

The American Society of Tax Problem Solvers



ASTPS

"EVERYTHING YOU MUST KNOW ABOUT ENGAGEMENT LETTERS"

by:

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ENGAGEMENT LETTERS: INTRODUCTION



- Critical in defining the scope of a tax engagement
- Representation and/or preparation
- Engagement Letters are legal agreements
- Delineates the terms and details of the engagement

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When to Use an Engagement Letter



- Generally, all Rep/Prep Engagements
- IRS Audits/Examinations
- Lien and Levy Actions
- TFRP Issues
- Innocent Spouse Issues
- Appeal Matters
- Tax Prep-Business & Individual

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Effect of an Engagement Letter



- Prevents misunderstandings between the practitioner & client
- Provides clarification to office staff and other case assistants
- Defines the responsibilities of both the practitioner and client
- Minimizes disputes and discourages premature/unnecessary litigation

Polling Question

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Drafting an Effective Engagement Letter



- Consider all related **ethical** guidelines
- Provide for **jurisdictional** guidelines and mandates
- **State law** requirements should be noted where applicable
- **Federal tax law** requirements to include Circular 230 provisions

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Pre-acceptance Considerations



- Legal, ethical or jurisdictional issues
- Taxpayer's mental capacity
- Relationship considerations
- Inclusion/Exclusion of other or non-tax professionals
- Resolution of issues/time frames
- Fee requirements/arrangements

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Scope of the Engagement



- Explain terms & objectives
- Outline & define scope limitations
- Discuss/document expected reliance of engagement information
- Explain the basis of additional or separate engagement letters

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Confidentiality, Privilege & Disclosure Issues



- Address confidentiality
- The practitioner's duty to maintain privilege (IRC §7525)
- Dissemination of information criteria
- The effect & duty of privilege at the conclusion of the engagement
- Effect of a client's withdrawal from an engagement

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Fees, Retainers & Billing Arrangements



- Fixed fee engagements
- Hourly service rates
- Contingent Fee Arrangements
- Value-based fees
- Minimum & maximum fee arrangements

Polling Question

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Termination of the Engagement



- Actions or inactions that may invoke a termination
- Clients' remaining responsibility with respect to a terminated engagement
- Explanation of any potential adverse effects should be provided to client

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Engagement Letter Language



- Keep it simple
- Language should be clear & concise
- Engagement should not include extensive "tax legal jargon" which may be confusing or even intimidating to the client
- Client should feel comfortable with the reading and language of the engagement letter

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Disengaging or Disengagement Letter



- Terms of the original engagement letter are relative and pertinent
- Disengagement should be provided via a formal format
- The practitioner should be specific regarding the basis or reason(s) of the disengagement

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Negative Engagement Letters



- Negative engagements should be utilized where clients are less than diligent in responding and/or returning documents and information
- Specific language of the “negative engagement letter” should create a “binding effect” in the absence of a client’s signature

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Non-Engagement Letter



- A mere “verbal” response may not always be sufficient
- Taxpayers may “misread” the practitioners’ intention (are we engaged or are we not)
- Although not required, it may be prudent in some instances to formally document a “non-acceptance” issue

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State Law Matters



- The practitioner should incorporate any state law provisions and/or requirements when drafting a formal engagement letter
- Various State law mandates should be considered when the practitioner and the client are located in different states

Polling Question

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Federal Tax Matters



- Circular 230 provisions are relevant
- Treas. Reg. §10.37 “Requirements for Other Written Advice”
- Treas. Reg. §10.33(1)- “Best Practices for Tax Advisors”
- Treasury Decision 9375-”Guidance Necessary to Facilitate Electronic Tax Administration-Updating of Section 7216 Regulations”
- IRC §301.7216-3(a)(3)(iii)-”Disclosure & Use of Tax Return Information”

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Engagement Letter Suggestions



Arbitration: Any controversy, dispute, or questions arising out of, or in connection with this agreement or our engagement shall be determined by arbitration in Buffalo, NY and conducted in accordance with the rules of the American Arbitration Association, and any decision rendered by the American Arbitration Association shall be binding on both parties to this agreement. **The costs of any arbitration shall be borne solely by you.**

Travel: Presently, we are unaware of any requirements to travel in connection with your representation. **However, if we deem travel to be beneficial to your case,** we will incur travel expenses as necessary **and bill** separately for such expenses. Our billing will be for **actual out-of-pocket costs only.**

Trust Fund Recovery Penalty: We will attempt to mitigate any current, previous, or potential assessment(s) of the IRS Trust Fund Recovery Penalty against you relating to unpaid trust fund taxes of *[Client's Company]*.

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Engagement Letter Suggestions



Support Staff: We will advise your support staff as to the needed IRS compliance requirements. Their support will assist us to seek a workable arrangement with the IRS. Please advise them that cooperation with us is **authorized and is a priority**. Following are some of the tasks we may request they facilitate and implement:

- Providing filed copies of various tax forms or reports,
- **Account analysis we deem necessary,**
- Current financial statements,
- Elimination of unprofitable contracts,
- Reducing any unnecessary spending,
- Calculating proper estimates for personal taxes,
- Making timely, adequate deposits of employment taxes,
- Monitor finances weekly targeting breakeven by year-end.

