



When Do TPAs Really Have Ethical Dilemmas?

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You may or may not be part of an organization like NIPA, ASPPA, ACOPA, a state Bar, and the like, but odds are that your job is covered by one or more governing Codes of Conduct/Ethics. As a preparer of certain tax forms, such as the Form 5500, you are likely subject to the ethical rules that apply those who practice before the IRS, Circular 230. Certainly, if you have a Preparer Tax Identification Number ("PTIN") or your ERPA designation, you need to get acquainted with the requirements of Circular 230. While Circular 230 is not necessarily a "page-turner" worthy of binge reading, it is important for you to be familiar with your obligations to your clients and colleagues.

Why even have a Code of Conduct/Ethics? Don't people know how to behave?

There is a lot more to these Codes than obvious rules, such as, "Don't steal your client's money." For example, in this age of social media, does your company have a policy regarding personal social media accounts? Do you have any sort of monitoring process to ensure that no one accidentally discloses confidential client information or disparages a competitor? Both of these actions may create legal liability and ethics violations for both the employee and the company.

Those who have achieved a higher level of professional education and obtained a designation must be aware of any requirements to maintain the designation. Besides general continuing education, you also are likely required to earn specific ethics continuing education credits annually. Many ethics courses are long on the rules and short on entertainment value. (The look on most attendees faces at conferences during the ethics sessions indicates that they are thinking more about getting to the 19th level of Candy Crush than about the matter at hand.) Nonetheless, this annual obligation should be an opportunity, instead, to rethink how you are doing business and consider how your current procedures should be revamped to stay on the correct side of the ethical line in the sand.

I'm generally an ethical person. Why do so many organizations assume I'm going to behave unethically and, therefore, must undergo annual re-education?

Sure, some people are just unethical. But, most of us try to do the right thing. Most ethical problems for us arise, not from a dark place where we are deliberately seeking to misrepresent ourselves or to obfuscate the facts. Most of our ethical dilemmas come from a genuine desire to please our clients and provide them with the best service possible. TPAs tend to be an amazing people-pleasing bunch of folks. However, it is important to make sure that you don't make your client's problems your problems.

For example, suppose you sent your client its EGTRRA Restatement in 2009 and you never received back a signed copy. You ask the client to find and send you a copy of the signed document, and the client advises you it cannot be found. What do you do?

You know that your client is a really great person and has always been very generous with its employees. You feel bad that the document is missing and are hesitant to make the client go through a big VCP filing. Can you forward the original email with another copy of the document to the client with a note to, "Scour your files for the signed version of the enclosure. It would have been signed by no later than March 31, 2010"? Or, is this type of email an invitation to your client to take the current copy you sent and backdate it to 2010?

Many of us would see this type of "correction" – regardless of whether the client backdated the document or not – as a harmless thing. After all, the client didn't actually change any of the provisions in the plan document. So, really, why does it matter? Well, some may believe that you just helped the client commit tax fraud. Failure to adopt a restatement affects the qualified status of the plan and, therefore, can impact the tax status of all of the funds and deductions taken in relation to the plan. Suppose the plan later gets audited, and the client advises the IRS reviewer that, "I backdated the document as my TPA instructed me to do." You could then be facing charges of helping to defraud the IRS.

So, while your heart was in the right place, you cannot encourage your clients to bypass the only legal means to correct a failure to timely restate – the Voluntary Correction Program ("VCP"). Remember – you sent them the document and likely several separate reminders. Their failure to sign and date the document is not your fault. You shouldn't do anything that could cause you to lose your designation (or face criminal fraud charges).

Besides the concern over losing your designation, what about your valuable reputation? Do you want to be known by your peers as the person/TPA who does shady work? It is a small industry. People move from one company to another and take the urban legends of their prior company with them. So, if you have a policy of always checking the box that all employee deferrals were made timely when you know perfectly well that the client is habitually late, that reputation gets around. No one wants to be known for the wrong reasons.

Additionally, at the end of the day, you still have to look yourself in the mirror. If you wouldn't want your actions to be posted on a billboard for your whole family and community to see, you probably shouldn't be doing it. Most of us also have our own personal code of ethics. This code, in many instances, may be stronger than any of the written Codes required by a professional entity. Whether driven by your religion, upbringing, or just your personal life standard, always follow your personal code. At the end of the day, you have to live with yourself.

There are some common issues that come up time and time again. It is important to train new employees about your company policies regarding these issues and have periodic reviews to

make sure that everyone knows what to do when these scenarios come up. In your breakroom/kitchen area, do you have the OSHA rules on workplace behavior? Isn't the Company's Code of Conduct equally important? So, why isn't it also hanging up just as prominently for employees to see each and every day? By displaying your Code of Conduct, you are not only giving your employees an opportunity to review the rules frequently while they are waiting for the microwave, but you're sending the important message that how your employees behave in the workplace is genuinely important to you.

In short, your professional and your personal ethical codes should be prominently visible by your actions, your training, and perhaps even your bulletin boards.



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