LOS ANGELES BENEFITS CONFERENCE

ETHICS CASE STUDIES

HAVE I GOT A PLAN FOR YOU

Case Study No. 1

You are a TPA who attends an ASPPA Regional Conference. You register for a workshop titled, "Introduction to Cash Balance Plans for Defined Contribution Plan Practitioners." Since your recordkeeping and 401(k) business has not grown in the last few years, you decide to expand the services you offer to clients. You know you can purchase cash balance plan administration software from your present software vendor. You also have an old friend who is an Enrolled Actuary and a Member of the Society of Pension Actuaries (MSPA), and although he works at a "big shop," he's agreed to sign your Schedules SBs and be available from time to time to answer a few questions.

You discuss this plan with your marketing advisor. She suggests that you send your existing clients (professionals and small closely-held businesses) a new brochure which provides in part:

- "Consider adding to your existing retirement program a new 'tax shelter' vehicle, principally for the benefit of the owners and other key employees—a cash balance pension plan."
- "Let us provide you with an explanation and example of how a cash balance pension plan would work for your business or practice."
- "Our experienced administrators, including Enrolled Actuaries, are capable of designing, implementing, preparing appropriate plan documents, filing all necessary government reports, and keeping the plan compliant."

Is there anything wrong with this arrangement?

THE DESPERATE LAWYER

Case Study No. 2

You are the TPA for a small law firm run by an 88-year-old matriarch. As you complete the year end work for December 31, 2013, you notice that participant deferrals and participant loan repayments were remitted late and irregularly. When you ask about it, she explains that she needed those deferrals and participant loan repayments to keep the practice afloat. "However," she adds, "we did put them all in the plan by the end of the year." Sure enough, your trust accounting confirms that the deferrals and repayments were all deposited into the plan in one lump sum on December 30, 2013. In discussing with her the rules requiring timely deposits, she indicates that she would prefer the 2013 Form 5500 be prepared without revealing this "irregularity."

What are your responsibilities in preparing the Form 5500 and related forms for 2013?

WHO CAN YOU TRUST--IF YOU CAN'T TRUST ME?

Case Study No. 3

You are the new TPA for a client that maintains a profit sharing plan. In preparing your first year end report and Form 5500, you learn that the plan holds a piece of vacant real estate that was acquired more than 10 years ago. You ask the client about the property. He indicates that it was a great investment, since he "paid next to nothing for it." You tell him it needs to be appraised each year. He tells you that it's never been appraised before; and since there is no market for it, his prior TPA used its cost. He also assures you that the original cost is still a "good value."

Can you use the cost as its current value under these circumstances?

THIS COULDN'T POSSIBLY BE A PROBLEM--OR COULD IT?

Case Study No. 4

You are the TPA for Acme Window and Door Company ("Acme") and its cross-tested profit sharing/401(k) plan. You are contacted by Best Window Company ("Best") who tells you they are not satisfied with their current TPA and would like to engage you to handle their 401(k) plan. You know that Acme and Best are the two biggest competitors in the window replacement market in your area. When you ask Best how they found you, they tell you that their CPA, with whom you have a mutual client, recommended you. Is there a problem? Must you disclose your engagement to either Acme (of Best) or Best (of Acme)? Would your answer be different if each of the two companies were merely two of approximately 10 window replacement companies in your area?

HOW WOULD THEY EVER KNOW?

Case Study No. 5

The Employee Plans Division of the IRS is auditing your client's 401(k) plan for calendar year 2012. You were first retained by this client in early 2013 and were responsible for the 2012 filings, testing, etc. You've been given an Information and Document Request Letter by the EP Agent, and you assemble the items listed. The letter asks for a list of all related companies. At this time, you first learn that your client's wife also owns a small business. Although he has nothing to do with his wife's business, they have a minor child (causing your client to be the owner of his wife's business through attribution). Her company has no retirement plan (although it employs a number of employees who would be non-highly compensated employees). When you describe the problem to the client, he indicates that he doesn't want to disclose it, at this point, because "the IRS would never find out about it." What is your responsibility?

WHO DO YOU TRUST?

