



Back to Basics – Simple Steps to Help Reduce Risk

KSCPA 74th Annual Tax Conference

November 22, 2024



Disclaimer

This information is produced and presented by CNA, which is solely responsible for its content. Continental Casualty Company, a member of the CNA group of insurance companies, is the underwriter of the AICPA Professional Liability Insurance Program.

The purpose of this presentation is to provide information, rather than advice or opinion. It is accurate to the best of the authors' knowledge as of the date the presentation was developed. Accordingly, this presentation should not be viewed as a substitute for the guidance and recommendations of a retained professional. In addition, CNA does not endorse any coverages, systems, processes or protocols addressed herein unless they are produced or created by CNA.

Any references to non-CNA websites are provided solely for convenience, and CNA disclaims any responsibility with respect to such websites.

Examples are for illustrative purposes only and any similarity to actual individuals, entities, places or situations is unintentional and purely coincidental. In addition, examples are not intended to establish any standards of care, serve as legal advice, or acknowledge that any given factual situation is covered under any CNA insurance policy. The relevant insurance policy provides the actual terms, coverages, amounts, conditions and exclusions for an insured. All CNA products and services may not be available in all states and may be subject to change without notice.

“CNA” is a registered trademark of CNA Financial Corporation. Certain CNA Financial Corporations subsidiaries use the “CNA” trademark in connection with insurance underwriting and claims activities. Copyright © 2024 CNA. All rights reserved.



Deborah K. Rood, CPA, MST

Risk Control Consulting Director, CNA Insurance

Risk Control Consulting Director, CNA Insurance

- 8th largest commercial property and casualty insurer in U.S.
- Underwriter of AICPA Professional Liability Insurance Program
- Largest and most enduring insurer of CPA firms

Specializes in developing and delivering risk control products and services to help CPA firms nationwide manage their professional liability risk

Practiced for more than 19 years at a Chicago-based regional CPA firm

- Specialized in federal and state tax consulting and compliance, closely held businesses and their owners



J. Michael Reese, JD/LL.M

Risk Control Consulting Director, CNA Insurance

- Served tax clients for over 12 years with both national and regional public accounting firms
- Provided risk management to accounting firms both as an internal and external resource since 2014
- Former prosecutor



CNA



Learning Objectives

- Identify the risks associated with the Corporate Transparency Act and how to mitigate them
- Recognize differences between the AICPA Statements on Standards for Tax Services (SSTS) and Treasury Circular No. 230
- Recall the requirements of the professional standards related to outsourcing, domestically or off-shore



Agenda

- Corporate Transparency Act and Beneficial Ownership Reporting
- AICPA Statements on Standards for Tax Services vs. Treasury Circular No. 230
- Outsourcing
- IRS Areas of Focus
- Tax Cuts and Jobs Act of 2017
- Engagement Letters
- “Too Good to be True” Tax Strategies



Corporate Transparency Act (CTA) and Beneficial Ownership Information (BOI) Reporting

CNA

CTA and BOI Reporting

What is it and why does it matter?

- The Corporate Transparency Act (“CTA”) is a federal statute enacted under the Anti-Money Laundering Act of 2020
- The CTA requires uniform beneficial ownership information (“BOI”) to be reported for most business registered with a Secretary of State in the United States
- BOI reports provide non-financial information regarding beneficial owners of reporting companies
- The Financial Crimes Enforcement Network (FinCEN) only accepts BOI reports electronically via a dedicated online portal

CTA and BOI Reporting

Do you want to provide BOI services?

- Will your clients request BOI services?
- Do you or your staff have time to learn the law and provide the services?
- Can your staff avoid “providing advice” when you’re not engaged to provide the service?
- Are your clients willing to pay a fee commensurate with the risk and time involved in providing BOI services?
- Do you understand the professional liability risks?

CTA and BOI Reporting

What are some professional liability risks related to BOI reporting services?

