Ethical Challenges Posed by the Use of Predictive Case Analytics In Tax

by Travis Thompson
Published February 01, 2020

The use of predictive case analytics software has dramatically increased in the worlds of tax and accounting in the last couple of years. This powerful artificial intelligence tool can accurately predict court outcomes and enable users to find relevant cases and court opinions faster than ever before. While the utility of this transformative technology may be evident, tax practitioners should be cautious of the challenges related to the use of this futuristic software.

This paper will discuss the ethical and practical challenges related to the use of predictive case analytics software and what tax practitioners should be aware of when they represent clients in the future.

What is Predictive Case Analytics?

In order to understand what predictive case analytics is, one must understand what Artificial Intelligence is. Simply put, Artificial Intelligence is machines acting in ways that seem intelligent. The definition of “artificial” is something that doesn’t occur naturally. The most productive definition of “intelligence” comes from Howard Gardner. Gardner explains that intelligence is “[t]he ability to solve problems, or to create products, that are valued within on or more cultural settings.”

There are three types of artificial intelligence: robots, natural language processing, and machine learning. Robots are automated devices that perform physical tasks in the real world. Natural Language Processing enables machines to understand and generate language in its written and spoken form. Finally, Machine Learning uses predictive computer programs that automate learning through experience using large data sets.

Predictive case analytics software uses Artificial Intelligence to analyze past rulings and accurately predict the optimal treatment of new tax situations.

The Utility of Predictive Case Analytics

Predictive case analytics provides features and tools that are much more powerful than existing legal research tools. Most importantly, unlike existing online legal research platforms, the structure of predictive case
analytics reduces the possibility of human error when analyzing and interpreting prior case precedent and tax law. For example, the technology provides actual metrics to lawyers and accountants that show the potential success or failure in a percentage using statutes, regulations, and existing case precedent. The predictive technology gives practitioners a tool to determine the likelihood of success based upon the facts in their respective cases.

Technology that is this powerful has the potential to drastically increase case settlement between the parties, keeping costs down for clients and moving cases through the legal system faster and more efficiently. But is this the proper way for tax cases and legal precedent to be established? One could argue that if case settlement increases to help reduce costs for the parties involved, then case precedent will only be established by those with the resources who want to move forward with an actual Tax Court trial and eventual ruling. Only time will tell how this transformative technology will impact the way attorneys practice law.

**Practical Challenges and Impacts**

While the utility of predictive data analytics is evident, there are some immediate practical issues that tax practitioners should be mindful of. First, the technology is very new and no guidance has been provided to date by the court or the bar associations with respect to its use. Another challenge is simply that both parties to litigation might not have access to the technology. One lawyer with the technology may be able to keep costs down and represent a client more efficiently with the predictive analytics, and another lawyer utilizing traditional legal methods will charge clients more their respective expertise and understand of case precedent. Pretty soon this technology will change the economics of the practice of tax law, giving less experienced attorneys tools to compete in a marketplace that is less and less reliant upon the subjective experience of expensive law partners.

**Ethical Boundaries and Implications**

As a whole, attorneys need to understand potential ethical issues relating to the use of predictive case analytics. To date, no specific guidance has been given by the American Bar Association or state bar associations regarding the use of such technology in the practice of law.

Predictive case analytics may help attorneys abide by ABA Rules 1.3 and 3.2 which state a lawyer shall act with reasonable diligence and promptness in representing a client and to expedite litigation. In addition, given the technology has the ability to shorten the length of time an attorney
spends with a case, associates and partners should reacquaint themselves with ABA Rule 1.5 which states that unreasonable fees cannot be collected from a client. If law firms and accounting firms are becoming more efficient, and it takes less time for lawyer or accountant to do their job, can they still charge the same fees per hour? Or will lawyers with less experience that are experts in predictive analytics transform the tax law marketplace and force expensive law firm partners to reduce their rates to compete? Only time will tell.

**Conclusion**

While predictive case analytics has the power to transform the practice of law and accounting, the technology is too new to truly determine outside of hypotheticals the true practical and ethical outcomes. There has been no guidance given by the courts or bar associations regarding the use of such technology, but in the face of inevitable efficiency and costs savings for clients, this technology is sure to explode within the marketplace. Attorneys should continue to monitor future court rulings and ethical guidance from their respective bar associations, but until then, tax practitioners should know that we are on the precipice of a complete paradigm shift regarding the practice of law and accounting. And the power of this technology within the marketplace will be evident in the very near future.