

## **Advisers face fines from IRS on more kinds of returns**

By Lisa Shidler

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CHICAGO — Financial advisers who prepare various tax-related documents for their clients will likely think twice before signing off on returns that include dubious or aggressive tax positions.

A new law, enacted in May, allows the Internal Revenue Service to impose stiff fines on those who prepare estate and gift tax returns, employment and excise tax returns, and returns of tax-exempt organizations. Previously, only income tax preparers faced fines for signing questionable returns without first disclosing details about the tax positions in question.

The new law, which also raises fines imposed on those who prepare income tax returns, will likely result in higher fees to clients, according to advisers. Also, more advisers are likely to turn away clients hoping to get away with questionable or aggressive tax positions.

“I think [advisers] will need to be a lot more conservative,” said Ed Slott, editor of Ed Slott’s IRA Advisor, a monthly newsletter based in Rockville Centre, N.Y.

The law also raises the standards of conduct for tax professionals.

In the past, tax preparers could recommend tax positions that they felt had a “realistic possibility of success.” In other words, preparers could sign off on positions that had at least a 33% chance of passing muster with the IRS, said Scott Coleman, an adviser with Schaumburg, Ill.-based KRD Financial LLC.

Now preparers must have a “reasonable belief” that the tax position has at least a 50% chance of getting the IRS’ blessing, said Mr. Coleman, who is also a certified public accountant.

### **Higher fines**

Fines for preparers taking “frivolous” positions have been raised to \$1,000, or half the preparer’s total fees, whichever is larger. That’s up from \$250 before the law was enacted.

Preparers taking “reckless” positions, meanwhile, face a \$5,000 fine, or half the preparer’s total fees, whichever is larger. That’s up from \$1,000.

To be sure, tax preparers can still sign returns with questionable tax items, but these positions need to be highlighted in specific disclosure documents.

Typically, preparers avoid making those disclosures out of fear of drawing scrutiny from the IRS.

“If you have to disclose something like this on a return, it almost screams to the IRS, ‘Give me a call,’” Mr. Slott said. “You better be prepared to defend it, and that means extra costs.”

Firms need to develop new policies on how to handle questionable tax returns, said Mr. Coleman, who pointed out that his firm may be forced to turn away some clients. “It will make us more cautious in the positions that we’re taking that were questionable or uncertain,” he said of the law.

The law is part of Congress’ efforts to close the nation’s \$290 billion tax gap.

“The IRS doesn’t have resources to increase the budget, and they put these laws in to make sure that preparers are acting in the IRS’ side,” Mr. Coleman said.

The effects of the law are being felt most by accounting firms, said Stephen A. “Tony” Batman, chief executive of Dallas-based 1st Global Capital Corp., a wealth management and broker-dealer firm that works with 700 CPA firms.

“We talk about taxes such as federal income and estate, but we don’t complete returns,” he said.

H.D. Vest Financial Services, an Irving, Texas, firm with more than 5,000 brokers and advisers, most of whom are accountants or tax professionals, declined to comment on the law.

“I think this is to put teeth in the law for people who were deliberately filing fraudulent returns,” said Chris Shorba, a tax partner with Kern DeWenter Viere Ltd. in St. Cloud, Minn. “I don’t know that we’ll have to change that much. We’re in the business of following the law.”

Even so, the law will likely lead to more paperwork — specifically, in the form of more disclosure documents.

“My liability insurance isn’t inexpensive,” said Bryan J. Ricci, a CPA with Ricci & Co. of Bristol, Conn. “We have to consider that every time we meet with a client.”

Mark Briggs, a CPA and certified financial planner at Briggs Wealth Management LLC in Glastonbury, Conn., expects to remain cautious. “I want to be comfortable so that I don’t need the disclosure form,” he said.

