

31st Annual Tax Symposium

MICHIGAN'S CPA - CLIENT PRIVILEGE

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I. MICHIGAN CODIFICATION

A. MCLA 339.732

Except by written permission of the client or the heir, successor, or personal representative of the client to whom the information pertains, a licensee, or a person employed by a licensee, *shall not disclose or divulge and shall not be required to disclose or divulge information relative to and in connection with an examination or audit of, or report on, books, records, or account that the licensee or account that the licensee was employed to make.* Except as otherwise provided in this section, the information derived from or as a result of professional service rendered by a certified public accountant is confidential and privileged.”

II. RELEVANT CASELAW

A. Purpose and Scope

1. The purpose behind the accountant-client privilege is to protect from disclosure the substance of the information conveyed by the client to the accountant. *In re Estate of Martin*, 1998 WL 1988880 (1998), citing, *People v. Paasche*, 207 Mich App 698, 706; 525 NW2d 914 (1994).

- The information derived from or as the result of professional service shall be considered confidential and privileged.
- Statute applies *only* to confidential information passed from the client to the accountant. *Id* at 4. (In *re Estate of Martin* is only case holding strict interpretation of statute)

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2. *Clements Manufacturing liquidation Company, LLC v. THB America*, 486 B.R. 400 (2012) –Chapter 7 Trustee sought CPA’s client’s tax returns, work papers and correspondence.

- Privilege only protects the substance of the confidential information communicated by the client to the accountant
- Accountant’s work papers, depending upon how much confidential information is contained within may be privileged.
- Should generate a document log that shows each email, communication
- Financial records provided by client are privileged

III. EXCEPTIONS TO THE PRIVILEGE

1. Where CPA’s professional competence is being challenged in Court or Administrative Agency, can disclose as part of defense
2. Ethical investigations
3. Where information is sought by law enforcement and have “reasonable basis that client has violated federal or state law or governmental ordinance