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Engagement Letter Suggestions



Professional Fees

- **To commence** representation, we require a retainer of \$nn,nnn. Generally, we require full payment of retainers **prior to commencing representation**. However, as a courtesy to you, we have agreed to payment terms as follows: \$nn,nnn due on the 15th of February, March, and April, 20nn. We acknowledge receipt of the February 15th payment on February 23, 2024.
- All retainers and fees for services are earned when paid. **Because accepting your case requires we decline other potential cases and the majority of our services are performed early in an engagement, no refunds are given.** All invoices are due upon presentation. Failure to timely pay either the retainer request or invoices shall cause our firm to **immediately stop providing services** without further notice. **Further, restarting representation is solely at our discretion.**

Invoicing

- This letter is your invoice for the three payments described above and we are not obligated to invoice separately for those payments. We expect you will follow up and make the agreed upon payments timely on March 15th and April 15th.

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Engagement Letter Samples Exam 1



Stage 1 EXAM Engagement Letter

[Date]

Subject: Preliminary Review of Tax Situation for 2020 and 2021

Dear [Client's Name],

I am writing to outline the professional tax services we propose to provide. This letter serves as an agreement between you and [Your Name or Your Firm's Name] for the purpose of conducting a comprehensive review of your tax situation for the years 2020 and 2021.

Services:

The scope of this initial engagement will be to conduct a thorough review of your tax situation for the aforementioned years. This process involves the analysis of your tax returns, supporting documents, and any other relevant information that may contribute to understanding the intricacies of your case.

It is important to note that this agreement does not extend to representation before the Internal Revenue Service (IRS). Should it be determined, upon completion of the review, that representation is necessary, and we agree to represent you, a separate engagement letter detailing the scope and terms of the representation, including associated fees, will be prepared and sent to you.

Fees:

For this preliminary review, a fee of \$X,000 is required, to be paid in advance. This covers the comprehensive assessment of your tax situation, including time spent on analyses and consultations.

Documentation:

You agree to provide, in a timely manner, any documentation or information we request for the purpose of this review. This includes, but is not limited to, tax returns, invoices, receipts, bank statements, or any other relevant financial documents. Your cooperation is crucial to facilitate an effective and efficient review process.

Please sign and return the enclosed copy of this letter to confirm your understanding and agreement of these terms. This offer must be accepted within 5 business days and the agreement, if accepted, will remain in effect unless terminated in writing.

If the above correctly sets forth your understanding, please sign this letter in the space indicated and return it to me.

Thank you for your attention to this matter. I look forward to serving you.

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Engagement Letter Samples Exam 2



Stage 2 EXAM Engagement Letter

Subject: Tax Audit Representation Engagement for 2020 and 2021

Following our comprehensive review of your tax situation for the years 2020 and 2021, we are pleased to offer you my professional services to represent you before the Internal Revenue Service (IRS). This letter serves as the engagement agreement for this purpose, defining the scope of our representation, the associated fees, and other pertinent details.

Services:

We will represent you before the IRS, communicating directly with Revenue Agent Lucretia or her Group Manager on your behalf. This engagement encompasses in-person meetings, telephone calls, and written correspondence as necessary. Our role will be to analyze the issues under audit, prepare thorough responses to IRS inquiries, negotiate on your behalf, and generally seek a resolution to the matter.

Fees:

For this initial level of representation, an estimated fee of \$N,n00 will be charged. This covers all the services mentioned above.

Communications:

We will meet, correspond, and communicate with the [IRS Revenue Agent/TCO/etc.] on your behalf. Absent a summons, you will not be required to meet with the IRS personally.

You agree to have all communication with the IRS conducted by us, with us present, or with our advance approval. Contacting IRS directly may cause us to withdraw our representation without further notice.

Possible Appeal:

If it becomes necessary to appeal the audit findings to the IRS Independent Office of Appeals, we are prepared to extend our representation to cover this process. If such an extension is required, an additional fee of \$N,n00 will apply.

Please sign and return the enclosed copy of this letter to confirm that you understand and agree to these terms. This offer of services is valid for 5 business days and, if accepted, the agreement will remain in effect unless terminated in writing.

Thank you for entrusting me with this responsibility. I am committed to providing you with the best possible representation in your dealings with the IRS.

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Engagement Letter Boilerplate



Boilerplate Paragraphs for Engagement Letters

Lien release to facilitate collection

We will request the release of the Federal Tax Lien filed against your property by the Internal Revenue Service. We will argue that the release will facilitate the collection of the liability to the fullest extent possible. Note that the IRS is generally reluctant to release liens once filed, and we make no express or implied guarantee of success.

Levy release based on economic hardship

We will request the release of the IRS levy filed by the Internal Revenue Service. We will argue that the levy is creating undue economic hardship and that release will facilitate the collection of the liability to the fullest extent possible. Even when successful, levy release may only be a partial release. While we will make a serious effort to release the levy, we make no express or implied warranty of success.

8821 and 2848 signed and start of engagement – phase 1

You have signed Form 8821 authorizing us to obtain information from the IRS regarding your tax matters. You have also signed Form 2848 authorizing us to represent you and act on your behalf with the IRS. Form 8821 will be filed with the IRS upon commencing the investigation phase. Form 2848 will be filed only upon the commencement of the implementation phase. Filing Form 2848 initiates our responsibility to represent you and act on your behalf.

Investigative phase description – phase 1

This engagement letter covers the initial investigation of your tax matter. A separate engagement letter will be issued upon completion of the investigation stage describing the terms of the implementation phase. The implementation letter will include a separate fee for that phase.

Analysis completed implementation phase description – phase 2

We have analyzed your current tax situation by reviewing the documents presented. We have prepared and will file IRS Form 2848 (Power of Attorney) upon receipt of this engagement letter and related payment. Our analysis has concluded that you appear to be a candidate for an Offer in Compromise, an Installment Agreement, a Partial Pay Installment Agreement, Currently Not Collectible status or Innocent Spouse Relief. ADD, CHANGE and DELETE services as appropriate.