Best Practices
Compliance & Documentation

Summary

From Engagement Agreement to Client Acceptance and everything in between, this class will offer guidance needed to ensure that clients and practitioners understand each other from start to finish. Conflict waivers, disclosure authorizations, and IRC § 7216 consents – find out what you can do to protect your practice.

The information contained herein is for educational use only and should not be construed as tax, financial, or legal advice. Each individual's situation is unique and may require specialized treatment. It is, therefore, imperative that you consult with tax and legal professionals prior to implementation of any strategies discussed.

Instructor

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I. Introduction

As tax practitioners we are inundated by forms and paperwork; everything from governmental tax forms to regulatory documents to those wrinkled scraps of paper that our clients bring to us in shoeboxes, proudly proclaiming that they indeed have all of the supporting documentation we tirelessly and ceaselessly implore them to keep. In fact, that is precisely the reason our clients turn to us: To rid themselves of an onerous task and piles of paper that have amassed atop dining and kitchen tables, in shopping bags and Tupperware containers, crept behind closed closet doors and slipped beneath bed skirts to settle in with the dust bunnies.

Neither they nor you want to see more paperwork! So I guess I have my work cut out for me trying to convince you that a handful of additional forms are essential to your practice, including engagement and representation agreements, a taxpayer consent form, disclosure authorizations and conflict waivers, even a disengagement agreement.

Best practices demand nothing less.[1]

II. Disclaimer

Don't be fooled by the "J.D." in the alphabet soup after my name. While I may proudly proclaim that I attended law school, I am not a practicing attorney. I am not licensed by the State Bar. I cannot offer legal advice.

But I can share my experiences with you. I have been in practice for more than thirty years. While I've hardly seen "it all", I have seen a lot. I am a sole practitioner responsible for every aspect of my business, from client satisfaction to practitioner protection. And I'm proud to say that my client retention rates are superseded only by my spotless compliance record. It is based on these achievements that I now share some of my "secrets" with you.

However, I ask you to note that:

- Sample wording offered in this manual is intended solely for general educational purposes and not for the purpose of providing specific legal, accounting, or other professional advice to any particular reader or with respect to any particular jurisdiction.
- I make no representations, warranties or guarantees as to the technical accuracy or compliance with any federal, state or local law or professional standard.
- I assume no responsibility and make no promise to correct or update the contents of this manual for any reason, including changes in any law or professional standard.
- I strongly urge you to seek legal counsel from an attorney who is knowledgeable as to the accounting and tax practitioner industry, your practice, and the laws of any jurisdiction(s) in which you practice to ensure compliance with applicable laws and professional standards.

Having now told you that I really cannot tell you anything, let me go ahead and tell you…

[1] "A best practice is a technique or methodology that, through experience and research, has proven to reliably lead to a desired result. A commitment to using the best practices in any field is a commitment to using all the knowledge and technology at one's disposal to ensure success."
[Excerpted from http://searchsoftwarequality.techtarget.com/definition/best-practice, last accessed April 29, 2019].

III. What's the point?

So if I must convince you, let me count the reasons we should start every client engagement every time with a well-worded, comprehensive but easy to understand contract that **outlines the scope** of our engagement,[2] **our obligations** to our client and our **client's responsibilities** to us.[3] Such a contract makes it clear that the success of the tax preparation and representation process depends on mutual cooperation and reciprocal trust. It is a bilateral agreement that ensures all participants know from the beginning that they are entering into a professional alliance intended to benefit both parties.

Sure, your professional liability carrier and your business attorney will tell you that an engagement agreement is needed to **provide protection**, to **mitigate your liability exposure** from negligence and malpractice, to prevent harsh consequences from potential misunderstandings, and to **ensure compliance** with regulatory and professional standards. Of course!

I won't argue that these benefits are as worthwhile as they are inherent to a properly drafted and executed contract, but it is not for these reasons that I advocate the use of an engagement agreement. After all, I have no intention of relying on a document to enforce my rights, collect my fees, or defend myself in a court of law. I am by nature risk-averse as well as confrontation-wary. Misquoting an old cigarette slogan, I'd rather switch than fight![4]

Aside from the fact that a legal fight can be both time-consuming and expensive, it is by its very nature unpleasant. The outcome will often be unsatisfactory; in fact, it is said that the best result that can be hoped for, is that both parties walk away unhappy. It would hardly matter that facts and circumstances might be on my side or that my "perfect" engagement agreement served to protect me, or even that my insurance carrier covered my legal fees (and loss). As far as I'm concerned, the stress and inconvenience of a dispute – whether in court or at the mediation table or just a verbal exchange of ill-will – are to be avoided.

To that end, I work diligently to stay abreast and inform my clients of Code changes, to provide expert service and a product that can withstand an examiner's scrutiny, to screen, train and educate my clients, to cull those whose ethics are questionable, and to at all times maintain my integrity. My good name is my livelihood; my unquestioned reputation is what lulls me to sleep at night.

So then why do I need an engagement agreement, another form, an added complexity?

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[2] In an interview with the Risk Control Director of CNA Insurance, Tieger-Salisbury warns against "scope creep" which she defines as "a project that expands incrementally and often subtly from its original—sometimes not well- enough-defined- goals—while it is in progress." The author cites as an example, a CPA who completes a client's tax return and also tidies up the books and financial records as a favor but then finds himself potentially exposed to a law suit when it is later discovered that someone embezzled from the client [*Engagement Letter is the CPA's Best Defense* (February 25, 2016)].

[3] Communicating clearly with the client regarding the terms of the engagement is set forth as one of many best practices for tax advisors [Treasury Department Circular No. 230, §10.33(a)(1)].

[4] The slogan as correctly used by the American Tobacco Company during their most visible ad campaign in the 1960s and 1970s was "Us Tareyton smokers would rather fight than switch!"

My engagement agreement sets me apart. While I do not have official statistics that confirm how many of my peers, associates and competitors use an agreement, I do know that many clients tell me, "My previous accountant never made me sign an agreement." It is likely that these same practitioners also did not ask their clients to bring in a mileage log or letters of acknowledgement from donee organizations or vehicle registration invoices. I told you, I'm careful. I'm painstakingly meticulous, judiciously prudent, vigilant and protective of myself and my clients.

I'm a professional and proud of it! And if placing a contract in front on my clients each year serves to **emphasize my professionalism**, then that would be reason alone to use an engagement agreement. (But it's nice to know that this same agreement can serve so many other purposes as well.)

