

November 13, 2001

Florida Department of Business
and Professional Regulation
State Board of Accountancy
Suite A
240 Northwest 76th Drive
Gainesville, Florida 32607

Dear Board Members:

The purpose of this letter is to request the board's opinion of our conclusions in applying chapter 473 of the Florida statutes in Chapter 61H1 of the Florida Administrative code to a particular hypothetical situation.

Statement of Situation

Three Florida CPA firms form a limited liability company(LLC). The primary business activity of the LLC will be selling the services of one or more professional employer organizations(PEO) to both clients and non-clients of the CPA firms. The LLC will not be a PEO. It will simply identify prospects and assist in the selling process. In exchange for a "closed sale," the LLC will be paid a commission by the PEO on an annual basis. The LLC will hire an employee or employees to sell the PEO services. In all likelihood, these individuals will not be existing employees of any of the CPA firms.

The LLC's three members (the CPA firms) will each have a vote in all matters relating to the management of the LLC. Consequently none of the CPA firms will control the LLC.

Potential prospects to whom the LLC will attempt to sell the PEO's services include existing clients of the CPA firms for whom audit, review, and compilation services are rendered. In addition, businesses that are not currently clients of the CPA firms will be considered prospects. Prior to any sale being made to a client of the CPA firms, the fact that commission will be paid to the LLC will be disclosed to the client in writing in accordance with the rules adopted by the Board.

Questions

1. Is such an arrangement allowed under current Florida law and rules?
2. Does such an arrangement impair the independence of the public accounting firms?

Pertinent Law and Rules

Chapter 473.3205, Florida Statutes
Chapters 61h1-21.003 and 61h1-22 Florida Administrative Code
AICPA Professional Standards, ET Sections 503.01 and 505.03

Discussion and Conclusions

Question 1-Chapter 473.3205, Florida Statutes, states that a licensee may not accept a commission in connection with the sale or referral of public accounting services. However, this chapter states that a licensee may accept a commission for the sale of a product or service to a client, provided that the licensee discloses that fact to the client in writing in accordance with the rules adopted by the Board.

Based on this information, it is our opinion that the arrangement as described would be allowed under current Florida law and rules.

Question 2 – Chapter 61h1-22, Florida Administrative Code, states, generally, that all licensees must comply with the professional Standards as published by the American Institute of Certified Public Accountants. ET Section 503 of the Professional Standards states that a member in public practice shall not for a commission recommend or refer to a client any product or service or receive a commission when the member or the member's firm also performs for that client:

- a) An audit or review of a financial statement:
- b) A compilation of a financial statement when the member expects, or reasonably might expect, that a third party will use the financial statement and the member's compilation report does not disclose a lack of independence:or
- c) An examination of prospective financial information.

ET Section 505.03 of the Professional Standards states that if the member, individually or collectively with members of his or her firm, controls a separate business, the entity and all its owners and employees must comply with all of the provisions of the Code of Professional Conduct. Accordingly, Rule 101, Independence, and all its interpretations and rulings would apply to the separate business, its owners and employees and, if violated, the member's independence would be considered to be impaired.

ET Section 505.03 further states, “ If the member, individually or collectively with his or her firm does not control the separate business, the provisions of the Code would apply to the member for his or her actions, but not apply to the entity, its owners, and employees. For example, the entity could enter into a contingent fee arrangement with an attest client of the member or accept commissions for the referral of products or services to such attest client.”

Based on this information, it is our opinion that the arrangements as described would not impair the independence of the public accounting firms.

We respectfully request the Board's opinion on these issues.

Very truly yours,

E. Ray Charles, C.P.A.

ERC/rm