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How Lawyers Perceive CPA Hazards

by Jonathan S. Ziss, JD | Jun 04, 2018

Insightful lessons can be learned by reviewing professional liability issues. With this in mind, Arthur J. Gallagher & Co. provides this column for your review. For more information about liability issues, contact Irene Walton at irene_walton@ajg.com.

I was recently at a gathering of lawyers who spend a lot of time defending CPAs in professional liability matters. As we shared our thoughts as to where the trouble is coming from these days, I thought that it made sense to share these observations from a highly specialized resource with the PICPA community.

Tax Preparers

When penalties and interest are assessed, taxpayers sometimes seek relief by asserting that they had reasonable cause and acted in good faith, both of which tie back to reliance on the professional advice of their tax preparer. These submissions are often drafted by the taxpayer in collaboration with the tax preparer – if not wholly drafted by the preparer.

It creates a situation in which the preparer falls on his sword, so to speak. Should the subsequent outcome not satisfy the client, a liability claim might be asserted in which the client seeks damages. Having already fallen on the sword, the preparer will be hard-pressed to muster a defense. More problematic: insurance coverage may have been spoiled by admitting fault.

There is a way to handle these situations so that the interests of both the taxpayer and the preparer are protected. The preparer can reach an agreement with the client that a statement may be used for mitigation only, and cannot be used for any other purpose (such as impeachment in a liability case). A limited-use agreement can be easily put in place, and it takes nothing away from the intent to establish reasonable cause.

Another bit of risky business that attorneys discuss in the area of tax work includes insufficient communication between the practitioner and counsel for the estate of a high-net-worth decedent, for whom an IRS Form 706 return may have to be prepared. Determinations as to whether the estate qualifies and, if so, who will prepare the return (within the allotted time), require clear communication. Too often, silence on these matters, plus the passage of critical time, sets up a bad situation for the CPA, the executors, and estate counsel.

For those who have clients who rely on intermediaries to communicate for them – say, an executive assistant – make sure that your engagement letter calls out this arrangement so that the client cannot disavow his or her responsibility under Circular 230 or otherwise.

Audit and Attest Work

Identifying a reportable condition and documenting it in a management comment letter is strong medicine. Don't be hesitant to prescribe it for the health of your client and for your own protection.

When asked to sit in on a conference call with a bank or to accompany a client to a meeting during which its financial condition will be discussed, consider the big picture. What is your role? Do you plan to answer questions to benefit your client? Will you be providing information to give comfort to the lender?

Comfort appearances, like comfort letters, can open the door to third-party liability exposure. Bear in mind that a simple client courtesy such as this could have serious repercussions.

One often hears that the Public Company Accounting Oversight Board (PCAOB) is especially wary of anybody other than large firms who audit public company registrants. If you do this work, be sure to have the depth and expertise to meet the challenge, and be sure that your work papers reflect your thoughtful planning, preparation, and execution.

Cybersecurity

The CPA community on the whole is tech savvy, but it's getting crazy out there in cyberspace. There is a trained workforce of cybercriminals working three shifts per day to evade or pierce firewalls, delude and deceive unwitting staff, and hijack or kidnap data. Accounting firms seem to be a favored target. You want to keep up your defenses. Visit IRS.gov, FTC.gov, AICPA.org, and, of course, PICPA.org. Each of these websites delivers a wealth of easy-to-understand information that you can use to stay ahead of the bad guys and to react appropriately to an adverse event.

All Engagements

Know who your client is. That sounds almost silly, right? But ask yourself whether your client is the company or its officer(s). Will you be working for the aged and diminished family patriarch or his noisiest and nosiest son or daughter? The husband, the wife, the couple? A majority bloc of partners or the company? You get the picture.

It may seem to be a question that doesn't need to be asked. But when you realize that it does, it may already be too late. You don't want to find yourself in a conflict of interest. Asking who the client is – and continuing to ask this question – is good professional hygiene.

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