An Ethical Dilemma

By Charles M. Lax

Michigan Certified Public Accountants are subject to the AICPA's Code of Professional Conduct ("Code"). Additionally, those same practitioners, if engaged in a "tax practice" are also governed by the Treasury Department's Circular 230 ("Circular 230"). Both the Code and Circular 230 prescribe the applicable duties and responsibilities of ethical practice and sanctions for violations. While in large part both are consistent, to the extent of any inconsistency, the dictates of Circular 230 prevail with regard to practice before the Internal Revenue Service. Not surprisingly, both sets of regulations address such ethical issues as:

- Conflicts of Interest
- Confidentiality
- False Advertising
- Return of Client Records
- Competency
- Client Fees
- Acting with Due Care

In this article and from time to time in the future, I will discuss common ethical dilemmas that CPAs and other tax practitioners face every day in their practices. This will be done through a case study methodology, which will include a set of facts, a description of the conflicts, the applicable authority and a suggested resolution. Also, keep in mind that in some instances there will be no definitive "right answer" and in those cases it will merely be my own opinion.

The Case of the Newly Minted Valuation Expert

You are a CPA and a member of the MICPA. You register for and attend a workshop at an MICPA conference titled "Business Valuation Basics." Since your tax, auditing and financial service business has not grown in the last few years, you decide to expand the services you offer to clients. You know you can purchase business valuation software from your present software vendor. You have an old friend who is a Certified Valuation Analyst (CVA) and Accredited in

Business Valuations (ABV) and although he works at a “big four” firm, he has agreed to “eyeball” your business valuation reports and is available from time to time to answer a few questions.

You discuss this idea with your marketing advisor. She suggests that you send your existing clients and referral sources a new brochure which provides in part:

- The firm now offers business valuation services
- The business valuation services are offered for such purposes as transaction based, tax based and litigation based needs
- Our experienced, credentialed staff, including CVAs and ABVs, has the knowledge and understanding necessary to meet every client’s business valuation needs

Is there anything wrong with this arrangement and the brochure?

Issues

- Does the brochure constitute false advertising?
- Is the statement, “Our experienced, credentialed staff, including CVAs and ABVs . . .” problematic?
- Does the firm/CPA possess sufficient competency or have the requisite qualifications to offer business valuation services?
- Is the arrangement with the “outside” accountant conducive to ensuring that the Code and Circular 230 obligations are met?

Both Paragraph 1.600.010.01 of the Code and Section 10.30 of Circular 230 prohibit members/tax practitioners from engaging in promotional efforts which are false, misleading or deceptive. In this case, is the brochure’s statement, “Our experienced, credentialed staff, including CVAs and ABVs, has the knowledge and understanding necessary to meet every client’s business valuation needs” misleading and/or deceptive? Why would this be the case? It appears that the experienced staff is nothing more than an “old friend” who has the necessary credentials, but will provide little input into the valuations. By referencing “our credentialed staff” a client would have a reasonable expectation that their report was prepared by that credentialed person. In this case, that clearly will not occur.

Furthermore, Code Paragraphs 0.300.060.02 and .03 and Section 10.35 of Circular 230 require members/tax practitioners to possess sufficient competency to perform the required service for their clients. Again, this would appear to be problematic. Attending an MICPA workshop, buying software and having a real expert “eyeball” reports would likely fall short of the competency standard by any measure.

A better approach would obviously necessitate a regular and continuing relationship with the business valuation expert. While it may not be necessary to hire them on a full-time basis, the arrangement should have greater substance. The preferred approach would be to have the friend (or if necessary, another business valuation expert) have a regularly scheduled time to discuss each valuation engagement, review in depth each valuation report and meet with the actual staff member preparing the report and their client, if necessary.