The Importance of Defining an Accountant's Duties in Retention Agreements

by Robert A. Berns and Charles Kellet

We don't need no stinkin' engagements!

To borrow from Gold Hat's quote from The Treasure of the Sierra Madre: "Engagements? We don't need no stinkin' engagements!" Oh, but you do. While not ethically required in tax engagements, best practices – and not doubt your liability insurer – would suggest the regular use of written engagements as a useful and beneficial risk management tool.

The most frequent instance of where accountants should but fail to utilize written retention agreements are tax engagements, and tax engagements are increasingly the subject of disputes and litigation. Having clients read, agree to and sign engagements can often avoid fee disputes, jurisdictional glitches and lost time and revenue.

Image not found or type unknown

By defining the scope of the services to be provided, the services that will not be provided and the fees that will charged for the services, a peaceable kingdom can be achieved without the specter of a professional liability claim or ethics grievance.

Also, it is important to remember that an engagement letter is a contract. Thus, by use of an engagement, you have the ability to outline the services that you will provide and will not provide, which often times can help avoid an unintended expansion of your obligations or an unintended expansion of the client's expectations.

So, in practical terms, what can a written retention letter do for you in a tax engagement?

- Among other useful things, it can define the period covered for the work that will be performed, which may affect the statute of limitations.
- A written engagement can ensure that the client does not expect or later allege a failure to address or cure prior tax periods.
- It can define the law to be applied in the event of an actual dispute, *i.e., New Jersey has a 6-year statute of limitations while New York has a 3-year statute of limitations.*
- *It can define the client's responsibilities; tell the client up front what they must provide in order for you to perform the assigned task.*
- *It can require that disputes be arbitrated to avoid litigation. It can clarify the identity of the client for conflict purposes and can define the person(s) authorized to approve the final return.*
- *It can cutoff assertions/allegations that the accountant was required or had agreed to perform tasks or services not outlined in the writing.*

The bottom line – while you may not be as happy as Walter Huston doing a jig at the end of tax season, the regular and annual updating of tax engagements will allow you to sleep more soundly and have a written shield to deflect a client's allegations or charges that the work performed was not the work promised.