

Statement on Standards for Tax Services No. 1, Tax Return Positions

Introduction

1. This ~~s~~Statement sets forth the applicable standards for members when recommending tax return positions and preparing or signing tax returns (including amended returns, claims for refund, and information returns) filed with any taxing authority. For purposes of these standards:

~~a. A~~ a tax return position is ~~(a1)~~ a position reflected on ~~the~~ tax return ~~as to~~ on which ~~the taxpayer~~ member has ~~been~~ specifically advised by ~~a member~~ a taxpayer or ~~(b2)~~ a position about which a member has knowledge of all material facts and, on the basis of those facts, has concluded whether the position is appropriate. ~~For purposes of these standards, a~~

~~b. A taxpayer~~ is a client, a member's employer, or any other third-party recipient of tax services.

2. This statement also addresses a member's obligation to advise a taxpayer of relevant tax return disclosure responsibilities and potential penalties.

3. In addition to the AICPA, various taxing authorities, at the federal, state and local levels, may impose specific reporting and disclosure standards with regard to recommending tax return positions or preparing or signing tax returns.¹ These standards can vary between taxing authorities and by type of tax.

Statement

4. A member should determine and comply with the standards, if any, that are imposed by the applicable taxing authority with respect to recommending a tax return position, or preparing or signing a tax return.

5. If the applicable taxing authority has no written standards with respect to recommending a tax return position or preparing or signing a tax return, or if its standards are lower than the standards set forth in this paragraph, the following standards will apply:

~~2. The following standards apply to a member when providing professional services that involve tax return positions:~~

~~a. A member should not recommend that a tax return position or prepare or sign a tax return taking a position be taken with respect to any item unless the member has a good-faith belief that the position has at least a realistic possibility of being sustained administratively or judicially on its merits if challenged.~~

¹ A member should refer to the current version of Internal Revenue Code Section 6694, *Understatement of taxpayer's liability by tax return preparer*, (or its successor) to determine the reporting standard applicable to preparers of federal tax returns.

~~b. — A member should not prepare or sign a return that the member is aware takes a position that the member may not recommend under the standard expressed in paragraph 2a.~~

~~eb. Notwithstanding paragraph 25a, a member may recommend a tax return position if that the member: (1) concludes is not frivolous as long as the member that there is a reasonable basis for the position and (2) advises the taxpayer to appropriately disclose that position. Notwithstanding paragraph 25ba, thea member may prepare or sign a tax return that reflects a position if (1) that the member concludes there is not frivolous as long asa reasonable basis for the position and (2) the position is appropriately disclosed.~~

~~46. When recommending a tax return positions or and when preparing or signing a tax return on which a tax return position is taken, a member should, when relevant, advise the taxpayer regarding potential penalty consequences of such tax return position and the opportunity, if any, to avoid such penalties through disclosure.~~

~~37. A member should not recommend a tax return position or prepare or sign a tax return reflecting a position that the member knows—~~

~~a. exploits the audit selection process of a taxing authority, or-~~

~~b. serves as a mere arguing position advanced solely to obtain leverage in the bargaining process of settlementa negotiation with a taxing authority.~~

~~84. When recommending a tax return position, a member has both the right and the responsibility to be an advocate for the taxpayer with respect to any position satisfying the aforementioned standards.~~

Explanation

~~9. The AICPA and various taxing authorities impose specific reporting and disclosure standards with respect to tax return positions and preparing or signing tax returns. In a given situation, the standards, if any, imposed by the applicable taxing authority may be higher or lower than the standards set forth in paragraph 5. A member is to comply with the standards, if any, of the applicable taxing authority; if the applicable taxing authority has no standards or if its standards are lower than the standards set forth in paragraph 5, the standards set forth in paragraph 5 will apply.~~

~~510. Our self-assessment tax system can function effectively only if taxpayers file tax returns that are true, correct, and complete. A tax return is prepared based on primarily a taxpayer's representation of facts, and the taxpayer has the final responsibility for positions taken on the return. The standards that apply to a taxpayer may differ from those that apply to a member.~~

~~116. In addition to a duty to the taxpayer, a member has a duty to the tax system. However, it is well established that the taxpayer has no obligation to pay more taxes than are legally owed, and a member has a duty to the taxpayer to assist in achieving that result. The standards contained in paragraphs 2, 3, and 4-8 recognize thea member's² responsibilities to both the taxpayers and to the tax system.~~

~~712.~~ In order to meet the standards contained in paragraph 2, a member should in good faith believe that the tax return position is warranted in existing law or can be supported by a good-faith argument for an extension, modification, or reversal of existing law. For example, ~~i~~n reaching ~~such a conclusion concerning whether a given standard in paragraph 4 or 5 has been satisfied,~~ a member may consider a well-reasoned construction of the applicable statute, well-reasoned articles or treatises, or pronouncements issued by the applicable taxing authority, regardless of whether such sources would be treated as *authority* under Internal Revenue Code ~~s~~Section 6662, *Imposition of accuracy-related penalty on underpayments*, and the regulations thereunder. A position would not fail to meet these standards merely because it is later abandoned for practical or procedural considerations during an administrative hearing or in the litigation process.

~~813.~~ If a member has a good-faith belief that more than one tax return position meets the standards set forth in paragraphs 4 and 5-2, a member's advice concerning alternative acceptable positions may include a discussion of the likelihood that each such position might or might not cause the taxpayer's tax return to be examined and whether the position would be challenged in an examination. In such circumstances, such advice is not a violation of paragraph 3~~a~~7.

~~14. 9.~~ — In some cases, a member may conclude that a tax return position is not warranted under the standard set forth in paragraph 2a. A taxpayer may, however, still wish to take such a position. Under such circumstances, the taxpayer should have the opportunity to take such a position, and the member may prepare and sign the return provided the position is appropriately disclosed on the return or claim for refund and the position is not frivolous. A frivolous position is one that is knowingly advanced in bad faith and is patently improper.

