

**REVISED PROPOSED AMENDMENT: TAX PRIVACY
(Proposed Amendment 3 of User Friendly, Volume One)**

Synopsis of Proposed Amendment: *This amendment proposes to address several offenses relating to unlawful disclosure and/or inspection of tax return information. The amendment proposes to (A) amend the Statutory Index to refer most of those offenses to the guideline covering eavesdropping and interception of communications, §2H3.1; and (B) amend §2H3.1 to add a three-level decrease in the base offense level for the least serious types of offense behavior, i.e., violations of 26 U.S.C. §§ 7213A and 7216.*

The pertinent offenses are:

(A) 26 U.S.C. § 7213(a)(1)-(3), and (5), which makes 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);

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

(C) 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); and

(D) 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).

Like the proposed amendment published in the Federal Register, the following revised amendment refers these offenses to §2H3.1 and makes a technical change in subsection (b)(1) that is not intended to have substantive effect. It differs from the Federal Register proposal in the following respects:

- (1) The proposed amendment published in the Federal Register provided for a three-level downward adjustment in the base offense level in cases which involved inspection, but not disclosure, of a tax return or tax return information, or a knowing or reckless disclosure of information furnished to a tax return preparer in preparation of a tax return. The revised amendment modifies this downward adjustment to make it applicable to cases in which the defendant was convicted of an offense under 26 U.S.C. § 7213A or 26 U.S.C. §7216. Both versions are intended to cover the conduct covered by 26 U.S.C. § 7213A and 26 U.S.C. § 7216 because these offenses carry statutory maximum penalties of only one year, making them the least serious offenses covered by the guideline. The revised amendment specifically cites these statutes (rather than describing the*

offense conduct to which the downward adjustment would apply) for ease of application.

- (2) The proposed amendment published in the Federal Register added an Application Note 3 to §2H3.1, which provided that an adjustment under §3B1.1 may apply to a defendant who used a special skill or abused a position of trust in the commission of the offense. The revised amendment eliminates this note as unnecessary.

During 1999, only three cases were identified as having a conviction under any of the applicable statutes (26 U.S.C. § 7213, 26 U.S.C. § 7213(a), or 26 U.S.C. § 7216). Any amendments relating to these offenses will not impact the prison system.

Proposed Amendment:

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

- (a) Base Offense Level (Apply the greater):
- (1) 9; or
 - (2) 6, if the defendant was convicted of 26 U.S.C. § 7213A or 26 U.S.C. § 7216.
- (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 offense 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.

42. **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.

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, but provide a maximum term of one year for violations of sections 7213A and 7216.

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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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