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Public Company Accounting Oversight Board
Office of the Secretary
1666 K Street, NW
Washington, DC 20006-2803

March 2, 2005

Rulemaking Docket Matter No. 017, release No. 2004-015: Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees

Gentlemen :

I am a sole practitioner who has practiced since 1961, and have no public clients.

However, I believe that you must differentiate between the regulations for closely-held clients and public clients. The small businessman relies on his accountant for business advice, and preparation of financial statements and tax returns, both for the business and personally. I believe that it would cause irreparable harm if you forced small businesses to have separate accounting firms preparing the tax returns vs. preparing the financial statements. They are integrated services.

I can understand your concern about accounting firms developing tax shelter type transactions, and then reporting on them in the financial statements, and preparing tax returns with these strategies which might be of questionable status. But those situations do not exist usually for closely-held small businesses. I think that they should be excluded from such restrictions. Actually, I think that even the "Big Four" should be permitted to prepare business (partnership or corporate) tax returns for public companies, so long as there is no "tax shelter type activity" involved. Also, they should be permitted to prepare the tax returns of officers, executives, and even audit committee members. This will provide consistency of reporting, and might disclose to the practitioners activities that might require further scrutiny by the "auditor".

Another situation that I wish to comment on is "contingent fees". I believe that tax return preparers should be permitted to bill on a "contingent-fee basis" for services other than the initial preparation of a tax return, or for the amending of a tax return they prepared.

If the initial tax return was prepared by another firm, then a tax practitioner should be permitted to bill on a "contingent-fee basis" to correct items that he has discovered which will result in a lower tax liability, and probably a refund. His "expertise" should be rewarded beyond just hourly rates for the "value" of his services. In a practical sense, how can anyone monitor what the value of those services are on an hourly basis at "premium" rates, versus a percentage of the tax saving? (I'm assuming that the services are performed in a professional manner, not just making an adjustment to generate a questionable refund and a fee.)

I have confirmed with the IRS that all amended tax returns for refunds are reviewed by at least 1 IRS representative, and that those beyond some certain figure are actually reviewed by 2 or 3 people before a refund check is issued. The basic "tenet" of contingent-fee regulations has always been that the tax return must be "reasonably expected" to be reviewed by the taxing authority. The IRS has confirmed that for all practical matters this is what is done. (Obviously, a \$ 500 adjustment resulting in a \$ 125 refund would probably not be given more than a cursory review by the IRS at best. But also, it would be rare that a situation this small would be on a "contingent-fee" basis anyway. Since "contingent-fee" arrangements would almost always involve larger amounts, therefore the greater the probability that the IRS would be reviewing it 1 or more times.

I appreciate your considering comments from the "other end" of the profession.

Sincerely,

A handwritten signature in black ink that reads "David L. Zalles, CPA". The signature is written in a cursive style with a large initial "D" and "Z".

David L. Zalles, CPA