- Failing to advise clients about reporting requirements
- Providing off-the-cuff advice
- Reporting error – improperly completing the report
- If you provide referrals, consider the advice in *Unintended consequences of professional referrals*

CTA and BOI Reporting

Mitigating BOI risks – all CPA firms

- Notify clients of BOI reporting requirements via a newsletter or similar communication
- Include a provision disclaiming responsibility for BOI reporting in all non-BOI engagement letters

- *Corporate Transparency Act/Beneficial Ownership Reporting*

Assisting you with your compliance with the Corporate Transparency Act (“CTA”), including beneficial ownership information (“BOI”) reporting, is not within the scope of this engagement. You have sole responsibility for your compliance with the CTA, including its BOI reporting requirements and the collection of relevant ownership information. We shall have no liability resulting from your failure to comply with CTA. Information regarding the BOI reporting requirements can be found at <https://www.fincen.gov/boi>. Consider consulting with legal counsel if you have questions regarding the applicability of the CTA’s reporting requirements and issues surrounding the collection of relevant ownership information.

CTA and BOI Reporting

Mitigating BOI risks – if you choose to provide BOI services

- Consider the “unauthorized practice of law”
- Understand how insurance coverage applies
 - CNA Coverage Considerations: Services Related to the Corporate Transparency Act
- Address data security concerns related to additional PII



CTA and BOI Reporting

Mitigating BOI risks – if you choose to provide BOI services

- Talk to legal counsel
- Determine what services the CPA firm will provide
- Perform thorough client acceptance procedures
- Draft a concise engagement letter
- Document, including client representations
- Keep abreast of technical developments
- See *Risk Management and the Corporate Transparency Act* for risk management when providing BOI services and a downloadable sample engagement letter



AICPA Statements on Standards for
Tax Services (SSTS) and Treasury
Circular No. 230



SSTS and Circular No. 230

Where are we today?

- AICPA Statement on Standards for Tax Services – *revised* effective January 1, 2024
- Treasury Circular 230 – last revised **effective June 12, 2014** and revision coming ????
- *Loving v. IRS*, 742 F.3d 1013 (2014)
 - “...the IRS’s statutory authority under Section 330 cannot be stretched so broadly as to encompass authority to regulate tax-return preparers.”
 - What does it mean to “regulate” or perhaps, where does “regulation” stop?

SSTS and Circular No. 230

Still confusing return preparers

- 31 U.S.C 330 –
 - “... the Secretary of the Treasury may regulate the practice of representatives of persons before the Department of the Treasury...”
- Cir 230, 10.2(a)(4) –
 - “Practice before the (IRS) comprehends *all matters connected with* a presentation to the (IRS) ... relating to a taxpayer’s rights, privileges, or *liabilities* under laws or regulations administered by the (IRS).”
- Cir 230, 10.3(b) –
 - “Any (CPA) ... may practice *before the (IRS)* by filing ... a written declaration that the (CPA) ... is *authorized to represent* the party or parties.”
- So what is a “presentation”?
- What should CPAs do with Cir 230 Subpart B (Duties and Restrictions Relating to Practice Before the IRS)?

SSTS and Circular 230

Errors and omissions

- **Cir 230 (6/20/2005), Cir 230 (6/12/2014)**

- Subpart B – Duties and Restrictions Relating to Practice Before the IRS
- Cir 230, 10.21 (Knowledge of client omission) – “having been *retained* ... with respect to a *matter*”
 - – knows that the client has not complied with (US tax law) or has made an error in or omission from any return
 - must advise client promptly of the fact
 - must advise client of consequences

- **SSTS (1/1/2014)**

- SSTS 1.2 (Knowledge of errors)
 - becomes aware of an error or failure to file a required tax return
 - an error does not include an item that has an insignificant effect on tax
 - error includes position taken on PYTR that does not meet SSTS definition of tax position
 - should promptly inform a taxpayer
 - should advise taxpayer of potential consequences and advise on corrective measures to be taken

