abused a position of trust in the commission of the offense may be subject to an adjustment in §3B13 (Abuse of Position of Trust or Use of Special Skill). For example, a federal or state employee who unlawfully disclosed a tax return or tax return information in violation of 26 U.S.C. §7213(a) or (b) may have occupied a position of public trust, as described in Application Note 1 of §3B1.3, and may have used that position to significantly facilitate the commission of the offense.]

Background: This section refers to conduct proscribed by 47 U.S.C. § 605 and the Electronic

Communications Privacy Act of 1986, which amends 18 U.S.C. § 2511 and other sections of Title 18 dealing with unlawful interception and disclosure of communications. These statutes proscribe the interception and divulging of wire, oral, radio, and electronic communications. The Electronic Communications Privacy Act of 1986 provides for a maximum term of imprisonment of five years for violations involving most types of communication.

This section also refers to conduct relating to the disclosure and inspection of tax returns and tax return information, which is proscribed by 26 U.S.C. §§ 7213(a)(1)-(3),(5), (d), 7213A, and 7216. These statutes provide for a maximum term of imprisonment of five years for most types of disclosure of tax return information.

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APPENDIX A - STATUTORY INDEX

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26 U.S.C. § 7212(b)	2B1.1, 2B2.1, 2B3.1
26 U.S.C. § 7213(a)(1)	2H3.1
26 U.S.C. § 7213(a)(2)	2H3.1
26 U.S.C. § 7213(a)(3)	2H3.1
26 U.S.C. § 7213(a)(5)	2H3.1
26 U.S.C. § 7213(d)	2H3.1
26 U.S.C. § 7213A	2H3.1
26 U.S.C. § 7214	2C1.1, 2C1.2, 2F1.1
26 U.S.C. § 7215	2T1.7
26 U.S.C. § 7216	2H3.1

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