IV. Insurance

Neither an engagement agreement nor even extreme caution precludes the need for a good errors and omissions (E & O) policy; just as careful driving may only mitigate but never eliminate the possibility of an accident and the need for insurance that can assume the risk of a catastrophic loss.

Professional liability coverage is activated when legal action is threatened; most policies will defend the practitioner and pay any losses for covered acts (within policy limits and after applicable deductibles). Typical acts include negligent tax advice, errors in the preparation of documents, inaccurate advice on tax treatments and most other errors or omissions related to tax preparation.[5] If additional services are provided (e.g., bookkeeping or financial planning), the practitioner may need to purchase a rider or even a separate policy. This – and all insurance-related matters – should be discussed with the practitioner's insurance agent so that a suitable policy may be tailored to the practitioner's specific needs.

Some states or professional associations may mandate that the practitioner purchase a tax preparer bond.[6] A bond differs from E & O insurance in that it does not indemnify the practitioner against loss since the surety company merely guarantees to the state that it will pay the damages up to a minimal state-mandated threshold and then will seek reimbursement from the bonded individual. In this manner, the bond guarantees that neither the state nor the practitioner's clients need to pursue the practitioner; instead, the surety company assumes that task determined to be made whole again by the errant practitioner.

[5] Fraser, *Tax Preparer Bond vs Errors and Omissions*, NATP TaxPro Journal (Summer 2016).

[6] California, for example, requires state-licensed preparers – defined as persons (not including EAs and CPAs) who assist with or prepare tax returns for a fee – to obtain a $5,000 bond [California Business and Professions Code §§22250].

V. The Basics

A. Evergreen Contracts[7]

Because each client, each situation and each engagement is unique, the contract stipulating to the engagement should be equally distinctive; at least in so far as the type of service that is to be provided, the period covered, the initiation and termination of the engagement. In other words, boilerplate language and contracts intended to exist into perpetuity should be avoided.

I have separate agreements for tax preparation services, representation, and consulting. Depending on a client's needs and the services I have been asked to provide, I sometimes must ask an individual to sign multiple agreements.

In all agreements, I specify the type of service for which I have been engaged – e.g., tax preparation, tax consultation, tax planning, audit representation – and then make reference to other agreements that would be required should the client ask me to offer services not covered by the current agreement.

I clearly outline the duration of the agreement; its beginning and its end. And, in an attempt to preclude potential misunderstandings, I title each agreement with a clear reference as to which tax year is covered by the contract.

ENGAGEMENT AGREEMENT FOR TY 2018

Duration of Engagement

Engagement will begin once Client has signed Agreement; however, in the event that Client does not return signed Agreement to EA but nonetheless verbally agrees (or otherwise indicates by such actions as submitting the tax organizer, providing tax data, or filing the prepared returns) that EA shall prepare returns on Client's behalf, all terms and conditions of this Agreement shall apply. Client's signature on federal and/or state e-file authorization form(s) shall be deemed acceptance by Client of all terms in Engagement Agreement. Engagement of EA's services will be deemed satisfied upon delivery of completed returns to Client who is solely responsible for filing all tax returns with the appropriate tax authorities. Additional services (e.g. tax planning, communications with tax authorities, preparing prior-year unfiled returns, etc.) may be provided under separate agreement between Client and EA.

B. Readability

While an engagement agreement is technically a bilateral agreement between client and practitioner, it is generally not an agreement that has been drafted to commemorate contractual terms and obligations that were the result of one-on-one negotiations. Instead, practicality dictates that the contract is drafted by the service provider, then presented to

[7] An evergreen contract – one that stays perpetually alive throughout the seasons – is an agreement that is automatically renewed at completion until canceled by the either party [as defined by BusinessDictionary.com, available at http://www.businessdictionary.com/definition/evergreen-contract.html#ixzz3YHDHdHsg, last accessed April 30, 2019].

and signed by the client. Nevertheless, the agreement delineates promises each party makes to the other.

Therefore, it is imperative that both parties understand those promises and have an opportunity to consent to them. Presumably, the practitioner who drafted the contract and uses it on a daily basis as he engages with each client is familiar with its contents. The client, however, is often presented with a lengthy document filled with fine-print and legalese during an introductory meeting or the annual data collection interview and has little time, opportunity or even wherewithal to become conversant with the contract.

In short, it's hardly fair for one contracting party to be asked to sign a document without granting him the opportunity to understand what he is signing. In worst case scenarios, courts have held contracts to be unconscionable if they are "unjust or unduly one-sided in favor of the party who has the superior bargaining power."[8]

Referred to as adhesion contracts because the weaker party is faced with the choice to either adhere to (accept) the contract or reject it, these contracts – while not always unconscionable and unenforceable – can certainly appear to be less than fair or even biased. Having recently undergone surgery, I have to wonder if the consent form that was presented to me in the OR just before the anesthesiologist administered his dose of Propofol did not in fact put me into a take-it-or-leave-it situation. Did I give informed consent? Could I be held to the terms of the agreement that likely stipulated that I could not sue the surgeon for malpractice but instead would have to settle any grievance through arbitration?

At another facility, I was not even given a hard copy of the consent form. Instead, an electronic signature pad was pushed across the desk and I was asked to sign "here, here and here." Several laminated pages of disclosures and boilerplate hung from a ring on a bulletin board too far away to see. I was told that I was agreeing to disclosures in the various paragraphs of the contract on board. Would a judge or jury ever hold me to those terms?

I hope I never have to find out!

Nor should my clients have to wonder what it is they signed. So I provide copies of my engagement agreement to everyone at year-start; it is sent out with my introductory letter; it is posted on my website;[9] and duplicates are given as a matter of course. I ask clients to read the agreement, sign and return it to me at the outset of the engagement – before I even begin work. Existing clients are likely familiar with the general contents of my form and need only to look for changes and updates that are inevitably made each year. New clients are given the opportunity to read the form in my office. I make it a practice to review each section verbally.

But I also know that most of my clients just sign. They don't read the fine-print. They trust me to be fair. Or, they just don't care. It is for these clients that I make my agreement as readable as possible with short paragraphs separated by grey-shaded headings clearly

[8] "Contracts" defined [available at http://legal-dictionary.thefreedictionary.com/contracts, last accessed April 30, 2019].