SSTS and Circular 230

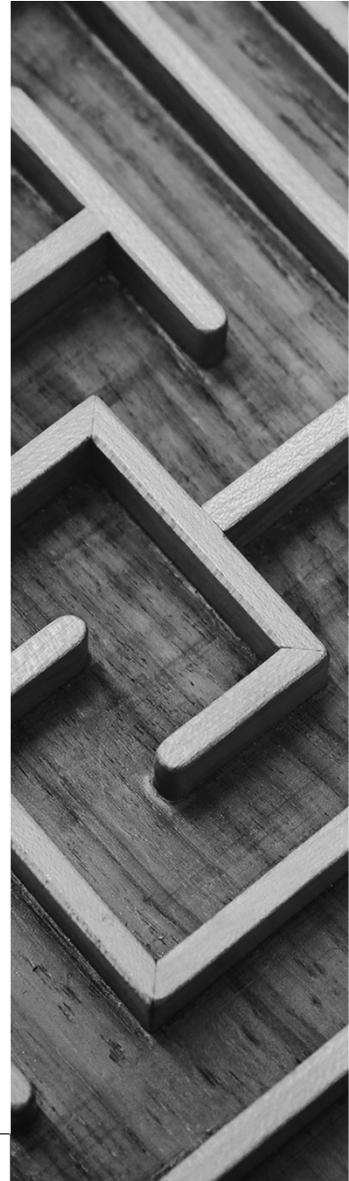
Problems with errors

- **COMPARE: SSTS 1.2.8** (A member is not allowed to inform a taxing authority of an error without the taxpayer's permission, except where required by law) *versus*
 - **SSTS Explanation 1.1.9** (In addition to a duty to the taxpayer, a member has a duty to the tax system), and
 - **SSTS Explanation 1.2.13** (Members have a responsibility to both the taxpayer and the tax system)
- **COMPARE: SSTS Explanation 1.2.15** (if a member learns that the taxpayer is using an erroneous method of accounting and it is past the due date to request permission to change to a method meeting SSTS 2.1.1 [definition of "tax return position"], the member may sign a tax return for the current year, provided that the tax return includes the appropriate disclosure of the use of the erroneous method) *versus*
 - **Treas. Reg. 301.7701-15(b)** (A signing tax return preparer is the individual who has the primary responsibility for the overall substantive accuracy of the return) or
 - **Circular 230, 10.34**

SSTS and Circular 230

Problems with tax positions

- **Cir 230, 10.34 (Rev. 6/2014):** A practitioner may not *willfully, recklessly, or through gross incompetence* sign a tax return or claim for refund that the practitioner *knows or reasonably should know* contains a position that *lacks reasonable basis* (nor advise a client similarly)
- **Cir 230, 10.34 (Rev. 6/2005):** A practitioner may not sign a tax return as a preparer if the practitioner *determines* that the tax return contains a position that *does not have a realistic possibility* (one in three) of being sustained on the merits unless the position is not frivolous and is adequately disclosed (nor advise a client similarly)
- **SSTS 1.1.5c:** A member may advise a taxpayer to take a tax position where the member concludes there is reasonable basis for the position with disclosure (and **SSTS 2.1.6c** – a member may sign a tax return including a tax position that has reasonable basis and is disclosed)
- ***THIS IS ALL ABOUT PENALTY EXPOSURE/RELIEF, AND PENALTIES ARE COMMON TO TAX CLAIMS!!!***



Outsourcing

CNA

Outsourcing

Conduct due diligence

- Competence
- Data security
- Working together

Outsourcing

What should the contract with the outsourcing provider address?

- Availability of professionals, turnaround times, escalation procedures, and other items essential to service delivery
- Minimum data security requirements
- Indemnification of the CPA firm
- Limits on the provider's ability to further subcontract and related terms
- Insurance coverage
- The choice of law, choice of forum, and dispute resolution provisions
- Termination provisions

Outsourcing

Obtain client consent

- **AICPA Code of Professional Conduct**

- Obtain specific consent from the client before disclosing confidential information to a third-party service provider; or
- Enter into a contractual agreement to maintain confidentiality and provide reasonable assurance that the third party has procedures in place.

