on the client's tax return. To help reduce this risk, be proactive and contact ...

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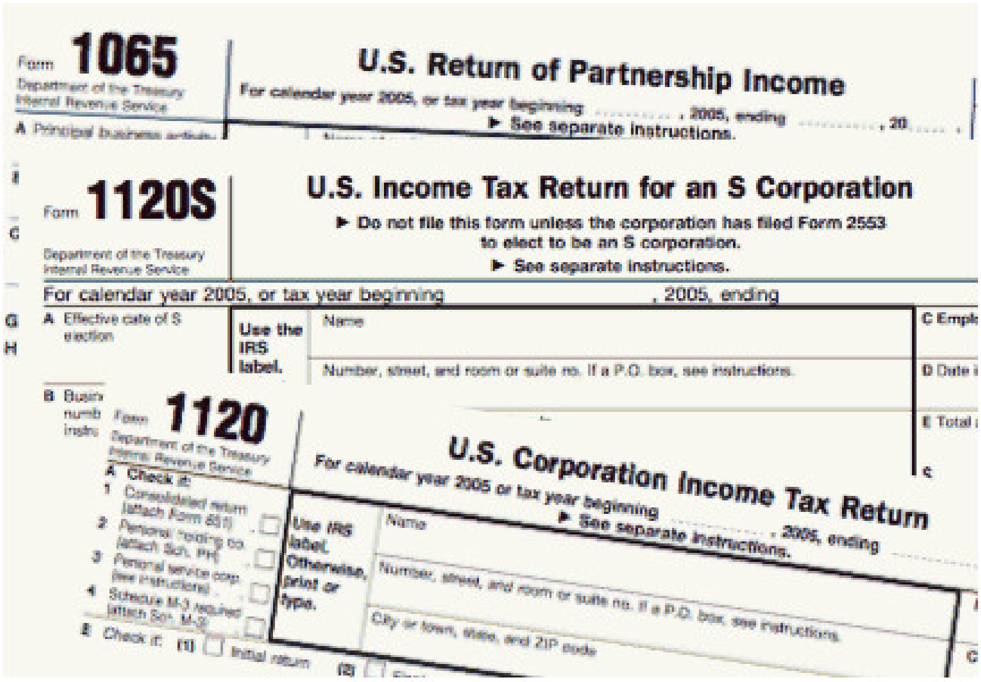

Tax season is upon us, and the anticipation of seven-day work weeks is in the air. Accounting and tax professionals have many responsibilities this time of year, and sometimes, the professional liability risks associated with performing services may be overlooked. Luckily, properly planning for the season can help mitigate the risk of a professional liability claim. Here are some things you can do now to get ready.

Help your clients help you

Many professional liability claims arise because the tax pro or accountant had insufficient time to properly review client information received and an otherwise avoidable error is made on the client's tax return. To help reduce this risk, be proactive and contact your clients at the beginning of the season to schedule

helpful in such a situation. Many firms use a newsletter to accomplish this. Some areas for educating clients including:

- Opportunities stemming from the Tax Cuts and Jobs Act, including planning strategies related to Internal Revenue Code (IRC) §199A and Qualified Opportunity Zones (QOZs). For example, if a client has a transaction with a large gain and is not advised about the potential to defer the tax on the gain by investing in a QOZ fund, the client may blame their tax pro for not advising them.
- U.S. filing obligations related foreign investments such as the FBAR and filing obligations related to foreign trusts. With penalties for non-compliance generally starting at $10,000, tax pros should discuss potential foreign filing obligations with every client.
- Inform all clients, including individuals, about the *Wayfair* decision. If a state revenue department discovers the client's failure to collect and remit sales tax in their state, the client may assert that their tax pro should have advised them of their responsibility to collect and remit sales tax and, therefore, is responsible for penalties and interest assessed in addition to the sales tax the client was unable to collect from customers.

Assess your engagement letter processes and usage

On an annual basis, review your prior year's engagement letter templates and update them for changes in the law and current developments in professional liability. The AICPA, NAEA, NATP, professional liability insurers, including CNA, and paid providers all have sample engagement letters for CPAs to leverage. Customize your engagement letter for your firm, and understand how specific engagement letter provisions address the risk of providing service and allocate this risk between the tax/accounting firm and its client. This will better position you to respond to any questions raised by the client.

Historically, engagement letter use for tax services is far less frequent than for attest

signed engagement letter is recommended. Ideally, tax pros would obtain a signed engagement letters for assisting clients with responding to notices as well. However, more realistically, an email from the client stating that the client agrees that the firm will respond to the notice on the client's behalf and that the terms and conditions of the compliance engagement letter apply may be effective.

Review your client list

Terminate clients that are no longer a fit for your firm, especially those that demonstrate their disrespect of you by not paying outstanding invoices or failing to provide information on a timely basis. Review your client list at least once a year to free up time for opportunities with better clients.

Review policies to determine if hosting services are provided

Finally, if the professional also perform attestation services for clients, record retention policies should be reviewed. The AICPA Professional Ethics Executive Committee ("PEEC") issued an ethics interpretation, *Hosting Services*, ET §1.295.143 which became effective July 1, 2019. The interpretation indicates that providing hosting services, meaning the firm is the sole repository for a client's records, for an attest client may impair a firm's independence.

In a tax practice, if a professional calculates tax depreciation, IRC §263A or performs other calculations and the attest client does not maintain a copy of these calculations for their records, the firm may have an independence problem. Luckily, providing your client a copy of these items for their records should solve help the problem. Regardless of the independence concern, this is a good practice for any client to help ensure the client's records are complete.

For more tips on what to do now and during tax season to help reduce the risk of a