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When to Call a Tax Attorney Instead of an Accountant

By Steph Weber

Featuring Yvonne R. Cort, Partner at Capell Barnett Matalon & Schoenfeld, LLP

How to Navigate the Tax Labyrinth in New York

Tax issues should be remedied sooner than later. But by the time one woman came to see tax attorney Yvonne R. Cort, her hasty solution had backfired. "[The woman and her husband] hadn't filed yet, and she kept pestering her husband to find out what his income was," says Cort, who focuses on tax controversy matters at Capell Barnett Matalon & Schoenfeld in Syosset. "She didn't get an answer and filed a joint return [without] the husband's income, hoping to claim innocent spouse relief."

Problems immediately sprang up.

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> **– YVONNE R. CORT**
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> *Partner at Capell Barnett Matalon & Schoenfeld, LLP*

CONTINUED ON NEXT PAGE...

Between the missing earnings and knowingly filing an incorrect return, the wife inadvertently put herself on the hook for the tax, interest and penalties associated with the spouse's late payment, says Cort, who would have suggested a married-filing-separately status to avoid the repercussions.

For tax-related matters like this, the first instinct is often to call an accountant. However, their expertise may be limited.

"Accountants are used to working with 1099s and information provided by third-party reporting," says Jorge Rodriguez, a tax attorney at Rodriguez Law Firm in Manhattan. While accountants frequently consult with tax attorneys, he says, they may not be as able to determine "the true circumstances of a problem that are not readily apparent from paperwork."

From real estate transactions and online purchases to company valuations and estate planning, "tax touches everything," says Rodriguez, and attorneys in this niche are well-versed in its far-reaching effects. Many of his clients are still navigating the substantial tax code changes implemented by the Tax Cuts and Jobs Act of 2017 (TCJA), and he expects tax legislation "as big, if not bigger than the TCJA" soon that will affect "all income brackets, companies and pass-throughs."

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More opportunities exist when assistance is sought early, upon receipt of a notice of audit or investigation or before a major life event, like a retirement or the creation or sale of a business.

Due to potential tax implications, it may also be prudent to seek counsel when dealing with employment contracts, intellectual property, severance packages, and licensing and copyright agreements, says Rodriguez. These conversations invoke attorney-client privilege—a benefit that is not extended to accountants in most states, including New York.

For outstanding tax debts, accountants can typically arrange monthly installment agreements with various tax authorities. However, qualifying for an offer in compromise (OIC), in which the debt is settled for less than what is owed and is based on individual financial circumstances, generally requires a more targeted approach.

If an excessive tax burden "arises from a closing or disposition of an asset," says Rodriguez, an attorney may be able to subsequently adjust the terms of the transaction to reduce the financial fallout.

Despite the delay created by the pandemic, collection efforts are on the upswing—a reminder to all to preemptively assess their unique tax situations. "The IRS and state tax authorities have committed to a significant increase of audits and investigations, both on the civil and criminal side, to close the purported tax gap," says Rodriguez. "Governments are paying more attention to tax than ever."

NEW YORK STATE
What About Residency?

Legal intervention may be required to correct problems with a taxpayer's residency status, which is determined through state-issued questionnaires and audits. New York residents are subject to tax on their worldwide income, so a small mistake can have big consequences. "People think all they need to do is stay out of the state for six months," says Cort. "First, they need to show that their home isn't in New York. They would need to show that they've left New York and established their domicile in a new location. Then, if they still have a place in New York, then they might still be a resident if they're physically present in the state more than 183 days. It's a complicated area, and the burden of proof is usually on the taxpayer. And in an audit, one wrong word can hurt your argument."

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NEW YORK CITY OFFICE:
1385 Broadway, 12th Floor
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