

Avoiding Malpractice in Tax Engagements

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Tax Professionals Live in a Dangerous Professional World

- This speaker's experience over the past ten years in the tax malpractice area is that claims the attorney or CPA tax practitioner arise in two major areas –
 - Alleged breach of standard of care arising from administrative or ministerial tasks
 - Alleged breach of the standard of care with regard to 'advice' (actual or implied) on which a client relied

What Tax Services Do Attorneys and CPA Provide to Their Clients?

- Just about any professional tax service an attorney or CPA provides to a client fall into one of three categories
 - (1) Compliance (i.e. generally preparing some required return, disclosure or other form, including advice)
 - (2) Representation and Controversy (inquiries, exams and litigation)
 - (3) Tax planning advice (including related financial financial projections)

The Mix of the 3 Services is Different for Attorneys and CPAs

- CPAs engage in far more compliance activities as part of their tax services]
- CPAs also represent clients with regard to examinations of returns
- Lawyers, of course, litigate and CPAs do not litigate
- Lawyers are far more likely to offer 'written' opinions on tax matters (particularly outside the very largest CPA firms)
- CPAs provide a prodigious quantity of 'tax advice' by virtue of reporting items ('positions) on an client's tax return

Types of Claims – Administrative and Ministerial

- Blown filing due dates and similar items
- Omissions – e.g. failure to file extensions or ignorance of required filings (think of the myriad of foreign disclosures)
- Timely returns are filed but elections are omitted or ignored

Type of Claims – ‘Substantive’ Claims

- Incorrect or incomplete advice
- Failing to provide advice (usually ‘negative’)
- Failing to properly advise of potential penalties
- Ethical breaches for ‘conflict of interest’

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