

It has come to our attention that a number of lenders have been asking members of the Society to provide confirmatory letters with respect to tax returns of their clients. We understand that the focus of these confirmatory letters has been on tax returns prepared for individual clients or corporations, partnerships or other business entities whose ownership is held by a single individual or a limited number of individuals. Given that there appears to be a growing number of requests for this type of letter, we thought it advisable to provide some general pointers with respect to preparation of a response to such questions.

The principal general recommendations with respect to preparation of such a letter are as follows:

1. In order to address privacy laws and confidentiality issues, written authorization should be obtained from the client for the disclosure of information related to their tax return and for communications with the lender concerning such matters.
2. The letter should set forth the limitations with respect to the engagement to prepare the tax returns. Thus, with respect to an individual tax return, the letter should set forth, among other things, that it was the responsibility of the client to provide all of the information required for the preparation of complete and accurate returns and that the firm's work in connection with the preparation of the tax returns did not include any procedures designed to discover defalcations or other irregularities. To the extent

that a written engagement letter was executed with respect to the tax return engagement, a copy of that letter should be appended to the response to the lender and the salient restrictions or limitations (including those referenced in the prior sentence) should be referenced in the letter.

3. To the extent that the taxing authorities (IRS and DOR) were authorized to contact you directly with respect to any audits or questions with respect to the returns, the letter should note whether there have been any such communications with the taxing authorities. To the extent that the taxing authorities were not authorized to contact you directly with respect to you to such matters, your letter should set forth that the taxing authorities were not authorized to communicate with you and that you have not undertaken any effort to determine whether the taxing authorities have communicated with the client concerning the subject returns.
4. Unless the client has executed the tax returns in your presence and you have attended to the filing of the returns, your letter should not affirm the execution by your client of the tax return or information concerning the filing of it.
5. To the extent that you have not performed any services for the client subsequent to the filing of the tax return the letter should so state.

6. The letter should state that you are doing nothing more than confirming the authenticity of the tax returns at issue and that by doing so you are making no further representations to the lender.
  
7. The letter should disclaim that its issuance creates any relationship between the lender and the firm, and should set forth that the firm accepts no responsibility for any matters other than the authenticity of the underlying document.

While these guidelines are constructive in framing the response to lenders' inquiries, they are only intended to provide general guidance. As there are a variety of inquiries that lenders may make, when questions or concerns arise, it is advisable to seek independent legal guidance concerning the preparation and issuance of a confirmatory letter.