

# CPA Confidentiality

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# MCLA §339.723 – Michigan’s Statutory Accountant-Client Privilege

- **PRIVILEGE IS NARROWLY CONSTRUED**
- **INFORMATION MUST BE “PROTECTED INFORMATION”** WHICH MEANS DISCLOSED TO A LICENSEE OR LICENSEE’S EMPLOYEE **AND** INFORMATION MUST BE RELATED TO AN EXAMINATION, AUDIT OR REPORT ON BOOKS OR RECORDS THAT THE LICENSEE (OR LICENSEE’S EMPLOYEE) WAS EMPLOYED TO MAKE
- **IF PRIVILEGE APPLIES**, LICENSEE (OR LICENSEE’S EMPLOYEE) CANNOT BE REQUIRED TO DIVULGE AND CANNOT DIVULGE THE PROTECTED INFORMATION
- **EXCEPTIONS** WHEN CAN BE DIVULGED: (A) WRITTEN WAIVER FROM THE CLIENT OR THE HEIR, SUCCESSOR OR PERSONAL REPRESENTATIVE OF THE CLIENT; (B) AS A COURT OR AGENCY DEFENSE; (C) NO JOINT CLIENT PRIVILEGE; AND (D) PRACTICE MONITORING/ETHICAL INVESTIGATION

## IRC 7525 – Communications Privilege for “Federally Authorized Practitioners”

- **Extremely narrow!** Privilege can only be asserted in any non-criminal tax matter before the Internal Revenue Service and any non-criminal tax proceeding in Federal court brought by or against the United States
- **For privilege to apply:** (A) Disclosure must have been made by taxpayer client to a federally authorized tax practitioner with respect to tax advice; (B) disclosure must meet the requirements for attorney-client privilege to apply (ie., made for purpose of obtaining tax advice, disclosure made directly by client to practitioner, and disclosure was intended to be kept confidential and was kept confidential)

## INADVERTANT DISCLOSURE

- Privilege can be destroyed by inadvertent disclosure
- Ways to Avoid Inadvertent Disclosure:
  - A. Do not mix protected and unprotected information
  - B. Include a “confidential” warning and only use that warning when you mean it – no lunch orders
  - C. Limit recipients of protected advice to only those with a “need to know”
  - D. Do not share your analysis with those who only need the conclusion/decision but not the analysis