- **IRC §7216**

- Requires client consent before disclosing to a third party any information furnished to the CPA in connection with the preparation of a tax return
- Sample consent forms available from AICPA at <https://www.aicpa-cima.com/resources/download/section-7216-guidance-and-sample-consent-forms>

Outsourcing

Performing services

- CPA firm remains responsible for the deliverable
- Work performed by an outsourcing provider should be directed, supervised, and reviewed by the CPA firm
- Consider time zone overlap, or lack thereof, when making team assignments and estimating deadlines

IRS Areas of Focus

CNA

IRS Areas of Focus

Background

- The Inflation Reduction Act provides funding to modernize the IRS and ramp up enforcement
- IRS compliance efforts to focus on:
 - High-income/high wealth individuals
 - Large partnerships
 - Large corporations
- Increased use of artificial intelligence and improved technology to identify non-compliance



IRS Areas of Focus

How may claims arise?

- Increase in audits/audit rates and audit findings
 - Increase in taxpayer penalties
 - Claims alleging the CPA did not successfully handle the audit
 - Rise in amendments to federal and state tax returns
 - New CPAs identifying errors that require amended tax returns

CNA



IRS Areas of Focus

Mitigating the risk of a claim related to errors identified on a prior year return

- Identify clients most at risk for future audits
- Review previously-filed tax returns objectively
- If an error is identified and you prepared the tax return, inform your professional liability carrier
- If you find an error, inform the client of the error and corrective options
 - If the client chooses to fix it, obtain a new engagement letter
 - If the client chooses not to fix it, consider termination
 - Document the **client's** decision

IRS Areas of Focus

Mitigating the risk of claims arising during an examination

- Read/review the Internal Revenue Manual
- Take CPE to better understand the examination process
- Are there tax examinations where you should not assist the client?
 - New IRS pass-through group
 - Bipartisan Budget Act audits
- Perform services via a separate engagement letter



Tax Cuts and Jobs Act of 2017 (TCJA)

CNA

TCJA

What's happening?

- Many provisions of the TCJA will sunset 12/31/2025
 - Individual tax rates
 - Changes affecting standard and itemized deductions (SALT and AMT implications)?
 - IRC section 199A (Qualified Business Income) deduction
 - Estate tax exemption
- Will there be new legislation in 2025 or 2026?
- How will you do tax planning?
 - Individual/small business
 - Individual/high net worth individuals
 - Estate/wealth transfer
 - Corporate

TCJA

How to provide services

- Obtain a tax consulting engagement letter
 - Draft a concise scope of service
 - **NO!** – “We will analyze the impact of the expiration of TCJA on your 2026 taxes.”
 - **YES!** – “We will compare your projected federal income tax liability for estimated 2026 income based on expiring TCJA rules and pre-TCJA rules related to net operating losses.”
- Regardless of planning or advice, inform client that future changes in legislation may impact the outcome of any choice the client made
- If the client requests a “what if” analysis:
 - Specify the variables to be adjusted

Engagement Letters

CNA

Engagement Letters

What is the scope?

- In review:
 - Circular 230, 10.33 – communicate clearly with the client regarding the terms of the engagement
 - SSTS – (*crickets*)
- Scope = duty of care = “*What am I responsible for?*”
- Compliance scope concerns
- Consulting scope concerns
- My scope didn’t really change, but I need to do way more work
- My scope changed dramatically
- Client-driven concerns

Engagement Letters

Compliance concerns

- Type of return
- Type of tax
- Jurisdictions
- Estimated tax payments, extensions, and drafts
- Extra forms – foreign
- Extra forms – state
- Elections



Engagement Letters

Consulting concerns

- When the client makes the ask –
 - Do you maybe know the questions and the answers but need to clarify and confirm?
 - Do you maybe know the questions but not the answers and need to research and confirm?
 - Does the question have an answer or not?
 - Does the client have a situation that maybe has/doesn't have an answer?
 - Is it basically compliance, but for a prior or future year?
 - None of the above?
- How does the nature of the ask affect the description of the scope (and by extension, the deliverable)?

