TIPS FOR UTILIZING/UNDERSTANDING DOL AUDIT INFORMATION

1. Some basics.  Employers who offer 401(k) plans are bound to follow the federal ERISA statute.  ERISA is administered by the United States Department of Labor (“DOL”)
   1. In general, if the 401(k) plan has over 100 participants, then it is required to undergo a limited scope audit.  A limited scope ERISA audit is an audit to be performed in accordance with the standards.  Because they are audits, the firm performing the audit should undergo peer review.  There may be some potential deviations from that rule for jurisdictions that either do not have peer review or have adopted peer review guidelines that differ from the AICPA guidelines.
   2. In fact, if a firm performs at least one ERISA audit, then it is supposed to disclose that audit to its chosen peer reviewer.  ERISA audits are deemed a “must select”, meaning that the peer reviewer must review at least one ERISA audit engagement when completing the peer review engagement.
2. The ERISA List from DOL.     When you look at the list provided by DOL, it will have a list of engagements with a column showing the state where the audit occurred.  The identity of that state was obtained by looking at the address of the plan “sponsor” found on the “Form 5500”, rather than the address of the CPA/firm.
3. Who is the sponsor?  Different entities can “sponsor” a plan under ERISA.  However, many times the sponsor is the employer offering the 401(k) plan or other benefit plan to its employees.
   1. The “sponsor” should not be confused with the plan “administrator.”  The administrator is simply a third-party contractor knowledgeable about these plans (because most employers are not) who takes care of making sure that it is compliant with ERISA.
   2. Many of the engagement letters for ERISA audits are actually signed by the plan administrator.  Often the administrator is in the firm’s home state, while the sponsor is in another state.
   3. Each Board will have to make a determination on how to address the issues of: (1) who is the client; and, potentially (2) where did the audit take place.
4. Form 5500:  The Form 5500 is simply the tax form filed for ERISA plans.  The Internal Revenue Code and ERISA both have annual reporting requirements.  Those requirements are both satisfied by filing the Form 5500.  The Form 5500s are usually filed by the Plan Administrator.  It is unusual to see the audit firm actually file the tax forms for the sponsor.
5. Engagement Letters:   Board are encouraged to request a copy of the engagement letter for the audit.  Often those will show the address for the sponsor.  It will be difficult for a firm to claim that they were doing an audit for a client in a particular state if the engagement letter has their address.  Also, if firms are using the form AICPA engagement letter, it will clearly identify the sponsor as the client, even if it is signed by the administrator as the sponsor’s agent.
6. The EFAST system:  Since 2010, filers of Form 5500 are required to file electronically via the DOL EFAST system.  The EFAST system is nice because it shows the Form 5500 **and also has a copy of the audit report attached**.
   1. Boards are encouraged to check the EFAST system prior to sending out letters to firms.  If the Plan Administrator who filled out the 5500 lists the wrong firm as the auditor, a quick review of the filing would have revealed that the audit report was actually prepared by a different firm.
   2. The web address for the EFAST system is:  <https://www.efast.dol.gov/welcome.html>

There is a search function that you can access from the welcome page.

1. Evidence Regarding the CPA’s Knowledge That It Was Performing Audits in Your State:  It is quite common for the firms to say that they had no idea that they were performing an audit in a particular state.  Often the engagement letter will be addressed to the plan administrator in the CPA’s home state and the audit report may not have an address on it.  The firm will often not travel to the site of the company but will do the audit either from their own office or by going to the plan administrator’s office to review the paperwork.  These are all used as evidence that they did not have the intent to violate the law.
   1. However, contrary evidence can be found in the 5500s.  The sponsor address is clearly shown.  Per the AICPA guidelines, step #1 in completing the audit is to “Review the Form 5500.”  Those guidelines also state that ERISA requires that the audited financial statements be compared to the 5500s in order to detect any differences.  So the auditors should be looking at the 5500s and have at least viewed a document showing an address of your state.
   2. Additionally, AICPA’s form engagement letter has a paragraph stating that the auditor has reviewed the 5500 or that they need to review the 5500 before it is filed.  If you ask for the firms’ engagement letters, you will see that language in most of them.