Case Study No. 6

You serve as the TPA for a client's profit sharing plan. Following the year end, you send your client your standard information letter which includes a request for a complete census of employees (including name, hire date, birth date, total compensation, and the actual number of hours of service), plus each employee's Form W-2. The client only returns to you a list of names, hire dates, birth dates, and compensation amounts, indicating that these are the only plan participants. Can you rely on your client's determination?

CAN WE TALK?

Case Study No. 7

You have been the TPA for a client for many years. Unfortunately, you've been unable to resolve a fee dispute and have not been paid for last year's work. You are contacted by someone who introduces themselves as the new TPA for the client and says she'll be taking over their plan work. This person is an ASPPA member and you know her from the local ABC chapter. You are asked by the new TPA about: (i) how well the client pays, (ii) if the client takes your advice, and (iii) what problems they have with regard to their plan. What is your responsibility to the client and the other ASPPA member?

WHO IS THE CLIENT?

Case Study No. 8

You are engaged to perform recordkeeping, administration, and compliance work for a new client's cross tested 401(k) plan. The client is a small chain of health food stores. You initially meet with Betty and Barney, husband and wife, who introduce themselves as the owners. Your standard engagement letter is addressed to Mr. and Mrs. Barney Rubble, with the address being the business address. The letter indicates that it confirms your firm's engagement by Healthy Foods, Inc. ("Healthy"), the plan sponsor, as the TPA for its 401(k) plan.

During the first year, you regularly communicate with Betty on all matters that pertain to the plan. One day, you receive a telephone call from Barney who informs you that: (i) he has filed for a divorce from Betty, (ii) he owns all of the stock of Healthy, (iii) Betty has been terminated as an employee of Healthy, and (iv) the only information Betty should be provided is that which any other terminated employee would receive.

A few days later, you receive a call from Betty. She confirms the divorce proceeding and that she is no longer an employee of Healthy. However, Betty also indicates that her lawyer assures her that she has an ownership interest in Healthy. Betty further reminds you that your engagement letter was addressed to both Barney and her. At this point Betty asks you for the following information: (i) Barney's account balance, (ii) Barney's current base compensation, (iii) Barney's W-2 income for the prior year, (iv) whether Barney has taken any distributions recently from the plan. (Barney is over 59-1/2 years old.), (v) whether any action has been taken to terminate the plan, and (vi) the current compensation and what are the last few years' W-2 earnings of his "Administrative Assistant?"

What is your response to Betty, and should you provide her with any of the information she has requested?

SOMETIMES IT DOESN'T PAY TO BE A NICE GUY

Case Study No. 9

You are a TPA who owns and operates a "small TPA shop." You are aware of and have condoned the activities of an employee (your niece) who asked whether she could do some "moonlighting" for a few very small clients of hers. Since these clients are really too small for your own firm, you agreed to allow her to service those clients as long as it "did not interfere" with her day-to-day responsibilities. You recently learned that while she is handling these clients' work in the evenings and on weekends, she is using your company's stationery and software. Is this problematic and what is your responsibility?

CAN YOU GIVE A FRIEND A HAND?

Case Study No. 10

You receive a referral from a CPA friend in April of 2013. The CPA typically refers 5 to 10 new clients to you each year. In this case, the referral is to a client that has maintained a profit sharing plan for many years. The CPA explains to you that when the client first adopted the plan, "they were very small and he felt comfortable doing the plan's administration and filings." Now, since the plan is approaching 100 participants, he reasons the client would be well served with an "expert" like you handling these matters. Further, he believes the plan will soon need an independent audit report, which would be a "nice billable event."

You are given his records and work papers; and in the course of a review of the December 31, 2012 year end, you find:

1. The compensation of the owner of the company used in allocating the contribution was $390,000.

2. A loan, which had been made to the owner's son (not a plan participant) in 2010 was fully repaid to the plan in 2012 (but was not disclosed on the 2010 and 2011 Form 5500 as a prohibited transaction, nor was Form 5330 filed for either year).

To make certain that you are not "missing anything," you call your CPA friend, report these two problems, and suggest that the client must be apprised. The CPA tells you he would prefer this not be disclosed because it would be very embarrassing to him. What is your responsibility?