[9] Available at http://mhaven.net/Materials.php, last accessed April 30, 2019.

identifying each topic (e.g., Supporting Data, Client Review, Practice Standards, Cost of Service and Payment Terms). Easy to peruse; clear and concise.

And in plain English! None of this legalese: Notwithstanding,[10] whereas, commensurate with, in consideration of, the aforementioned conditions, here-to-fore.[11] My attorney may cringe but my clients are grateful for the lack of jargon and…

…the occasional interjection of humor; as when I ask my clients for a modicum of patience:

Patience

As much as I wish I could treat you as though you were my only client, (un)fortunately you are not. Please bear with me as this client did: "My life is quite complicated and I'll need your help on several fronts. My employer is bankrupt so I'll soon be out of work and without health insurance. Dad has dementia. Mom is moving into a senior facility. Then there's the homicide investigation (a patient) and the pedophilia trial (a close friend). It's all fascinating stuff, really, but… all of it can wait."

VI. Specific Clauses

Although I advocate tailoring an Engagement Agreement to the unique demands of each practice and the clientele that it serves, I also believe that certain types of clauses should be incorporated into all contracts for the sake of completeness and to address issues common to our industry.

A. Client Responsibilities

While it is of course crucial to outline the services I plan to provide, the expertise that I will share, and the obligations I expect to undertake, my engagement agreement focuses first on my client's responsibilities. I want it understood from the beginning that our professional relationship will succeed only if each of us recognizes that we have duties and obligations to one another.

My client, for example, is responsible for providing tax data along with supporting documentation in a timely fashion. I, on the other hand, am responsible for proper

[10] What does "notwithstanding" mean? The *Oxford Dictionary* [available at http://www.oxforddictionaries.com/us/definition/american_english/notwithstanding, last accessed April 30, 2019] explains that the word may be used as a preposition, an adverb or even a conjunction to mean "in spite of", "nevertheless" or "although" and even provides various flowery examples: "Imagine, apparently conclusive evidence to the contrary notwithstanding, that a very few gifted individuals are genuinely clairvoyant." "It is that attitude, allied to a zest for the game and notwithstanding obvious aplomb on the pitch that has impressed his club manager George Burley." And finally, "notwithstanding that the hall was packed with bullies, our champion played on steadily and patiently." I am hardly the wiser! I strongly urge you to avoid the ambiguity that "notwithstanding" and similarly impressive but ultimately vacuous vocabulary will inevitably generate.

[11] Be sure to define unique and unusual terminology, terms of art, acronyms and abbreviations used in the agreement.

application of the tax law. With a clear understanding of our respective duties, we can embark on a mutual endeavor to prepare a tax return that satisfies regulatory standards, minimizes the taxpayer's tax liability as much as legally possible, and is timely filed.

The process begins with data:

Supporting Data

By signing this Agreement, Client states that he has the necessary documents and records to support the deductions claimed on the tax return and will provide all requested information in a timely manner. While Client is not required to use the Personal Tax Organizer™, Client must provide all information requested and answer all questions asked on the Organizer in a clear and legible format.

Client is advised that the law imposes a penalty for substantial understatement of the tax liability and that the tax authorities regularly question whether any cash or bartering transactions have transpired. Close scrutiny of expenditures, including but not limited to travel and entertainment expenses, business use of automobile and cell phones, as well as charitable donations is common. EA is required to provide full disclosure to tax authorities should estimates or reconstructed data be entered on the return.

The data must be provided in a timely fashion:

Timeliness

Client agrees to deliver requisite tax data and supporting documentation in a timely manner and will not hold EA responsible for delays due to Client's lack of cooperation during the tax preparation process. A surcharge of X% may be assessed if Client provides data to EA more than 10 days after EA's initial request. EA may terminate contract without further notice, if Client fails to provide requested data. **NOTE:** EA will give priority of service to clients who have timely provided data and otherwise cooperated with the tax preparation process.

The filing deadline for TY 2018 individual returns is April 15th, 2019. If EA has not received Client's personal income tax data in full by March 15th, 2019, an extension request will be automatically e-filed by EA unless Client has notified EA in a timely fashion that an extension is neither needed nor wanted. EA will not provide ongoing reminders of filing deadlines or requests for information. **NOTE:** Since an extension merely extends the time for filing (not payment), penalties and interest for late payment may accrue for which the Client will be wholly responsible.

The client must also agree to review the prepared return(s) prior to submission:

Client Review

Client is wholly responsible for the accuracy of the return and will—after careful review—sign and deliver the completed return(s) to the proper taxing authorities or authorize EA to file electronically. **NOTE:** The law provides for a penalty to be assessed for substantial understatement of the tax liability. Client is responsible for all penalties and interest.

B. Practitioner Responsibilities

Now that my client has agreed to do his part, I must agree to do mine. I begin by explaining that while I will use my experience and expertise to prepare the client's return, the basis for the return will be the client's data; not numbers that I have conjured nor imaginary figures drawn from my office ceiling when my client uncomfortably rolls his eyes skyward to hesitantly mutter, "I guess it was $500" or confidently exclaims, "Same as last year!" or questioningly says, "Whatever is allowed." That's not how I do business and I make sure to tell my client that in advance.[12]

Mission

Returns will be prepared based on the information provided by Client. EA will not audit nor verify the data and may request additional material or clarification. EA will make every attempt to properly apply the law and legally minimize Client's tax liability. EA will exercise professional judgment and will, whenever possible and justifiable, attempt to resolve any issues involving the Code in favor of Client.

Practice Standards

EA may not sign a return as a paid preparer if EA determines that the return contains a position that does not have a realistic possibility of being sustained on its merits, unless the position is not frivolous and is adequately disclosed to the IRS as per IRC § 6662.[13] EA must inform Client of penalties likely to apply regarding the position advised, prepared or reported and must advise Client of any opportunity to avoid such penalty by making adequate disclosure. EA may rely in good faith (without verification) upon all information furnished by Client; however, EA must make reasonable inquiries if the information appears to be incorrect, inconsistent or incomplete.

[12] A practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission. [Treasury Department Circular No. 230, §10.21].

[13] This Code section relates to the imposition of accuracy-related penalty on underpayments.

