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Dec. 11, 2018

Planning for the upcoming tax season is an important step in managing the professional liability risk associated with providing tax services. The following pre-tax season checklist provides several suggestions firms should consider in planning for this work.

What to do now

Help clients prepare

- Inform clients of significant changes in tax law such as the Tax Cuts and Jobs Act ("Tax Reform") and the *South Dakota v. Wayfair, Inc. et. al.* (*Wayfair)* Supreme Court decision through client newsletters. Need help getting started? The AICPA has created sample client letters related to these topics. Retain a distribution list of such communications, including the dates transmitted, in order to document that the client was informed of these changes.
- Alert clients about other filing obligations such as Financial Crimes Enforcement Network ("FinCEN") Form 114, *Report of Foreign Bank and Financial Accounts* ("FBAR"), state and local income tax returns, and the consequences of non-compliance.
- Ask clients to schedule appointments to discuss items affecting their 2018 return prior to year-end. If a tax projection will be prepared or tax consulting will be performed, obtain a separate signed engagement letter for these additional services. Sample tax planning and tax consulting engagement letters are available to policyholders in the Policyholder Resource Center. Be specific about the scope of services. For example, "assess income tax aspects of changing from an S

corporation to a C corporation in light of Tax Reform" is preferable to "explore Tax

- If your clients have not already addressed the proposed regulations that changed the partnership audit rules for partnership tax years beginning after December 31, 2017, advise them to do so. Clients should consult with their attorneys about revising partnership and limited liability company agreements in order to address these changes. AICPA Tax Section members may utilize the *Letter to Advise Clients on Partnership Audit Changes* as a starting point. Items that clients, with the assistance of their attorneys, should address in a revised partnership agreement include but are not limited to:

    o Who will be designated as the partnership representative,

    o Whether the IRS may collect any additional tax, interest, and penalties directly from the partnership at the highest individual tax rate or to take any adjustments into account from the partners in the reviewed year,

    o For eligible partnerships, whether or not to elect out of the new partnership audit regime,

    o Who should make decisions related to new elections that will be available, the partnership representative or another designated individual, and

    o Which new tax terms and concepts may require adjustment to partnership operating agreements.

Prepare the firm

- Research state law regarding registration requirements for the firm and tax return preparers. Registration and licensing requirements vary by state and some states charge registration fees. Renew or register with the states that have registration requirements.

- Renew existing preparer tax identification numbers and register new tax return

should not be bypassed due to tax deadlines. Consider updating your policies for new risks. Not sure where to start? *Controlling Your Data* and IRS Publication 4557, *Safeguarding Taxpayer Data: A Guide for Your Business* are good resources.
- Review the firm's planned response to a data security incident, including its cyber liability insurance coverage. For tips on how to respond if a data security incident occurs, read *A Breach of Client Data: Risks to CPA Firms*.
- Review tax return volume from the prior season and staffing requirements for the upcoming season. Be alert for bottlenecks that may arise, such as too many staff and an insufficient number of reviewers. Explore using data scan software when planning staffing requirements.
- Initiate contact with independent contractors who assisted last tax season, determine their availability, and reach an agreement regarding such issues as hours and fees. Determine if additional temporary staff will be required and initiate a hiring search. Perform due diligence before hiring new independent contractors or temporary staff. For guidance, read the article *Due Diligence with CPA Firm Subcontractors*. Consider applicable AICPA ethics interpretations and Treasury regulations.
- Review tax organizers to ensure that they fully address recent, complex areas of law, and reporting requirements, such as:

    o Tax Reform

    o *Wayfair*

    o Filing obligations related to foreign activity, including the FBAR and the Foreign Account Tax Compliance Act ("FATCA"), and

    o The sharing economy, including income from home rentals, driving services, or other peer-to-peer services. If you are not conversant with the tax implications of the sharing economy, read *Short Term Rentals, The Sharing*

- Provide a training plan for staff and independent contractors, concentrating on changes in local, state, and federal tax laws, including Tax Reform and those related to new and expiring tax provisions. Include a timeline for completion. Consider separate training tracks for staff, managers, and partners, whose responsibilities regarding tax return preparation may differ.
- Train all firm members on the importance of protecting client data, both physical and electronic, at all times, and especially during this busy time of the year. Read *The Armor of Awareness* to learn what each person at the firm can do to protect client data.
- Review library resources and training materials and ensure that up-to-date resources are available to staff. Verify that staff has access to electronic tools and databases used as reference materials.
- Revise procedures based upon last year's post tax-season wrap-up meeting to improve current year processes for managing tax return preparation.
- Remind the tax department to amend engagement letters for changes in scope. For a refresher on how scope creep can be detrimental to the firm, read *Don't Let Scope Creep Lead You Out of Bounds*.

