As a CPA, do you shudder or smile when you hear the words “Affordable Care Act?”

Nearly every individual and business will need to address the new health care rules in the Patient Protection and Affordable Care Act (P. Bonner, Getting into the Swing of Tax Season, Journal of Accountancy, January 2015). Before making decisions about health insurance options under PPACA, clients should consider income tax, payroll tax, and cost-related issues; insurance coverage options and benefits; and employment law matters.

CPAs who provide tax planning services may be well-positioned to provide clients with PPACA-related advice regarding the tax and cost issues associated with selecting health insurance plans. But other matters go beyond the scope of the CPA's expertise.

So what's a CPA to do? This article provides examples of where CPAs need to “draw the line” between tax, insurance, and legal advice. In addition, when tax advice related to PPACA is requested, this column provides advice on properly defining scope in the engagement letter.

“Drawing the line” between tax, insurance, and legal advice

What's the difference between tax, insurance, and legal advice?

Consider the following client requests:

- A client approaches a CPA about reclassifying workers as independent contractors to qualify as a small employer and avoid PPACA-related penalties. While an aspect of worker classification is tax-related, the definition of an employee often differs for employment tax and PPACA purposes. In this case, an attorney with experience in tax and employment law should assist the client.

- A business client asks a CPA to advise whether the company's health insurance plan qualifies as minimum essential coverage. Generally, this client should have an insurance adviser who should have educated the client about the product during the sales process. The insurance adviser is better qualified to advise the client on these types of issues than the CPA.

- A CPA in a rural area is approached to register clients with the state's health insurance marketplace. Registering individuals for minimum essential coverage is not a tax or accounting service and should be performed by a licensed insurance professional or by the individual.

- A business client approaches a CPA and asks about the tax implications of not providing minimum essential coverage for the company's 125 employees. The calculation of penalties is a tax service, and the CPA is often the best professional to advise the client.

In short, CPAs need to be mindful of the difference between tax issues and issues that are best left for other professionals to consider. CPAs are generally problem-solvers and eager to answer a client's questions, but care must be exercised to ensure the practitioner does not cross the line and provide legal or insurance advice.

Contemplate the use of experts and attorneys

When clients request PPACA advice that is not tax advice, the CPA should consider advising the client to consult with another professional better situated to provide assistance.

For example, if a client is considering restructuring his or her business to minimize PPACA-related compliance costs, the client should consider engaging a tax attorney with expertise in the new health care laws to benefit from both the attorney's expertise and the protection of attorney-client privilege over related communications. The CPA can in turn be engaged by the attorney as a consultant using a Kovel arrangement, which extends the attorney-client privilege
to accountants who assist attorneys when the accountant is necessary or highly useful to the attorney’s provision of legal advice to the client.

Before providing referrals to experts, investigate their background and experience related to PPACA. If the firm prepares a tax return based in part on an expert’s findings and recommendations, the firm, as the preparer, is responsible for complying with the applicable provisions of the AICPA Statements on Standards for Tax Services and Circular 230, Regulations Governing Practice Before the Internal Revenue Service (31 C.F.R. Part 10). If the tax return position is challenged, the client may hold the firm responsible for the expert’s work.

**Define engagement scope**

Services that may have PPACA implications will generally consist of tax compliance and tax consulting services. An engagement letter establishes the services’ parameters and ensures that there is a clear understanding between the CPA firm and its client regarding the scope of the work. The content of the engagement letter is critical in limiting professional liability exposure related to PPACA.

For income tax compliance services, the firm’s standard engagement letter should suffice. PPACA forms are included in both the individual and business income tax returns and are not separate filings, so additional language is not required.

Regarding tax advice: If a client makes a general inquiry about how he or she will be impacted by PPACA, the CPA should direct the client to relevant educational materials. When providing client-specific advice, CPAs need to discuss the client’s needs and ask for any additional necessary information. After obtaining that information, the CPA should draft a separate engagement letter for PPACA consulting services. The letter should clearly define engagement scope and deliverables, including client and CPA firm responsibilities, before providing services.

For example, consider the previously discussed situation in which a client asked about the tax implications of not providing minimum essential coverage for the company’s 125 employees. Engagement scope could be defined as “project 2015 income tax with and without the penalty for failing to provide minimum essential coverage to all employees.”

**Final thoughts**

PPACA implementation, tax extender legislation, and ongoing revisions to tax guidance issued by the IRS promise to make this a challenging busy season. When new tax issues emerge, claims often arise alleging the CPA failed to advise the client or provided improper advice. With PPACA, additional claims may arise when CPAs advise on matters beyond tax advice, such as insurance planning or legal advice. To help protect themselves, CPAs need to know where to draw the line in the services they provide—and properly spell out the parameters of those services in engagement letters.

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