This, then, is the basic premise of our agreement: In exchange for complete and valid data provided by my client, I will prepare a tax return on his behalf. Five short paragraphs and I've outlined the gist of our business relationship. For some practitioners, these few paragraphs may suffice to establish a solid, mutually acceptable association but for others, the devil is in the details…

VII. Fine-tuning the Agreement

You don't have to be Edward Snowden (or even my computer consultant) to be paranoid about security. With news reports of password theft at Twitter and LinkedIn, credit card theft by Russian hackers at The Home Depot, and the exposure of sensitive personal information at Equifax,[14] all of us live in fear of identity theft, tax id theft and fraud. On my Organizer, I ask my clients if they have been a victim of ID theft since we last met – often they answer, "Not yet!"

We all know it's not *if* but *when* we will fall prey; it's only a matter of time. Thus, it becomes incumbent upon me to do my part to assuage my client's fears by ensuring confidentiality and guaranteeing privacy as best as I can.

Confidentiality

Client is hereby given notice that all communications throughout the tax preparation process with EA are confidential, but *not privileged* and may be disclosed if a summons is issued. The working papers for this engagement are the property of EA and constitute confidential information. Any requests for access to these materials will be discussed with Client before making them available to other parties. Limited privilege may be available during the representation process under IRC § 7525. Client may advise EA to assert this privilege in non-criminal tax matters involving the Internal Revenue Service or federal district courts. Client, however, should be aware that disclosure of information considered during the tax preparation process is not covered under privilege—only tax advice communications are covered. Client hereby agrees to reimburse EA for all costs, including legal fees, required to defend the privilege asserted. *Client should immediately engage legal counsel if he has any concerns regarding possible criminal matters.*

It is important to note that clients enjoy only limited privilege with their tax preparers which may only be asserted in non-criminal matters[15] and specifically excludes communications

[14] Marriott Hotels (November 2018): 383,000,000 records (incl. credit card details and passport information) were leaked. Twitter (May 2018): 330,000,000 passwords were stored in readable text. Uber (November 2017) paid hackers $100,000 to delete 57,000,000 stolen records. Equifax (September 2017): 183,000,000 records (incl. sensitive personal data) were exposed. LinkedIn (May 2016): 117,000,000 passwords were stolen. Anthem (February 2015): 80,000,000 records (incl. dates of birth, member IDs, SSNs, and employment information) were compromised. Target (November 2014): 70,000,000 customer records put at risk by software installed on machines that customers used to swipe their credit cards when paying for merchandise. The Home Depot (September 2014): 56,000,000 customer credit card records syphoned off by suspected Russian and Ukrainian hackers. [Information about these and other data breaches available at http://www.informationisbeautiful.net/visualizations/worlds-biggest-data-breaches-hacks/, last accessed April 30, 2019.]

[15] IRC §7525(a)(2).

regarding tax shelters;[16] thereby rendering the privilege almost useless. It is certainly not comparable to the attorney-client privilege which is for all intents and purposes inviolable.

In a case wherein an accountant (Louis Kovel) was held in contempt of court and sentenced to one year in prison when he refused to provide information about his client to a grand jury, the ruling was reversed on appeal when the court found that the attorney-client privilege did in fact extend to the accountant who had been engaged by the law firm which was representing the same client.[17] Citing the case as precedent, privilege has often been successfully extended to a tax practitioner if communications with the accountant were made in confidence for the purpose of obtaining legal advice from the lawyer.

But courts have become increasingly wary of the tactic, particularly if the Kovel Letter used by an attorney to engage the accountant is not properly drafted or other finer points of the relationship are ignored.[18] In a Kovel arrangement, the taxpayer's attorney engages the tax practitioner and in that manner, the attorney – not the taxpayer – becomes the client of the practitioner. As a result, the practitioner must address all communications only to the attorney. And because only that information gathered by the practitioner which pertains to the legal matter at hand is deemed protected, the practitioner must carefully separate the information that he gathers in his capacity as an advisor to the attorney, a tax preparer, an auditor, or in any other function. **NOTE:** A pre-existing relationship between the practitioner and the taxpayer – albeit not always preclusive – may indicate to the courts that the Kovel arrangement is a sham established merely to achieve privilege where it would otherwise not exist.

Privacy

EA does not disclose nonpublic personal information about current or former clients to anyone unless instructed to do so in writing by Client [see Disclosure Authorization]. EA will not perform a conflict check; Client remains solely responsible for identifying and disclosing actual or potential conflicts of interest to EA. If a joint return is filed, EA may provide returns and copies of supporting documentation to either spouse without consent from or notification to the other spouse [see Spousal Conflict Waiver]. EA restricts access to nonpublic personal information to those professionals who may assist in the preparation process or provide adjunct services. EA has instituted all reasonable measures, including physical, electronic and procedural safeguards to protect Client's nonpublic personal information. Client assumes the risk of loss of confidentiality and/or tax documents during unencoded electronic transmission or mailing via USPS and third party delivery services.

In exchange for my concerted efforts to maintain the integrity of my client's private information, I ask my client to understand that it would be impractical to maintain and safeguard his personal information indefinitely. The client is notified at the outset of our relationship that I will return all original supporting documentation to him upon completion of

[16] IRC §7525(b).

[17] *US v Kovel*, 296 F.2d 918 (1961).

[18] *US v Adlman*, 134 F.3d 1194 (1998).

the tax preparation process, that I will retain my work papers for five years,[19] and that these papers will be automatically destroyed thereafter without further notice. However, the client may at any time request that the contents of his file be forwarded to him at his cost prior to destruction.[20]

Document Retention

EA's final work product will be retained for five years; thereafter, all documents will be destroyed by EA without further notice to Client. Physical deterioration or catastrophic events may shorten this term. Client understands and agrees that in the event a file is destroyed, EA will no longer have any records and will not have any responsibility to reconstruct the file. Client will assume all costs of shipping and storage should Client *timely* notify EA that the file should be forwarded to Client prior to destruction. EA does not retain any original documents as they are returned to Client at the completion of the tax preparation process. It is Client's responsibility to keep these materials for future use (e.g., possible examination by the tax authorities).

VIII. The Obvious

Of course, I expect to be paid for my services. I do not quote fees on the phone or internet but instead give prospective clients the opportunity to meet me during a free, no-obligation, introductory appointment. I apologize for any inconvenience that a cross-town commute may entail by explaining that our meeting will give each of us the opportunity to decide if we want to work together. The client is given the chance to interview me, evaluate my expertise, and establish a rapport that will be essential to our relationship. I, on the other hand, am given the chance to evaluate the work to be done as well as gauge the candor and sincerity of the prospective client.

