

FOCUS ON ACCOUNTING

Benefits of attorney-client relationship in dealing with IRS

By MILAN SLAK

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With the recent sweeping changes to federal tax law, individuals, closely held businesses and their owners, as well as larger national and multinational corporations, are seeking advice from tax professionals in order to position themselves in the most tax-efficient manner both for current transactions as well as prospective transactions.



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A large part of the tax-planning process involves an analysis of statutory laws, Internal Revenue Service regulations, legislative history,

IRS and judicial rulings and how they apply to specific transactions.

Tax planning also incorporates the risks of IRS challenge and potential litigation.

In the event of an IRS tax audit, the IRS will seek to obtain all information from the taxpayer about the taxpayer's transactions. The IRS may even issue summonses to the taxpayer's attorneys and accountants in order to obtain research memoranda, communications and notes.

The IRS does this so that it can better position itself during the audit or for litigation.

Naturally, the taxpayer wants to minimize the amount of information that the IRS can



FILE PHOTO/JOSHUA DOUBEK

The Internal Revenue Service in Washington: In the event of IRS scrutiny, the work product doctrine may apply.

access. So how does a taxpayer proactively take steps to protect information from disclosure to the IRS?

Although the 1998 IRS Restructuring and Reform Act provides a privilege for confidential communications concerning tax advice between taxpayers and "federally authorized tax practitioners," including enrolled agents and Certified Public Accountants, it does not provide for a work product privilege, does not apply in criminal tax investigations and does not apply in other proceedings.

However, taxpayers still can rely on a tax attorney's privilege for attorney-client communications, a tax attorney's work product immunity and the Kovel doctrine.

ATTORNEY-CLIENT PRIVILEGE

The privilege applies to certain confidential communications between a client and the client's attorney relative to the attorney's opinion on law, legal services or assistance in a legal proceeding. The privilege protects against the disclosure of those confidential communications to third parties.

The purpose of the privilege is to allow a free flow of information between a client and an attorney so that the attorney can evaluate all relevant information without the concern that the communication may someday be disclosed.

If a tax attorney was involved in the tax planning process relative to a transaction under investigation by the IRS, then the

attorney-client privilege should generally apply to the communications between the taxpayer and the tax attorney. The privilege would limit the ability of the IRS to gain access to that confidential information.

WORK PRODUCT IMMUNITY

The work product doctrine protects from disclosure the materials prepared and information obtained by an attorney in anticipation of litigation.

A lawsuit doesn't have to exist for the immunity to apply; there simply has to be more than a remote possibility of litigation. The doctrine is generally applicable in criminal litigation, grand jury investigations and with respect to IRS summonses.

For example, a corporate taxpayer is considering a reorganization or restructure that would have significant tax implications, including the creation of a large tax refund. The taxpayer is aware that the IRS may later scrutinize the transaction.

The taxpayer retains tax counsel to research and draft a memorandum that considers the possible result of litigation with the IRS. The taxpayer then evaluates the conclusions made in the memorandum to decide on whether to proceed with the reorganization.

In the event of IRS scrutiny, the work

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utive director of the Pennsylvania Institute of Certified Public Accountants, accounting firms such as RKL acknowledge they must switch gears and modify their capabilities to keep in line with technology.

"They have positioned themselves as business advisers. People are relying on CPAs to handle cybersecurity auditing, for instance," Colgan said.

"Clients want CPAs to drive analytics and decision-making and avoid cyberthreats."

EMPHASIS ON INFORMATION TECHNOLOGY

Monborne said IT services are going to be a large focus for RKL in the next five years.

RKL provides solutions related to enterprise products, software support and management, development of custom applications, cybersecurity, cyberfraud and risk assessment.

"We have about 100 people in information technology in 22 states across the country" involved with RKL's IT subsidiary, Monborne said.

WEALTH MANAGEMENT

The firm has found success by using its

accounting background and providing services that encompass a variety of industries.

One example is RKL's wealth management entity, which exists out of the firm's offices throughout Pennsylvania. RKL Wealth Management, as it is called, manages about \$1 billion in assets for clients, according to Monborne.

Companywide "we are expecting \$80 million in revenue in 2018, and our average annual growth since 2011 has been about 18 percent. In that time frame, there have been mergers, but maybe only 6 percent of that growth came from mergers," Monborne said.

16 OFFICES

Monborne said RKL has quite the extensive history of mergers, consolidations with other firms and name changes. He said the company's origins as a CPA firm can be tracked to the late 1940s.

"Our headquarters is now wherever I am located," said Monborne, who lives in Lancaster.

RKL has 16 offices, including ones in Spring Township and in Upper Macungie Township. The firm serves businesses in the mid-Atlantic.

Much of RKL's client base consists of fam-

ily owned and privately held companies. Clients run the gamut from financial institutions and government agencies to community and nonprofit organizations.

UNDERSTANDING THE COMMUNITY

Fisher said RKL has made itself a fixture in the local business community.

"It allows us to gain a better understanding of the wants, needs and challenges of owners and financial executives in the Berks and Lehigh Valley region," he said.

"As RKL continues to grow and evolve, one thing that won't change is our commitment to our communities."

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product doctrine may apply to prevent the IRS from obtaining the memorandum.

KOVEL DOCTRINE

The Kovel doctrine derives from a tax case concerning whether the attorney-client privilege applies to agents of an attorney.

Although there is no accountant-client privilege under federal law, there is a way to bring an accountant-client communication under the umbrella of the attorney-client privilege.

If an attorney needs to use the services of an accountant in order to render the legal advice to the client, then the attorney-client privilege generally attaches to the communications made between the client and the accountant.

If the matter requires the assistance of an accountant, the attorney, not the client, should hire the accountant and the attorney should invoice the client for the services of the accountant.

The Kovel doctrine also can apply to other types of professionals whom the attorney feels necessary for the legal representation.

Because of the dynamic nature of the tax law, tax planning is extremely important.

Retaining tax counsel at the outset of a contemplated transaction is imperative in order to obtain professional advice as well as preserve the confidentiality of communications and work product.

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