

31st Annual
Tax Symposium

**THE CPA PRIVILEGE AND
RESPONDING TO A SUBPOENA FOR
CLIENTS' TAX RETURNS, EMAILS
AND NOTES**

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MICHIGAN'S ACCOUNTANT PRIVILEGE

You have just been handed a subpoena for your client's tax returns, email communications, your notes and the client's financials – **what are you going to do?**



MICHIGAN LAW

Accountant-Client Privilege exists under MCL 339.732.

Purpose of the law is to protect the substance of the information conveyed by the client to the accountant

“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.”

WHAT INFORMATION IS PROTECTED?

- Applies to “confidential information” passed from the client to the accountant.
- “Information relative to and in connection with an examination and audit of, report on, books, records or accounts the accountant was employed to make”
- Accountant work papers, notes?
 - Not confidential. But any privileged information should be redacted; client confidential information.
 - Same applies to emails/correspondence. Parts may be privileged, any confidential information communicated to the accountant, redacted.
 - Unsure? Do a privilege log. Do a list of all documents, general description of the substance of the communication.
 - Advise the client of the subpoena, as client can waive privilege.



WHAT IS YOUR ROLE?

- Accountant, Trustee, Officer?
 - Clients often ask accountants to serve as Officer/Treasurer of their Business.
 - Or, act as Trustee of estate upon death.
 - And you are still acting as accountant?
 - Are your communications as “client” to yourself, the accountant privileged?
 - Lines between accountant/client can get blurred.



SOMETIMES INFORMATION IS NOT CONFIDENTIAL

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



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THANK YOU



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