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How private are your tax records? Surprise!

Friday, March 24 at 07:00 am CT by Bob Sullivan

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On an outrage scale of 1 to 10, this story is truly a 10.

Any information you give to a company that helps you prepare your taxes can be sold to anyone else. Only a single signature on a permission slip stands between you and the complete loss of your privacy. While that seems shocking — aren't tax records sacred? -- this isn't new. The IRS says it's a long-standing practice.

Worse yet, the government and the nation's tax preparers are steering you to use one of these third-party tax preparation companies. Anyone who wishes to file a return electronically -- the only rational way to file in the 21st century -- must use a private company to do so. And that private company has the right to share everything it knows about you.

Taken together, these two facts may form the single biggest privacy heist of our time.

Anyone who uses a storefront tax preparation shop like H&R Block, or files taxes using over-the-shelf software like TurboTax, should be on alert for information disclosure forms that come your way. Signing one could really come back to haunt you.

We all imagined that tax returns were handled with solemn care. It's obvious why: The government makes you provide the most intimate details of your life each year. How could this information not be kept private?

And in fact, Internal Revenue Service tax code prohibits disclosure of tax returns by the government except under very specific circumstances. But disclosure of the information by third-party companies — that's a different matter.

Last week, thanks to a story in the Philadelphia Inquirer, we all learned of a proposed regulation change at the IRS that formalizes the process necessary to obtain consumers' consent that their tax return data be shared.

What process?

When the objections started piling up, the IRS defended itself by saying it was merely clarifying an already-existing process. Tax preparers can already share your information, I was told. This new regulation is good for consumers, because it spells out the process needed to gain their consent.

As Chi Chi Wu of the Consumer Federation of America said to me, this is the first time you hear of an agency defending an awful practice by saying it's already happening.

The new regulation has its genesis in last year's big tax preparer complaint -- that many returns were shipped overseas to places like India for preparation, without consumers' realizing how far their personal information had traveled. So Rep. Ed Markey, D-Mass., generally a friend of privacy protection, asked the IRS to spell out new rules governing tax preparation outsourcing.

Consumers must now be told if their data is flying overseas for preparation.

But the rules also codify other kinds of data sharing, and that's where the problems start. Here's the offending language, which you can read for yourself in the proposed rule:

"These proposed regulations allow tax return preparers to obtain consents to use tax return information for solicitation of services or facilities furnished by any person..."

IRS: There's no change

IRS spokeswoman Nancy Mathis assured me that this is no different from past behavior by tax preparers, who could always share their data with affiliates. That's how they offer those usurious refund anticipation loans and other sneaky products, like those investment plans H&R Block is now being dragged to court for. H&R Block, by the way, didn't return phone calls requesting comments for this story.

But I disagree with Mathis. The rest of the sentence of the regulation clearly suggests wider sharing of our data is on its way. It reads:

"...rather than limiting solicitations to the services or facilities offered by the tax return preparer or member of the tax return preparer's 'affiliated group.'"

When I asked her to explain the distinction she didn't, other than to refocus attention on the supposed beefed-up disclosure requirements.

"The heart of this proposed regulation is about the right of taxpayers to control their tax return information," she said. "The idea is to emphasize taxpayer consent and set clear boundaries on how tax return preparers can use or disclose tax return information."

I agree the regulation is clear. Here's the relevant language that tax preparers now have to show to consumers:

"Warning: Once your tax return information is disclosed to a third party per your consent, we have no control over what that third party does with your tax return information. If the third party uses or discloses your tax return information for purposes other than the purpose for which you authorized the disclosure, under Federal tax law, we are not responsible for that subsequent use or disclosure, and Federal tax law may not protect you from that disclosure."

Allow me to translate: "You, and your privacy, are screwed."

See what's been struck from the code
I called Markey's office looking for comment on the hubbub. In January, Markey had publicly credited the IRS for addressing the tax return outsourcing issue. On Thursday, his response to the controversy was measured.

"Recent reports of some changes to the tax regulations suggest that tax preparers could with consent sell information to anyone. The IRS has suggested to my office that their regulations have been misinterpreted, and that the regulations do not significantly expand the ability of tax preparers to disclose taxpayer information to others, and that the major challenge for the IRS was, and still is, ensuring that any consent is informed and not coerced. I hope that the IRS moves quickly to clarify this matter."

Let's hope it does. I don't have a law degree, but I am pretty concerned about the phrase "use tax return information for solicitation of services or facilities furnished by any person."

That seems clear to me. So does the language that's been removed from the tax code, language that in the past was very specific about what could and couldn't be revealed by tax preparers. Read for yourself:

"(A consumer's consent) does not apply for purposes of facilitating the solicitation of additional business to be furnished at some indefinite time in the future, as, for example, the future sale of mutual fund shares or life insurance, or the furnishing of future credit card services."

That language (taken from IRS tax code 01.7216–3 for nerds out there) is very clear. And it has been removed from the revision.

You must use an outside firm to e-file
Now, consumers still have to consent to all this information-sharing. It is voluntary. But there's a reason people walk into an H&R Block -- it's because they don't want to deal with a lot of paperwork. So how carefully will they read this consent document when it's handed to them with a bunch of other papers to sign? Given the history of tax preparation firms, do you trust them to be clear about this process?

Then there's this. You have the option of filing taxes on your own, without the help of a tax preparation firm, thereby avoiding this whole mess. But if you are a child of this century, you have probably considered filing electronically. You get your refund faster. The IRS has been pushing for electronic filing for years.

But there is no way to directly e-file with the IRS. You must use an outside firm, a third-party Web site or software firm, to do so. And yes, such companies are covered by the new regulation. As soon as your data touches their servers, and they obtain a consent, they'll be able to sell the data to marketers.

In the case of e-filing, the software company or Web site must get the consumer to do something active, like type his name or a special 6-digit PIN code, to gain consent. Wu thinks that's at least a step above the form consumers will be handed at tax preparer storefronts. I'm not so sure. When you are filling out the endless Web site tax form pages, will you stop to read the disclosure you are presented? How big will the small print be?

Privitization is the problem

The sharing of intimate details like income, number of children, medical expenses -- even the amount of your tax refund -- and everything else found on a tax form is a horrible idea. The IRS can simply clarify this problem by clearly disallowing the sale of our personal information.

But there is a larger problem here, the force in Washington that is right now pushing for privitization of every government service. Underneath today's privacy controversy is this: Tax collection is a government job. Outsourcing it to aggressive, for-profit firms will have all manner of unintended consequences. This is only one of them. The best solution to today's controversy is for the IRS to develop its own e-filing system and give consumers the chance to avoid all the mess. And the larger solution involves the federal government thinking twice before it outsources every critical function it performs.