Review e-file requirements and processes

- Research mandatory e-filing requirements for federal and state tax returns. Preparers who file **11 or more** U.S. individual or trust returns are required to use e-file.
- Review the information currently on file with the Internal Revenue Service ("IRS") authorizing the firm as an IRS e-file provider, or register as an e-file provider with the IRS. If information on file with the IRS has changed in the past year, update it or reapply as a new e-filer.

- Train professional and administrative staff on firm e-filing processes. Submit

required to review and approve draft returns prior to such filing. Signed copies of e-file signature authorizations, e.g., Form 8879, *IRS e-file Signature Authorization* and equivalent state forms, must be received before tax returns may be filed electronically. Both spouses must sign the engagement letter and e-file authorization form if a joint income tax return is filed.
- Obtain a signed Form 8878, *IRS e-file Signature Authorization for Form 4868 or Form 2350* or equivalent state form, prior to filing an application for an extension of time to file.

Update engagement letter processes

- Review engagement letters used in the prior year and update, as needed. Sources of sample engagement letters include your professional liability insurer, the American Institute of Certified Public Accountants ("AICPA"), and paid providers. CNA's sample engagement letters are available to policyholders in the Policyholder Resource Center.
- Emphasize engagement letter usage for all tax services, including tax planning, tax consulting and tax audit representation services. In 2017, approximately 43% of the tax claims in the AICPA Professional Liability Insurance Program reflected a failure to utilize an engagement letter. While CPAs may be diligent about obtaining engagement letters for compliance services, experience demonstrates they are less conscientious when providing high risk tax services such as audit representation, planning and consulting services. A single engagement letter may not suffice for a client that engages the CPA firm for multiple services.
- Review firm policy on issuing engagement letters. While obtaining signed engagement letters is always the preferred risk control practice, unilateral engagement letters sent with tax organizers may be more practical for low risk individual tax return preparation engagements. A unilateral engagement letter requires signature only by the CPA firm. The client indicates its acceptance with

the firm's terms and conditions by returning the organizer and providing other tax

- Review the firm's client list from the prior tax season. Consider terminating the firm's professional relationship with unprofitable, high risk and "problem" clients, such as those who do not provide information in a timely manner. The article, *Clients: Knowing When to Walk Away* identifies other factors to consider when deciding whether or not to continue a client relationship. If you're still not sure, read *Take a Hike: Ending Client Relationships* for other considerations. If the decision is made to terminate the client, *Client Termination Letters* explains the importance of written termination letters and what to include in such a letter.
- Identify high risk clients, such as clients creating a potential conflict of interest for the firm. Review the articles *Managing Conflicts of Interest* and *Considerations in Avoiding Becoming a Casualty in the Divorce Wars*. Need more? Watch the webinar *Stuck in the Middle: Avoiding Conflicts of Interest* for additional suggestions. Establish protocols to address potential conflicts of interest that arise during tax season.
- Update the firm's client acceptance checklist and conduct due diligence on prospective clients, such as inquiring why they are changing accountants and conducting an internet search on the prospect. Request the prospect's consent to contact the predecessor accountant. Consider obtaining a retainer fee from all clients, or, at a minimum, new and customarily slow-paying clients, as a condition of engagement. Our article, *Is This Client the Right Fit for Your Firm?* includes other criteria to consider in balancing the risks and rewards of continuing a relationship with an existing client or accepting an engagement with a prospective client.

Stay tuned, next month we will be providing information on what can be done during tax season to prepare!

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Deb Rood is a risk control consulting director with CNA Insurance in Chicago.