Engagement Letters

Same scope, more work

- Example taken from real life:
 - Simple 1065 client with operations and straight percentage allocations, one state, basic M-1s. Estimated fee: \$2,000.
 - Client sold 68% of partnership to outside investor for “life changing money”.
 - EL is for the preparation of Form 1065 and state partnership equivalent.
- Issues:
 - Purchase of partnership interests required analysis of whether partnership terminated under (old) IRC 708 rules and if two 1065s were necessary
 - Purchase of partnership interests required analysis under book-up rules under 704(b) regs
 - Purchase of partnership interests required analysis under 704(c) rules (including discussion with partners on allocation method and partnership agreement) due to difference between 704(b) and tax bases
 - Company assets were EXTENSIVE, meaning each asset purchased pre-sale was broken into new partner basis (no 704(c) layer) and old partner basis (704(c) layer for tax depreciation purposes
 - Gain on sale to partners – or is that part of the 1040?

Engagement Letters

Different scope, more work

- Generally, falls into the category of “new or previously unknown facts”
 - New or existing K-1 has way more information this year than last year
 - Client has expanded operations beyond known jurisdictions
 - Major acquisition, disposition, or change to equity
 - What’s the trust document say?
 - Things that need a formal valuation
- Can be compliance or consulting
- How well are you communicating with the client (or with the audit team)?

Engagement Letters

Client-driven concerns

- What if my client doesn't understand "what's included"?
- Can/should I start the work without a signed engagement letter?
- What if they don't sign the letter?

Engagement Letters

My client has not authorized me to . . .

- I have a signed engagement letter, I need to extend or file, but my client is AWOL
- I sent an engagement letter, I received info back, but not the signed letter
- *United States v. Boyle*, 469 U.S. 241 (1985) *unanimous decision*
 - “Congress has placed the burden of prompt filing on the [taxpayer], not on some agent or employee of the [taxpayer]. The duty is fixed and clear; Congress intended to place upon the taxpayer an obligation to ascertain the statutory deadline and then to meet that deadline”
 - “The failure to make a timely filing of a tax return is not excused by the taxpayer’s reliance on an agent”

CNA



Engagement Letters

My client has not authorized me to . . .

- *Lee v. United States*, 84 F.4th 1271 (CA11 2023)
 - “We must answer this open question and decide whether *Boyle*’s bright line rule applies to e-filed returns. We believe it does.”
 - “Lee contends that Form 8879 makes e-filing fundamentally different from paper filing, rendering *Boyle* inapposite in this case. We disagree.”
 - “...the IRS considers preparation and origination distinct activities” (quoting IRS Pub. 3112, IRS E-File Application & Participation)
 - “When it comes to return filing deadlines, the taxpayer is essentially alone.” (concurrence)
- IRS Form 8879, e-file Signature Authorization
 - Taxpayer declaration – “I consent to allow my ... ERO to send my return to the IRS“
 - Practitioner PIN method – “. . . I am now authorized to file . . . “

CNA



“Too Good to be True Tax” Strategies

CNA

“Too Good to be True” Tax Strategies

Aren't most tax strategies aggressive?

- “Too good to be true” strategies often have the following characteristics:
 - A promoter is involved
 - A confidentiality agreement must be signed to learn about the strategy
 - The strategy appears to run afoul of one or more judicial doctrines
- Professionals associated with the strategy are paid a higher than customary fee or percentage commission
- The strategy is overly complex or has multiple steps that must be completed at a specific time/in a specific order
- The promoter attempts to limit liability contractually

CNA



“Too Good to be True” Tax Strategies

Recommendations

Be careful about:

- Accepting engagements to assist a client with an aggressive tax strategy
- Making referrals to promoters of aggressive tax strategies
- Providing off-the-cuff advice

“Too Good to be True” Tax Strategies

Recommendations

Consulting engagement considerations

- Obtain a separate engagement letter
 - Include limitation of liability and limitation of damages clauses
- Identify if the strategy is identified in IRS guidance
- Address the implications of an IRS audit and additional costs which may result
- Document advice provided and the client’s acknowledgement of such