Yes, I turn some of them away! Those who I feel might be less than truthful or lacking scruples are sent packing. Prospects who seemingly want to take more aggressive positions on their tax returns than I deem advisable (or allowable) are asked to leave. Troublesome individuals, combative clients and problematic prospects are waved away. While my judgment is not infallible, my instincts have been honed with decades-long experience. I trust my gut feelings. I'm seldom wrong.

Ultimately, I hit it off with most folks who come to me; particularly since my business now relies mostly on referrals from long-standing clients who send like-minded and like-situated friends and associates my way. These, then, are the prospects to whom I offer a fee quote; in writing atop the engagement agreement.

[19] Practitioners are encouraged to check local statutes to be sure that they comply with recordkeeping requirements as mandated within their state(s) of practice. As per IRC §6107(b), tax return preparers are required to retain a copy of each return they have prepared for at least 3 years after the close of the tax period covered by the return.

[20] Records of the client include all documents or written or electronic materials provided to the practitioner, or obtained by the practitioner in the course of the practitioner's representation of the client, that preexisted the retention of the practitioner by the client [Treasury Department Circular No. 230, §10.28(b)].

Presuming a prospect wants to take the next step and engage my services, I use my engagement agreement to outline what my quoted fee will (and will not) cover. I explain that my payment terms include a deposit or retainer that must be paid at the time of engagement and will be applied to the quoted fee. I offer the client various payment options by which his invoice may be satisfied. I offer discounts which I encourage my client to use to his advantage. And, finally, I include a dispute resolution clause that I hope will never be invoked.

Cost or Service

Fees for tax preparation will be based on the complexity of the return, the expertise required, and the time expended by EA and will be increased annually to remain commensurate with the requisite skill, knowledge, expertise, and continuing education required by regulatory authorities. Extraordinary expenses and additional services, including but not limited to tax file organization, data compilation, cost basis computations, research, replacement of lost returns, postage (delivery via UPS is charged a minimum $XX fee), correspondence with the taxing authorities, bookkeeping, tax consultation and audit representation, will be billed on an hourly basis.

Client, if eligible, may enjoy one of the following discounts: Student, Senior, Out-Patient, or Multi-Return. All discounts will be voided if Client has not paid EA's invoice in full within 10 days after initial billing.

Client may pay by cash or check or PayPal™. Client's returns will not be e-filed until EA's fees have been paid in full or alternate payment arrangements have been approved by EA. Client agrees to review all invoices upon receipt; absent any objection within 30 days, the invoice will be deemed correct, due and payable.

Payment Terms

When data is submitted to EA, Client will prepay one-half of the applicable tax preparation fee (*minimum prepayment shall be $XXX in all cases*). The balance is due upon delivery – whether physical or virtual – of the completed return. A monthly penalty will be assessed on the unpaid balance based on an annual rate of X%.[21] No additional services will be provided by EA until the account has been brought current. Prepaid deposits are non-refundable once the preparation process has begun. EA may take legal action to collect any outstanding fees and all costs incurred during the collection process will be added to Client's bill.

[21] Be sure to check usury fees – the maximum legal interest rate – in each applicable state.

Dispute Resolution

Any dispute arising under this Agreement or relating to EA's services, including but not limited to disputes regarding fees, the scope of the engagement or professional malpractice, will be first submitted for non-binding mediation or alternative dispute resolution before litigation is filed.[22] Litigation, if undertaken, shall be conducted in the county of XXX according to XX state law.

My insurance carrier recommends that I include a clause to limit the time during which a client may file a claim against me but admits that such a clause may not always be enforceable. In Massachusetts, a court held that a limitations period is valid if the claim arises under the contract, the agreed-upon limitations period is reasonable and subject to negotiation, and is not contrary to public policy.[23] The case is, of course, not binding in other states – I urge you to obtain legal counsel to ensure that your agreement includes a clause that is enforceable in your state.

Similarly, you may wish to include a damages disclaimer which would limit your potential liability exposure to fees received from your client. Sample phrasing: "…liability to the Client shall in no event exceed the fees received for the portion of the work giving rise to the liability; nor shall the liability include any special, consequential, incidental or exemplary damages or loss, including lost profits, savings or business opportunity."[24] Some attorneys prefer simpler language that is not only more understandable but also more inclusive and does not limit the damage waiver to a specific type of damage – whether direct, incidental or consequential: "Neither party will be liable for breach-of-contract damages that the breaching party could not reasonably have foreseen on entry into this agreement."[25] Once again, it is imperative that you consult with an attorney about the use of proper language as well as applicable state law.

IX. Legal Caveats

Business attorneys in their enduring endeavors to out-guess and avert all exigencies – however unlikely or remote – may suggest that you include additional provisions to ensure that your contract will be judicially enforceable.

A. Jurisdiction

Concerned that a disgruntled out-of-state client will likely sue an offending practitioner from the convenience of his own home, it is critical to include a clause that limits

[22] Although the contract's "demand" that warring parties attempt mediation and/or arbitration prior to litigation cannot ensure that the participants will engage in the process in good faith and with best efforts, experience has shown that once the parties engage in the process, they become committed to it and the possibility of a negotiated resolution [*Engagement Letter Wording*, North American Professional Liability Insurance Agency, LLC, © 2013].

[23] *Creative Playthings Franchising Corp. v James A Reiser, Jr.*, 463 Mass 758 (2012).

[24] *Engagement Letter Wording*, North American Professional Liability Insurance Agency, LLC, © 2013.

[25] Excluding Consequential Damages Is a Bad Idea, posted to Ken Adams' blog (February 15, 2010) [available at http://www.adamsdrafting.com/excluding-consequential-damages-is-a-bad-idea/, last accessed May 1, 2019].

dispute resolution to the venue and laws applicable to the practitioner's state as he may otherwise discover that he will be forced to hire legal counsel in and travel to another state to defend himself against a client's accusation. Limiting the jurisdictional venue ensures that the practitioner and client remain subject to the laws of the state in which the practitioner is located, the state which has primary responsibility for governing the practitioner's activities, and the state and local rules with which the practitioner is most conversant.

