Breaking Up Is Hard To Do: Disengaging Your Client

By Jason J. Galek

Not all clients are created equal. At times it will become necessary to terminate a relationship with your client. In fact, under certain circumstances, you may have a duty to terminate the professional relationship with your client. What is not evident for many is when and how.

Unsubstantiated Positions and Conflicts of Interest

The two main areas that may require you to disengage the relationship with your client are (1) unsubstantiated positions on tax returns and (2) conflicts of interest. In other situations, although you may not have a duty, disengagement may still be advisable. For example, if the client is continually difficult to deal with and fails to provide information on a timely basis, or you expect that a malpractice lawsuit will be filed against you. If you suspect that your client intends to file a lawsuit against you, you should consult with either your malpractice carrier or an attorney before disengaging your client.

With regard to the first category, accountants have a duty to comply with the standards of the applicable taxing authority in recommending a tax return position, or in preparing or signing a tax return. AICPA Statement on Standards for Tax Services No. 1, Tax Return Positions. When an accountant discovers an error on a client’s previously filed return, or discovers an error while performing services for a client that does not involve tax return preparation or representation in an administrative proceeding, the accountant is responsible to advise the client of the existence of the error and to recommend that the error be corrected. If the client does not correct an error, or in fact insists that the accountant take an aggressive and unsupported tax position, as the accountant you should consider whether to withdraw from the engagement and whether to continue a professional or employment relationship with the client. Although recognizing that your client may not be required by statute to correct an error by filing an amended return, an accountant should consider whether a client's decision not to file an amended return or otherwise correct an error may predict future behavior and noncompliance that might require termination of the relationship. AICPA Statement on Standards for Tax Services No. 6, Knowledge of Error: Return Preparation and Administrative Proceedings.

With regard to the second category, you need to remain vigilant to potential conflicts of interest. Under Circular 230 section 10.29, a practitioner shall not represent a client before the IRS if the representation involves a conflict of interest. A conflict of interest exists if —

1. The representation of one client will be directly adverse to another client; or
2. There is a significant risk that the representation of one or more clients will be materially limited by the practitioner’s responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner.
Under Circular 230, section 10.29, even if a conflict of interest exists between you and your clients or between your clients, you may continue to represent the client if:

1. You reasonably believe you will be able to provide competent and diligent representation to each affected client;
2. The representation is not prohibited by law; and
3. Each affected client provides his or her informed written consent waiving the conflict of interest.

Unless all of these elements are satisfied, you must terminate the relationship or be subject to professional violations and potentially be held responsible by your client for any unexpected additional tax, penalties, and interest. You also can be held responsible by your client if you recommend to your client tax positions that are without basis.

Disengagements And The Statute of Limitations

Regardless of the reason for terminating the client relationship, the disengagement should leave no doubt that you are no longer providing continuing professional services to your client. However, if additional tasks remain to be performed, it is your responsibility to make sure that the client is not left with a pending deadline and no means to complete the task or retain a new CPA, even going so far as completing the task before terminating the relationship. In some situations, a written disengagement may begin the statute of limitations. Ideally, with problem clients, you should consult with either your malpractice carrier or an attorney before sending the disengagement. Situations can easily develop where your client retains a new accountant and the client requests that you continue to work with new accountant on the client’s matters. Disengagements will be ineffective if you continue to perform services directly for your client.

Continuing services is important especially with regard to the statute of limitations, which is simply the period of years that a person has to file a civil complaint for professional malpractice with the court. In California, the statute of limitations for professional negligence claims against an accountant is 2 years from the discovery of the error. Cal. Civ. Proc. Code §§ 338(d), 339(1); Ventura County Nat’l Bank v. Macker, 49 Cal. App. 4th 1528 (1996). The statute varies greatly from state to state.

In California, the two-year statute of limitations under Code of Civil Procedure section 339(1) commences when (1) the client discovers the negligent conduct causing the loss or damage, and (2) the client has suffered actual injury as a result of the negligent conduct. Apple Valley Unified School Dist. v. Vavrinek, Trine, Day & Co., LLP, 98 Cal.App.4th 934, 942 (2002). A bright line test for when the statute of limitations begins is when the IRS or other taxing authority assesses a tax deficiency or penalties against the client. See, Curtis v. Kellogg & Andelson, 73 Cal.App.4th 492, 502-503 (1999). The client’s discovery of the cause of action begins to run no later than the time the client learns, or should have learned, the facts essential to his claim. Cleveland v. Internet Specialties West, Inc., 171 Cal.App.4th 24, 31 (2009).

Even if you think that the relationship has ended with your client, courts in many jurisdictions apply a doctrine of “continuing representation” to extend the time that a client may bring a malpractice claim, even though the statute of limitations would otherwise have run. The
continuous representation, however, must be in connection with the specific matter directly in
dispute, and not merely the continuation of a general professional relationship. Ackerman v.
Price Waterhouse, 252 A.D.2d 179, 205, 683 N.Y.S.2d 179 (1998)). Thus, even if (1) the client
discovers the negligent conduct causing the loss or damage, and (2) the client has suffered actual
injury as a result of the negligent conduct, the statute of limitations will not begin to run if the
accountant is engaged in a “continuous representation.” In other words, the statute of limitations
will not start if you continue to provide services related to the matter in dispute. To avoid this
outcome, make sure that you cease work for the client after the disengagement.

Disengagement Letters And The Client’s Records

Once you have made the difficult decision to terminate the client relationship, do not
disengage by making a phone call or a casual email. Your disengagement should be in a written
form, generally in a letter. As with engagement letters, disengagement letters should be concise
and specific. Ideally, the scope of the services provided will be described, including any
modifications to the original agreement. At minimum, the disengagement should clearly state
that you are no longer engaged to perform services for the client. If you need to assist the client
in transitioning to a new accountant, describe in detail the specific services or assistance that you
will provide and state that these are the only remaining services that will be provided, followed
by a final letter when the remaining services have been completed. Afterward, a copy of the
disengagement should be preserved in your file and included with a complete record of all of
your correspondence and working papers associated with the client.

For California CPAs, upon demand, you must return your client’s bank statements,
information returns, and other records originating from the taxpayer and not retain the records.
16 CCR § 68. Analyses, memoranda, letters of confirmation and representations, abstracts of
company documents and schedules or commentaries prepared or obtained by the accountant are
working papers and belong to the accountant. 16 CCR § 68.1.

Conclusion

The end of your relationship with your client should be documented clearly and concisely
in a written form to protect yourself in case of a dispute with your former client. The
disengagement should indicate the tasks that were completed and that no additional tasks remain
to be performed. If additional tasks remain to be performed, it is your responsibility to make
sure that the client is not left with a pending deadline and no means to complete the task or retain
a new CPA, even going so far as completing the task before terminating the relationship. Keep a
copy of all your correspondence with your client with your working papers. If your client
requests his or her records, return them but keep your working papers.

Jason J. Galek is a senior tax associate at Murphy Pearson Bradley & Feeney. He can
be reached at jgalek@mpbf.com or 415-788-1900.