“Too Good to be True” Tax Strategies

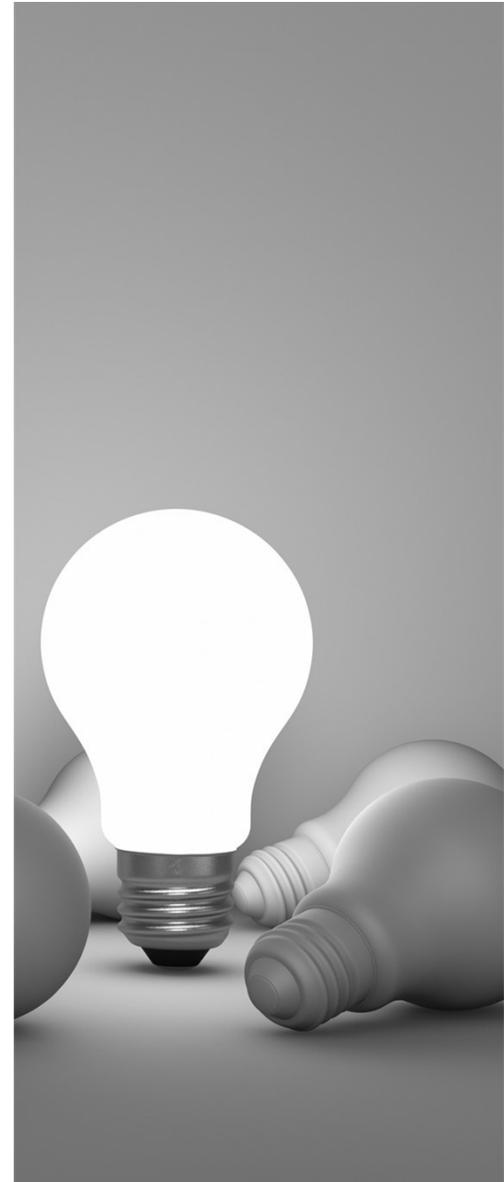
Recommendations

Tax compliance engagement considerations

- Is tax return disclosure required for signature?
- Inform client of audit risk and potential additional costs in writing

Learning Summary

1. CTA/BOI is brand new – the risks of providing services related to CTA need to be examined
2. Understand the similarities and differences between the SSTS and Circular 230
3. Implement strategies to outsource responsibly
4. Anticipate increased IRS enforcement activity and be proactive
5. Respond properly when clients request services related to expiring or potential new legislation
6. Understand how engagement letters help in the defense of a client disagreement or professional liability claim
7. Recognize “too good to be true” tax strategies and have a plan for when a client has invested in one



Resources

- *Risk Alert: Navigating Corporate Transparency Act/Beneficial Ownership Reporting*
- *Risk Management and the Corporate Transparency Act (including sample engagement letter)*
- *Unintended consequences of professional referrals*
- *Statements on Standards for Tax Services*
- *Treasury Circular No. 230 (Rev 6-2014)*
- *Outsourcing and Professional Liability*
- *AICPA Section 7216 Guidance and Consent Forms*
- *IR-2023-166*, Sept. 8, 2023
- *IRS Funding and a Potential Rise in Malpractice Claims against CPAs*
- *Avoiding Fallout from Aggressive Tax Strategies*