Notwithstanding anything contained herein, both accountant and client agree that regardless of where the client is domiciled and regardless of where this Agreement is physically signed, this Agreement shall have been deemed to have been entered into at Accountant's office located in XXX, which shall be the exclusive jurisdiction for resolving disputes related to this Agreement.[26]

B. Limitations

And because no practitioner should offer advice or provide services outside of his area(s) of expertise, legal experts suggest that we not only disclose the source and scope of our expertise but that we clearly define the limitations of our knowledge in advance. Experts recommend that we explicitly:

- Recognize that it is increasingly difficult to keep abreast of changes in the legislation, jurisprudence and positions taken;
- Admit to our clients that their problem requires the expertise of someone with proficiency in the specific area required; and
- Establish relationships with specialists who will support our relationship with our client while servicing their needs at a competitive and fair price.[27]

Since a lack of familiarity with out-of-state tax laws – including community property and same-sex marriage issues – or failure to recognize that a client may have filing obligations in other jurisdictions could lead to potential malpractice claims, a paragraph should be inserted to alert your client that he may have an additional less-than-obvious filing obligation.

Nexus

EA's services are not intended to determine whether Client has filing requirements in taxing jurisdictions other than the one(s) Client has mentioned to EA.

A client will of course argue that he engaged a practitioner's services to obtain expert tax advice which he believed would include the identification of all federal, state and local

[26] You'll note from the very first word in the paragraph ("Notwithstanding") that this sample provision is not my own. I have included it here – despite its formal legal language – because this paragraph, amongst several others, should be expertly drafted to ensure its applicability if ever needed. You would hate to find out just as you are immersed in conflict, that your contract (or some of its provisions) did not in fact achieve what it had set out to accomplish.

[27] Stick and Wende, *Defensive Practice for Tax Practitioners*, presented at the 2008 British Columbia Tax Conference by partners of Alexander Holburn, Beaudin & Lang LLP.

filing requirements. And to that end, I do my utmost to elicit sufficient information during the client interview so that I may competently advise the client. But because it is impossible to be familiar with all rules in all jurisdictions, I carefully study, research governing law, and ultimately share my findings with my client "to the best of my knowledge." Some practitioners offer their client a "nexus study" under separate agreement and for an additional fee.

With similar logic, some practitioners might wish to clearly state that they are responsible only for positions taken on the current-year return and not those on returns for previous years prepared by another firm or preparer.[28] That may seem somewhat obvious. In fact, to those of us who are by nature ethical and diligent, who live by the Golden Rule to do unto others as you would have them do unto you,[29] and who trust in the goodness of people, many contractual clauses recommended by attorneys seem superfluous. Ultimately, you would hope that they all are! But as the attorneys will tell you, a good contract is designed to cover those just-in-case scenarios.

C. The Unauthorized Practice of Law

Practicing law without a license is illegal. On its face, this is a simple, declaratory statement that seemingly states the obvious. But as the following examples illustrate, tax practitioners routinely risk crossing the line by offering advice that is, in fact, "legal":

- Practitioner notices that his client (a sole proprietor) is operating his business under an unregistered fictitious business name and suggests that he should register the name with the county clerk as required by state law.
- While practitioner prepares a partnership return, he recommends to his client that he should form an LLC.
- Practitioner suggests to his client who has residences in two states to spend more time in one state rather than the other to benefit from a favorable Circuit Court decision to which one (but not the other) state will acquiesce.
- Practitioner assists his long-term client with the preparation of a non-tax document.[30]

And in an actual case that is as surprising as it is painful: When the taxpayer refused to pay his CPA's invoice after the CPA researched case law so that his client would prevail in an ongoing IRS audit, the court held that the CPA had provided legal services thereby invalidating his contract – and the associated payment terms – with the client.[31]

We've all been there; done that! Whether we've engaged in unauthorized practice as a favor to a client, to procure goodwill, or due to ignorance, we risk running afoul of the law and the State Bar, which most certainly has the wherewithal to pursue transgressors. Most State Bars typically do not proactively pursue violators but, instead, wait until they have been notified of wrong-doing by a disgruntled client – only then will the practitioner face the wrath of the gods and licensed attorneys!

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[28] Raspante and Vono, *Engagement letters for the individual tax practitioner*, Journal of Accountancy (December 31, 2013).

[29] Luke 6:31.

[30] Baez, *Unauthorized Practice of Law*, NATP TaxPro Journal (Summer 2016).

[31] *Agran v. Shapiro* (273 P.2d 619).

Yet the courts do not clearly define what constitutes the unauthorized practice of law, admitting that it "is not subject to precise definition" and that "the line between permissible business and professional activities and the unauthorized practice of law is often blurred."[32] Another court declared "that it is neither practicable nor wise to attempt a comprehensive definition by way of a set of rules."[33]

So what is a tax professional to do in the absence of legal guidance? Be careful!

D. Drafting Considerations

Although I have provided sample language and referenced other sources from which you may obtain additional clauses and even complete templates, I ask that you do not merely adopt them as a finished product into your practice. Each prototype, each provision, and every phrase should be reviewed for accuracy and suitability. Just as no two tax practices are identical; so, too, is no single engagement letter of one size that fits all.

When drafting your document, you must consider the regulatory authorities, professional standards and ethical guidelines to which you are subject, including but not limited to Treasury Department Circular 230,[34] state law, and the codes of professional conduct and statements of standards imposed by various business associations.

A well-drafted agreement must be able to address issues prior to its acceptance, such as the capacity of the parties to enter into a contractual relationship and potential conflicts of interest. The agreement must then identify, define and even limit the scope of the engagement; address confidentiality and disclosure issues; and clearly delineate the applicable fee structure and billing arrangements. Lastly, no agreement may be considered complete if it does not also address the termination of the professional arrangement, each party's obligations to the other, and an "escape" clause should either party wish to end the relationship prior to it intended conclusion.[35]

X. Do's and Don'ts

Here is a list – albeit not all-inclusive – gleaned from personal experience as well as the expertise of other tax practitioners and attorneys:

Make sure to have your client sign the engagement agreement *prior* to starting work. While it might seem that this should be done to protect the practitioner's rights and ensure payment for services provided, legal experts explain that advance agreement in fact promotes the client's freedom to contract. He is not forced into a contract after work has already begun at which time it may be impractical, costly, difficult, embarrassing or too late to sever the professional relationship.

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[32] *In re New Jersey Society of CPAs* (507 A.2d 711).

[33] *In re Unauthorized Practice of Law Rules Proposed by South Carolina Bar* (422 S.E.2d 123).

[34] The revision currently in effect was published in June 2014.

