

IN THE MATTER OF
H & R BLOCK, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5
OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2162. Consent Order, March 1, 1972—Modifying Order, Nov. 2, 1982

This order reopens the proceeding and modifies Paragraphs 5 and 6 of the Commission's order issued on March 1, 1972 (80 F.T.C. 304), by substituting a new paragraph 5, so as to make the order's provisions consistent with federal tax laws. Section 7216 of the Internal Revenue Code provides a comprehensive scheme for regulating the use by tax preparers of information obtained from customers, and the Commission believes that this scheme is adequate to prevent the misuse of confidential information by petitioner in the future.

ORDER REOPENING THE PROCEEDING AND GRANTING REQUEST TO
MODIFY ORDER

On January 22, 1982, H & R Block Inc., the petitioner, filed a Request to Reopen Proceedings under Section 2.51 of the Commission's Rules of Practice. Block sought to set aside paragraphs 5 and 6 of a March 1, 1972, order against the company. On June 8, 1982, Block filed a Supplement to Modification of Request to Reopen Proceedings, seeking modification of the Order paragraphs instead of their elimination. The Order paragraphs prohibit Block from using information obtained from a customer for any purpose other than the preparation of tax returns unless, prior to obtaining any information from the customer, Block obtains the customer's written consent. The consent form used must disclose: (1) the exact information to be used, (2) the particular use to be made of such information, (3) and a description of the parties or entities to whom the information may be made available.

The petitioner contends that enactment of Section 7216 of the Internal Revenue Code, 26 U.S.C. 7216, on December 10, 1971, effective January 1, 1972, and adoption by the Internal Revenue Service of regulations 301.7216-1 through 301.7216-3 on March 24, 1974, constitute a change of the law warranting reopening the proceeding and modifying paragraphs 5 and 6 of the Commission's Order. Regulation 301.7216-3 reads in pertinent parts:

Disclosure or use only with formal consent of taxpayer.—(a) Written consent to use or disclosure—(1) Solicitation of other business. (i) If a tax return preparer has obtained from the taxpayer a consent described in paragraph (b) of this section, he may use the tax return information of such taxpayer to solicit from the taxpayer any additional current business, in matters not related to the Internal Revenue Service, which the

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tax return preparer provides and offers to the public. The request for such consent may not be made later than the time the taxpayer receives his completed tax return from the tax return preparer. If the request is not granted, no follow up request may be made. This authorization to use tax return information of the taxpayer does not apply, however, for purposes of facilitating the solicitation of the taxpayer's use of any services or facilities furnished by a person other than the tax return preparer, unless such other person and the tax return preparer are members of the same affiliated group within the meaning of section 1504. Thus, for example, the authorization would not apply if the person is a corporation which is owned or controlled directly or indirectly by the same interests which own or control the tax return preparer but which is not affiliated with the tax return preparer within the meaning of section 1504(a). Moreover, this authorization 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. It is not necessary, however, that the additional business be furnished in the same locality in which the tax return information is furnished.

* * * * *

(2) Permissible disclosures to third parties. If a tax return preparer has obtained from a taxpayer a consent described in paragraph (b) of this section, he may disclose the tax return information of such taxpayer to such third persons as the taxpayer may direct. However, see § 301.7216-2 for certain permissible disclosures without formal written consent.

* * * * *

(b) Form of consent. A separate written consent, signed by the taxpayer or his duly authorized agent or fiduciary, must be obtained for each separate use or disclosure authorized in paragraph (a)(1), (2), or (3) of this section and shall contain—

- (1) The name of the tax return preparer,
- (2) The name of the taxpayer,
- (3) The purpose for which the consent is being furnished,
- (4) The date on which such consent is signed,
- (5) A statement that the tax return information may not be disclosed or used by the tax return preparer for any purpose (not otherwise permitted under § 301.7216-2) other than that stated in the consent, and
- (6) A statement by the taxpayer, or his agent or fiduciary, that he consents to the disclosure or use of such information for the purpose described in subparagraph (3) of this paragraph.

The Commission has considered these developments and concluded that the public interest warrants its reopening the proceeding and modifying the order substantially as requested by petitioner. Section 7216 of the Code and the regulations promulgated thereunder constitute a comprehensive scheme for regulating the use by tax preparers of information obtained from customers. The Commission believes that this scheme is adequate to prevent the misuse of confidential information by petitioner in the future. The additional requirements of the Commission's Order, which mandate more

disclosures and require that consent be obtained earlier from the customer, are not inconsistent with the regulatory scheme. However, they do impose an additional burden on respondent that the Commission has concluded is unnecessary. Accordingly,

It is ordered, That paragraphs 5 and 6 of the Order be modified by the substitution of the following new paragraph:

5. Using or disclosing any information concerning any customer of respondent, including the name and address of the customer, obtained as a result of the preparation of the customer's tax return, for any purpose which is not essential or necessary to the preparation of said tax return, except as specifically authorized by Section 7216 of the Internal Revenue Code and the regulations promulgated thereunder or by future amendments thereto.

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IN THE MATTER OF

U.S. PIONEER ELECTRONICS CORP.

Docket C-2755. Interlocutory Order, Etc., Nov. 5, 1982

REOPENING OF ORDER AND ORDER TO SHOW CAUSE

By petition of June 30, 1982, respondent U.S. Pioneer Electronics Corp. ("Pioneer") requests that Paragraph I(11) of the Commission's order issued against Pioneer on October 24, 1975 be modified so that the order would no longer prohibit Pioneer from restricting transshipment by sellers of its products. Pursuant to Section 2.51 of the Commission's Rules of Practice the petition was placed on the public record for comment.

Upon consideration of Pioneer's petition and supporting materials and the public comments, the Commission now finds that Pioneer would likely suffer significant competitive injury unless the order is modified. However, the Commission also finds that a limited prohibition of transshipment restrictions is necessary to ensure that the order's principal purpose, the encouragement of resale price competition in relevant Pioneer products, is achieved. Therefore, *it is ordered* that the order in this matter be reopened; that Pioneer's petition to delete Paragraph I(11) of the order is denied; and pursuant to Section 3.72(b) of the Commission's Rules of Practice, that on or before the thirtieth (30) day after service of this Order to Show Cause upon it, the Respondent may show cause, if any there be, why the public interest does not require the Commission to modify Paragraph I(11) of the order in this matter so that it will read as follows:

Preventing or prohibiting any independent dealer or distributor from reselling his products to any person or group of persons, business or class of businesses, except as expressly provided herein. This order shall not prohibit respondent from establishing lawful, reasonable, and non-discriminatory minimum standards for its dealers, including standards that relate to promotion and store display, demonstration, inventory levels, service and repair, volume requirements and financial stability nor shall this order prohibit respondent from requiring its dealers who sell respondent's products for resale to make such sales only to dealers who maintain such minimum standards.