

Dear Client:

The IRS has issued new rules that will affect how we, tax professionals, communicate with you, our client. The rules, which took effect June 21, apply whenever a practitioner provides written advice, including e-mails, faxes, and letters, on tax issues. While the rules are motivated by the government's well-founded concern with abusive tax shelters, they will apply to advice given on many common and accepted transactions.

The rules grew out of the government's decision to attack the mechanisms used by tax shelter promoters to sell abusive tax shelters. The new rules address the practice of promoters to obtain boiler-plate opinions for tax shelters. Taxpayers engaging in abusive transactions use these types of opinions to escape tax penalties of 20 percent or more, on top of what they owe in taxes, by claiming they "reasonably" and "in good faith" relied on the tax opinion for their belief that the transaction was permissible.

In the new IRS rules, clients cannot rely on a tax opinion for protection from penalties unless the practitioner provides a comprehensive opinion that considers and discusses:

- All relevant facts and applicable law,
- The relationship between the facts and the law,
- A conclusion as to the legal consequences of each tax issue, and
- The likelihood that the taxpayer will prevail if the IRS challenges the transaction.

The new rules apply to tax advice for transactions that have a "significant purpose" of tax avoidance. This standard is vague and uncertain, in large part because the IRS did not want to create any loopholes. Consequently, the new rules may sweep in many routine, non-abusive transactions. The penalties to practitioners can be severe for providing written advice that does not meet these requirements, including disbarment from practice before the IRS.

Because of the new rules, the cost of securing a comprehensive opinion will be higher. An alternative to writing an expensive opinion is to include a disclaimer on written advice furnished to the client. This disclaimer will state that the client cannot rely on the opinion for protection from tax penalties. Accordingly, effective June 21, this firm will routinely include the following language in written communications:

IRS Circular 230 Disclosure: As required by United States Treasury Regulations, you should be aware that this communication is not intended or written by the sender to be used, and it cannot be used, by any recipient for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

Even with this legend, there are other penalty defenses to penalties. You will not automatically be penalized if the IRS challenges a transaction.

Please be assured that we will continue to act diligently to meet your needs. The use of this legend does not change the quality of our service and the advice you have come to expect from us. In appropriate cases, after consultation with you, we will provide a comprehensive opinion that meets the new rules.

If you have any questions about this important development, please contact us.

Sincerely,

KBA GROUP LLP

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