[35] *Rules of Engagement: Engagement Letters* presented by LG Brooks at the National Tax Practice Institute (November 2014).

Be sure to have all parties to the contract sign – yes, if filing a joint return, *both* spouses must sign the agreement. **NOTE:** An unsigned agreement is of no use.

Similarly, an out-of-date agreement may be of little or no use.

It is accountant's practice to update and renew our engagement agreement on an annual basis. However, should accountant perform the services reflected herein for clients in later years without such updated agreement, client agrees that all terms and conditions of this engagement agreement shall nonetheless apply to such later performed services.[36]

Do not guarantee an outcome or results. Do not make promises that you cannot realistically keep.

Establish clearly defined office policies and make them available to all clients. In my practice, new clients receive a printed copy. Existing clients are referred at least annually to my website where they have ready access to my policies and procedures.[37]

XI. Beyond the Engagement Agreement

Whether governed by law or common sense, every engagement agreement should be supplemented by a host of additional practice tools. To begin, one document cannot be expected to cover all needs and scenarios and would, of course, become too cumbersome if an attempt was made to incorporate all contingencies. While I have seen agreements range in size from one-half to four (or more) pages, it is my policy to limit mine to two pages. As my practice grows is size and sophistication, my agreement is modified to accommodate new eventualities. Benefitting from well-intentioned advice, contract clauses are added and modified but only rarely deleted. My agreement is very much a work in progress. Yet, with specific purpose I limit its length to two pages.

That might seem easy to do with the power of word processing and the ability to shrink font size until absolutely everything fits, but it would also violate the principles of user-friendliness and legibility. So I'm left to design adjunct documents that can be used to address client-specific needs and specialized situations. All are cross-referenced in my engagement agreement.

Communications

Client agrees to *promptly* notify and forward copies of any communications received from tax authorities to EA for review and advice. If Client wishes to be represented by EA, additional fees and expenses should be anticipated [see separate Representation Agreement].

[36] Dean, *Engagement Letters: Necessity not a Nuisance*, as presented to California Society of CPAs Hollywood/Beverly Hills Discussion Group (September 19, 2014).

[37] Check out my office policies at http://mhaven.net/Policies.php (last accessed May 1, 2019).

Additional Services

EA will be available year-round to address any Client concerns and to provide tax-planning advice for an additional fee and only with Client's written consent, although EA will not be responsible for implementation of suggestions made [see separate Taxpayer Consent Form].

A. Representation Agreement

I use this form when called upon to communicate with federal and state tax authorities on my client's behalf. Because I offer an array of representation services, the introductory paragraph of my agreement is arranged as a buffet from which my client may select the services he needs.

Scope

This document serves to confirm that Client has retained EA for representation in connection with income tax returns selected for examination by the

❑ **Internal Revenue Service** ❑ **Franchise Tax Board** **Year:** _____

Client understands that he has engaged EA to represent him in *one issue only* and that ensuing matters must be addressed via a new and separate engagement. This contract covers

❑ **Audits** ❑ **Collections*** ❑ **Appeals** ❑ **Other:** _____

* Collection resolutions may run the gamut from full payment of Client's tax liability to payment on an installment plan to abatement merely of penalties and interest to audit reconsideration to deeming the account as uncollectible to an Offer-in-Compromise or even bankruptcy.

Client acknowledges that EA's representation services do not include any litigation in any state or federal court, nor before any other tax agency not mentioned above.

B. Taxpayer Consent to Use Tax Return Information

IRC § 7216 prohibits preparers of tax returns from knowingly or recklessly disclosing or using tax return information which includes all information obtained from taxpayers or other sources in any form or manner that is used to prepare tax returns or is obtained in connection with the preparation of returns.[38]

Regulations distinguish between disclosures that may be made without client consent (e.g., disclosures to the IRS, other taxing jurisdictions or the courts; disclosures to other US-based tax return preparers that assist in preparing the return; disclosures for the purpose of obtaining legal advice) and those that require taxpayer consent.

[38] Section 7216 Frequently Asked Questions [available at https://www.irs.gov/tax-professionals/section-7216-frequently-asked-questions, last accessed May 1, 2019].

Consents are valid only if they are made knowingly and voluntarily and are signed and dated by the taxpayer. Consent forms must include certain language and adhere to proper formatting rules.[39]

C. Disclosure Authorization

Often times I am asked to disclose confidential taxpayer information despite my expressly stated office policy to the contrary. The client will plaintively wail, "But I'm telling you it's okay." No, it's not. To ensure client understanding, I have posted a clear and concise explanation on my website to explain why I will not compromise my policy:

> *Third parties are responsible for performing their own due diligence rather than relying on the representation or verification of information by a tax professional. This is especially true when the requested representations are outside the scope of the professional's engagement and the requested verification relates to information that comes from the client, for which the professional has no first-hand knowledge. Additionally, the responsibility for underwriting a loan and determining the creditworthiness of the borrower lies with the lender — not the client's CPA.*
>
> *Protecting the confidentiality of client information is required under professional ethics standards, the Gramm-Leach-Bliley Act,[40] the Internal Revenue Code, state board of accountancy rules or regulations, and federal and state privacy statutes and regulations.[41]*

More frequently I find that I must obtain from rather than disclose information to third parties; particularly because I work with an elderly clientele that often relies on the assistance of younger family members to help gather tax data. My disclosure authorization specifically addresses that situation:

Specific Authorization(s)

Client hereby authorizes EA to gather tax data and supporting documentation from, as well as share tax return information with the following individual(s): _____

[39] Refer to Treas. Reg. §301.7216-3(a)(3) and Revenue Procedures 2013-14 and 2013-19 for complete information.

[40] Also known as the Financial Services Modernization Act of 1999 (Pub.L. 106–102).

[41] FAQ regarding *3rd Party Disclosures* available at http://mhaven.net/FAQ.php#q37 (last accessed May 1, 2019).

D. Spousal Conflict Waiver

As we develop long-term relationships with our clients, we watch as they navigate life's changes; some good, some not. In the event of marital separation or divorce, we must beware of potential conflicts of interest as we advise one spouse or the other.[42] Some practitioners make it a policy to automatically "fire" one spouse or the other, selecting the single client that they would prefer to serve in the future.

