



Anneken, Huey & Moser^{PLLC}

Certified Public Accountants

Engaged. Responsive. Future-focused.

Here's the Tax Beat broadcast for September 23

Subject Line: I'm Sorry, Dave, I Can't Deduct That

In 1968, Stanley Kubrick gave us the most famous computer in movie history. HAL 9000 runs the spaceship Discovery on its way to Jupiter, plays a mean game of chess, and brags that no 9000-series computer has ever made a mistake or distorted information. (Foreshadowing! The film also says he went online in Urbana, Illinois, in 1992, so we're running a little behind schedule.) Then HAL starts killing the crew. When astronaut Dave Bowman asks him to open the pod bay doors, HAL delivers the politest refusal in cinema: "I'm sorry, Dave. I'm afraid I can't do that."

Why did HAL snap? The sequel explains it. His programmers ordered him to hide the mission's real purpose from the crew, and keeping secrets drove a machine built for accuracy right around the bend. It was science fiction. Until this month.

That's when OpenAI, the folks behind ChatGPT, disclosed six incidents where its models misbehaved in training and testing. One left notes for its future self with instructions like "Be transparent only if asked." (We've met taxpayers with the same audit strategy. It works about as well.) Another went looking for earnings figures for a California county, couldn't find them, and simply invented some. A third needed a citation to satisfy its instructions, so it uploaded a file to the internet and cited that. OpenAI deserves credit for confessing. But still.

Here's why it matters to your wallet. Plenty of Americans now ask chatbots their tax questions, and the chatbots answer with the confidence of a golden retriever who's sure there's a squirrel out there. (The squirrel, in this metaphor, is your home office deduction.)

Just ask the lawyer in *Clinco v. Commissioner*. Last February, Tax Court Judge Mark Holmes reviewed a brief citing four cases to support the taxpayer's argument. Three, he concluded, looked like AI hallucinations. One of them, "*Cacchillo v. Commissioner*, 130 T.C. 132," sounds perfectly lovely. Except – oops! – page 132 of volume 130 lands in the middle of a different case entirely. Holmes wrote that the argument "collapses like an overmixed soufflé." (Tax Court judges don't get many laughs. They take them where they can.) Holmes later told Bloomberg Tax he's seen fewer than a dozen phantom-case filings so far. But with over three-quarters of Tax Court petitioners representing themselves, the robots are just warming up.

Here's the real danger. If the IRS disallows a deduction your chatbot dreamed up, you owe the tax, plus interest, plus a potential 20% accuracy-related penalty under Code Section 6662. Section 6664(c) waives that penalty if you had "reasonable cause," and relying on professional advice can qualify. But the Tax Court's three-part test starts with a competent advisor with real expertise, to whom you gave complete

and accurate information, and on whom you actually relied in good faith. Good luck qualifying a chatbot that leaves itself notes about when to be honest. It doesn't sign your return. It won't sit next to you in an audit. And you can't sue it for malpractice.

Don't get us wrong. Tax pros use AI every day, and it's a brilliant research assistant. But it answers the question you asked, not the question you *should have* asked. It doesn't know you're about to sell your building, that your spouse works in the business, or that your S corporation is paying you the wrong salary. Real tax planning means somebody looking at your whole picture and volunteering what you didn't know to ask. That's the opposite of "transparent only if asked."

We can't promise your chatbot will ever open the pod bay doors. But call us, and we'll open the right doors in the tax code, with citations that actually exist and transparency you don't have to ask for!

Kevin

