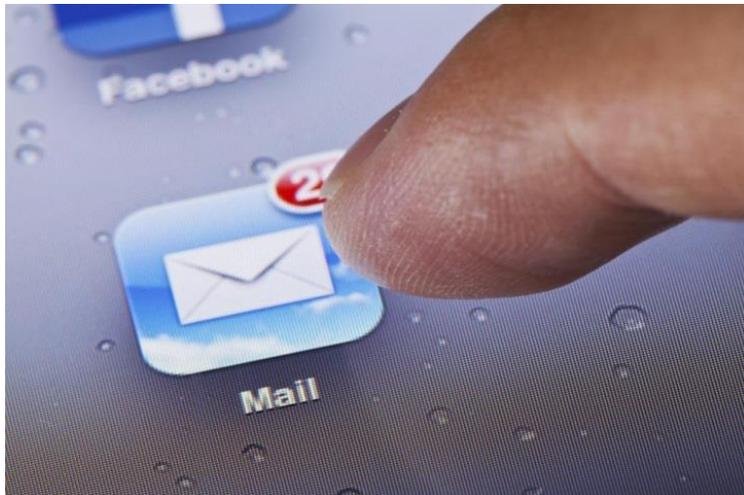




CLIENT UPDATE: DO YOU HAVE A DISCLAIMER IN YOUR EMAILS? CHANGES HAVE BEEN MADE.

Revisions to Internal Revenue Service Circular 230 Nix Omnipresent Tax Disclaimers



The IRS, perhaps tired of seeing emails scheduling lunch or a golf outing prominently displaying a Circular 230 disclaimer, has determined that it is more effective to judge the propriety of tax advice based upon the facts and circumstances applicable to the situation in which the advice was given, such as whether or not the practitioner had a reasonable basis in law and fact, than on

the practitioner's ability to insert a disclaimer, in assessing whether or not the practitioner has breached his/her professional obligations. Based upon this new IRS commitment to a facts and circumstances approach, Circular 230 disclaimers have been rendered moot and should be deleted. Do not be surprised, however, if the use of federal tax disclaimers in email signatures persists. Circular 230 has been amended, but good cause still remains to use general tax disclaimers, when applicable, in email communications.

This summer, the Internal Revenue Service ("IRS") finalized new regulations under Circular 230 (T.D. 9668 (Doc 2014-14374)), replacing the much maligned covered opinion rules with a single standard for written tax advice under Section 10.37 of Circular 230. The effect of this new single standard for written tax advice is the demise of the ubiquitous disclaimer proudly displayed by most attorneys, accountants and businesspeople alike at the bottom of each email. Through the new single standard, the IRS Office of Professional Responsibility will now judge the propriety of written tax advice based on the facts and

circumstances in which the advice was given, and not the ability of the proponent to insert a simple disclaimer, rendering moot the prior covered opinion escape hatch protection offered by the Circular 230 disclaimer.

Officially known as “Treasury Department Circular No. 230: Regulations Governing Practice Before the Internal Revenue Service” and codified as Title 31 of the Code of Federal Regulations, Subtitle A, Part 10, Circular 230 provides the regulatory framework applicable to practice before the IRS and the provision of federal tax advice. The reach of Circular 230 is broad, and most people have likely seen disclaimers permanently attached at the bottom of emails declaring “The IRS requires me...” or “pursuant to Circular 230...” regardless of the subject matter of the email. These ubiquitous disclaimers were the result of an IRS attempt to codify practitioner professional responsibility obligations applicable to certain types of federal tax advice including, most commonly, tax advice upon which a client could purport to rely on to minimize certain IRS penalties. This particular brand of tax advice is typically referred to as a “covered opinion” and practitioner professional obligations when rendering covered opinions are considerably heightened (and penalties for breach of the covered opinion obligations are commensurately heightened as well). To avoid application of the heightened covered opinion rules, Circular 230 provided a technical “escape hatch” pursuant to which a written communication would not be deemed a covered opinion if the communication contained a prominently displayed disclaimer stating that the subject communication could not be relied upon for purposes of avoiding any penalties under the Internal Revenue Code.

DISCLAIMER: The information in this publication is for the purpose of informing and educating our clients about various aspects of the law and is not intended to be used as legal advice; no attorney-client relationship shall be formed or deemed to be formed without a duly executed engagement letter. This publication may constitute advertising under various states' ethics rules. The Rhode Island Supreme Court, the Massachusetts Supreme Judicial Court and the New Hampshire Supreme Court license their respective lawyers in the general practice of law, but do not license or certify any lawyer as an expert or specialist in any field of practice. Prior results do not guarantee a similar outcome.

NO FEDERAL TAX ADVICE: Unless expressly provided, this e-mail communication (including any attachments) does not constitute written tax advice as described in 31 C.F.R. 10, et seq. and is not intended or written by us to be used and/or relied on as written tax advice for any purpose including, without limitation, the marketing of any transaction addressed herein. Any U.S. federal tax advice rendered by DarrowEverett LLP shall be conspicuously labeled as such, shall include a discussion of all material facts and circumstances applicable to transactions discussed therein in compliance with 31 C.F.R. 10.37, and shall set forth any applicable limits on the use of such advice.

QUESTIONS: If you have any questions regarding this disclaimer, please contact DarrowEverett LLP at 401-453-1200, 617-443-4500 or 508-757-3300.

© 2014 DarrowEverett LLP, all rights reserved.