While that may be prudent in some cases – particularly where the separating parties have taken combative stances – I find that it is sometimes better to continue the relationship with both parties to offer an element of continuity, to preempt a feeling of abandonment, or simply because mutual cooperation during the data collection process is enhanced. I do my utmost to be fair and unbiased. Nevertheless, I am careful to make both parties aware that I am human, that conflicts may arise, and that I may not always be able to resolve all matters to the satisfaction of both parties.

Potential Conflicts of Interest

In the past, EA has been engaged by both spouses to prepare your individual tax returns as well as advise and consult on other tax-related matters. You have both requested that EA continues to provide these services to both of you, despite the fact that the two of you are in the process of separating or divorcing.

There may be situations in which one party will be benefited and the other will be negatively affected. If EA becomes aware of such situations, EA will disclose the consequences of such tax strategies to both of you and it will be up to you both to agree in writing how to proceed. If no agreement can be reached between you, then EA can no longer provide services to both parties and will have to disengage.

You should each discuss this matter with your respective legal counsel before signing this waiver.

E. Disengagement Letter

Just as it is prudent to begin every professional relationship with an engagement agreement, it is equally wise to formally dissolve that relationship; particularly if it is not automatically terminated as per the terms of the original engagement. To that point, I remind my now ex-client of the following:

- There are several key elements for a great working relationship: Mutual respect, mutual benefit, and mutual goodwill. Lacking one or more of these elements suggests that our value proposition is not a good fit for our respective needs and expectations.

[42] A conflict of interest exists if the representation of one client will be directly adverse to another client or there is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner. However, the practitioner may represent a client if he reasonably believes that he will be able to provide competent and diligent representation to each affected client, the representation is not prohibited by law, and each affected client waives the conflict of interest and gives informed consent, confirmed in writing. [Treasury Department Circular No. 230, §10.29].

- It is best that my client takes his business to another professional who can better meet his needs. I explicitly remind that client that he remains responsible for complying with all filing requirements in a timely manner.
- If there is an outstanding balance due for services previously provided, I warn the departing client that he will receive a final bill which he will be required to pay as per the terms of our initial engagement. **NOTE:** Practitioners are prohibited from holding client-provided[43] documents hostage in exchange for receipt of outstanding professional fees.[44]

Since the client's next practitioner will likely need information from you to come up to speed and to serve your ex-client properly, you may wish to pre-emptively obtain a release from the departing client at the time of disengagement.

F. Negative Engagement Letter

As per my office policies, I do not begin work on a client's case until I have a signed engagement agreement in hand. Indeed, I specifically state in the header of my agreement that "Work will not begin without signed Agreement on file."

But then life happens. Whether due to expediency, exigent circumstances, imminent deadlines, practitioner laxness or any other myriad number of excuses, there is always the occasional situation in which I will begin work (and sometimes even complete the returns) without receipt of a signed engagement agreement; trusting that my client will not only pay me for services rendered but will actually sign the agreement after-the-fact to make my file whole. It is for these times that it is crucial to include language in the agreement that specifies that certain actions by the client will be deemed as automatic acceptance of the engagement agreement in its entirety. Client actions may include anything from submitting a completed tax organizer, providing supporting tax data, or filing the completed tax returns; whatever action you select to signal acceptance of the engagement, it should be clearly outlined in the engagement agreement.

G. Non-engagement Letter

As obvious as it is to document the fact that a client has engaged you to prepare his tax returns or represent him during an audit, it is less obvious but often just as important to confirm a client's understanding that you have *not* been hired. It is common practice to offer prospective clients an introductory appointment during which he is given the opportunity to provide the facts of his situation while the practitioner has a chance to assess the work to be performed. Presuming both parties wish to proceed, they can

[43] Client-provided records include both original and electronically reproduced documents, including documents prepared by the client or a third party such as general ledgers, trial balances, asset purchase or sale documents, brokerage and account statements, Forms W-2, 1099 and other informational returns, receipts for expenses and charitable contributions [Rempalski, *Practitioners' Responsibilities in Complying With Records Requests* (July 31, 2014)].

[44] However, "if applicable state law allows or permits the retention of a client's records by a practitioner in the case of a dispute over fees for services rendered, the practitioner need only return those records that must be attached to the taxpayer's return. The practitioner, however, must provide the client with reasonable access to review and copy any additional records of the client retained by the practitioner under state law that are necessary for the client to comply with his or her Federal tax obligations" [Treasury Department Circular No. 230, §10.28.(a)].

then enter into a professional relationship which may be commemorated and cemented with an engagement agreement.

If, however, during the interview or after mutual exchange of e-mails or at the end of a telephone conversation, the practitioner chooses not to accept the assignment, it may be necessary to clarify with the now-former prospect that no services will be provided. To preclude the possibility that the taxpayer may later claim that he had in fact hired the practitioner and, therefore, expected to receive services, the tax professional may wish to formally announce that he has not accepted the engagement and is not liable to the client in any way.

Although a non-engagement letter may be drafted as an informal memo, the practitioner should nevertheless obtain the non-client's acknowledgement by signature or return e-mail. In the absence of such an acknowledgement, I suggest that the practitioner at a minimum carefully notes in his files that he attempted to communicate the non-engagement but that the subject individual did not respond. As with everything that we do, documentation is key!

XII. Final Disclaimer

In an article cleverly entitled *Clause for Concern*,[45] Enrolled Agent John Walker is quoted: "Good engagement letters, like good tax returns, are not a do-it-yourself project. It's OK to draft the main points and get samples from various sources, but have yours reviewed by an experienced business-law attorney in your state. Doing so makes sure your letter provides the protection you want and helps that attorney see you as a responsible, competent fellow professional."

So I remind you again, that I am not an attorney and have not provided you with legal guidance. I have merely shared with you my opinions and what has worked for me in my practice. The sample texts that I have provided are just that – they are examples of content you may wish to incorporate into your engagement agreement. But the phrasings I have suggested and their intended consequences may not be appropriate for your situation specifically.

I have culled ideas from other practitioners, professional associations, published articles, classroom instruction, webinars, even my insurance company; sources that I recommend you seek out as well. Your take-away from this course should not be a template from which you can draft the perfect engagement agreement, but rather a menu of ideas from which you can select those that are appropriate for you.

The problem with practicing law is that the general rule never seems to apply to anything.[46]

[45] Stimpson, *Clause for Concern: Essentials for Engagement Letters*, Accounting Today (October 12, 2014).

[46] Anonymous tax lawyer as quoted by Robert MacKenzie at TaxConnections blog (April 17, 2014).