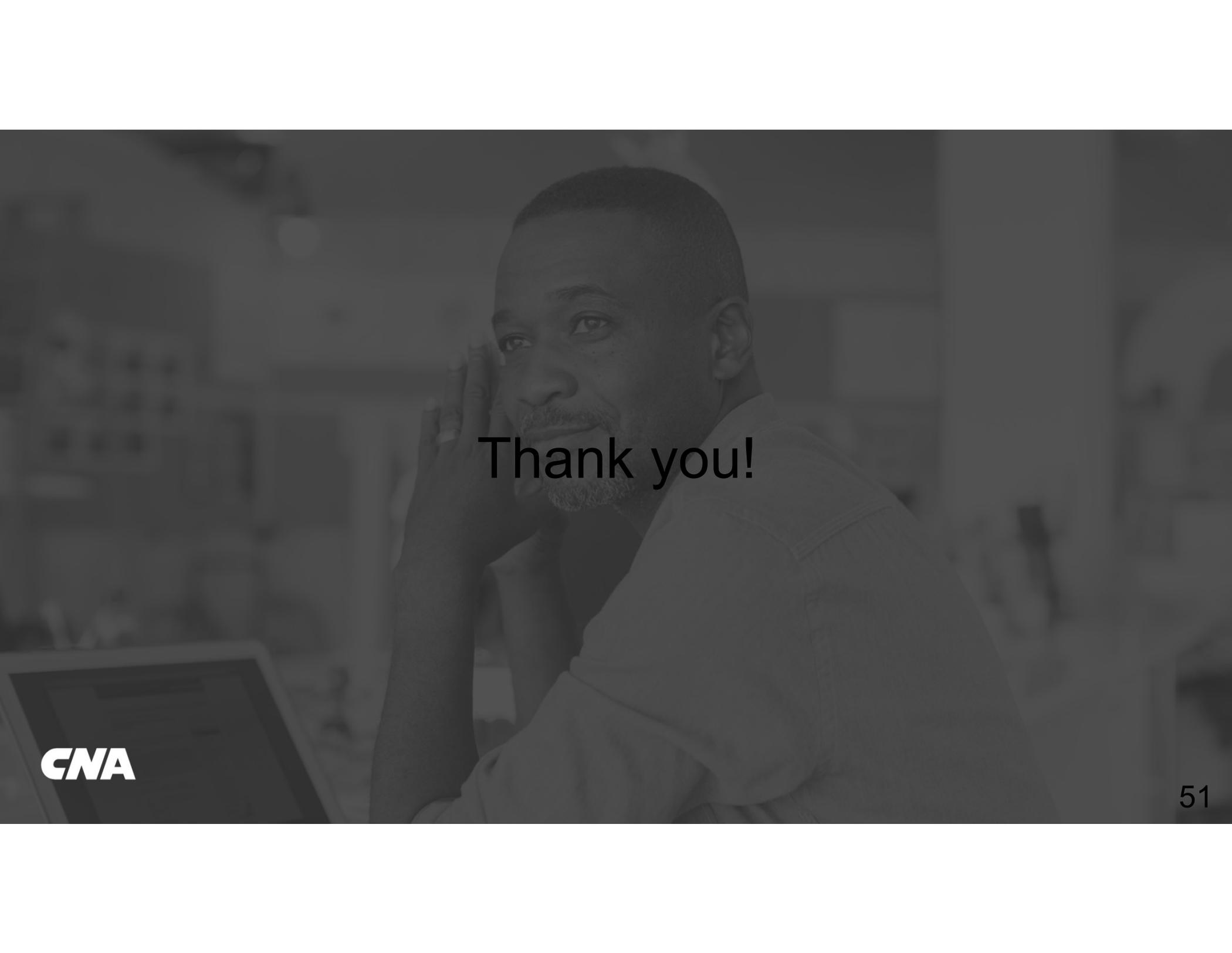
Additional Resources

- [*Surviving Tax Season: Checklists to Manage Your Risk*](#)
- [*Mitigating risk of large FBAR and international claims*](#)
- [*Expert Advice on Defending Tax and Other Claims*](#)
- [AICPA beneficial ownership information \(BOI\) reporting page](#)
- [FinCEN Beneficial Ownership Information Reporting page](#)
- [FinCEN Beneficial Ownership Information Reporting Frequently Asked Questions](#)
- [FinCEN Small Entity Compliance Guide](#)
- American Bar Association Practice Point, [*The Corporate Transparency Act: Tidbits for Tax Practitioners*](#)

For More Information

- AICPA Member Insurance Programs
 - (800) 221-3023 or www.cpai.com
- Sign-up to receive the AICPA Professional Liability Insurance Program's monthly *CPA Risk Report* and be alerted to new content.





Thank you!

CNA