~~10.~~ A member's determination of whether information is appropriately disclosed by the taxpayer should be based on the facts and circumstances of the particular case and the ~~authorities regarding disclosure requirements of in~~ the applicable taxing ~~jurisdiction~~ authority. If a member recommending a position, but not engaged to prepare or sign the related tax return, advises the taxpayer concerning appropriate disclosure of the position, then the member shall be deemed to meet ~~the disclosure requirements of~~ these standards.

~~151.~~ If particular facts and circumstances lead a member to believe that a taxpayer penalty might be asserted, the member should so advise the taxpayer and should discuss with the taxpayer the opportunity, if any, to avoid such penalty by disclosing the position on the tax return. Although a member should advise the taxpayer with respect to disclosure, it is the taxpayer's responsibility to decide whether and how to disclose.

~~162.~~ For purposes of this ~~s~~Statement, preparation of a tax return includes giving advice on events that have occurred at the time the advice is given if the advice is directly relevant to determining the existence, character, or amount of a schedule, entry, or other portion of a tax return.

Statement on Standards for Tax Services No. 2, Answers to Questions on Returns

Introduction

1. This sStatement sets forth the applicable standards for members when signing the preparer's declaration on a tax return if one or more questions on the return have not been answered. The term *questions* includes requests for information on the return, in the instructions, or in the regulations, whether or not stated in the form of a question.

Statement

2. A member should make a reasonable effort to obtain from the taxpayer the information necessary to provide appropriate answers to all questions on a tax return before signing as preparer.

Explanation

3. It is recognized that the questions on tax returns are not of uniform importance, and often they are not applicable to the particular taxpayer. Nevertheless, there are at least ~~two~~three reasons why a member should be satisfied that a reasonable effort has been made to obtain information to provide appropriate answers to the questions on the return that are applicable to a taxpayer.

a. A question may be of importance in determining taxable income or loss, or the tax liability shown on the return, in which circumstance an omission may detract from the quality of the return.

b. A request for information may require a disclosure necessary for a complete return or to avoid penalties.

~~*c.*~~ A member often must sign a preparer's declaration stating that the return is true, correct, and complete.

4. Reasonable grounds may exist for omitting an answer to a question applicable to a taxpayer. For example, reasonable grounds may include the following:

a. The information is not readily available and the answer is not significant in terms of taxable income or loss, or the tax liability shown on the return.

b. Genuine uncertainty exists regarding the meaning of the question in relation to the particular return.

c. The answer to the question is voluminous; in such cases, a statement should be made on the return that the data will be supplied upon examination.

5. A member should not omit an answer merely because it might prove disadvantageous to a taxpayer.

6. A member should consider whether the omission of an answer to a question may cause the return to be deemed incomplete or result in penalties.

~~67.~~ If reasonable grounds exist for omission of an answer to an applicable question, a taxpayer is not required to provide on the return an explanation of the reason for the omission. ~~In this connection, a member should consider whether the omission of an answer to a question may cause the return to be deemed incomplete.~~

Statement on Standards for Tax Services No. 3, Certain Procedural Aspects of Preparing Returns

Introduction

1. This ~~s~~Statement sets forth the applicable standards for members concerning the obligation to examine or verify certain supporting data or to consider information related to another taxpayer when preparing a taxpayer's tax return.

Statement

2. In preparing or signing a return, a member may in good faith rely, without verification, on information furnished by the taxpayer or by third parties. However, a member should not ignore the implications of information furnished and should make reasonable inquiries if the information furnished appears to be incorrect, incomplete, or inconsistent either on its face or on the basis of other facts known to ~~a~~the member. Further, a member should refer to the taxpayer's returns for one or more prior years whenever feasible.

3. If the tax law or regulations impose a condition with respect to deductibility or other tax treatment of an item, such as taxpayer maintenance of books and records or substantiating documentation to support the reported deduction or tax treatment, a member should make appropriate inquiries to determine to the member's satisfaction whether such condition has been met.

4. When preparing a tax return, a member should consider information actually known to that member from the tax return of another taxpayer if the information is relevant to that tax return and its consideration is necessary to properly prepare that tax return. In using such information, a member should consider any limitations imposed by any law or rule relating to confidentiality.

Explanation

5. The preparer's declaration on a tax return often states that the information contained therein is true, correct, and complete to the best of the preparer's knowledge and belief based on all information known by the preparer. This type of reference should be understood to include information furnished by the taxpayer or by third parties to a member in connection with the preparation of the return.

6. The preparer's declaration does not require a member to examine or verify supporting data; a member may rely on information furnished by the taxpayer unless it appears to be incorrect, incomplete, or inconsistent. However, ~~a distinction should be made between (a) there is a need either to determine by inquiry that a specifically required condition, such as maintaining books and records or substantiating documentation, has been satisfied and/or to obtain information when the material furnished appears to be incorrect, or incomplete or inconsistent, and (b) the need for a member to examine underlying information. In fulfilling his or her obligation to exercise due diligence in preparing a return, a member may rely on information furnished by the taxpayer unless it appears to be incorrect, incomplete, or inconsistent.~~ Although a member has certain responsibilities in exercising due diligence in preparing a return, the taxpayer has the ultimate responsibility for the contents of the return. Thus, if the taxpayer presents unsupported data in the form of lists of tax information, such as dividends and interest received, charitable contributions, and medical expenses, such information may be used in the preparation of a tax return without verification unless it appears to be incorrect, incomplete, or inconsistent either on its face or on the basis of other facts known to a member.

7. Even though there is no requirement to examine underlying documentation, a member should encourage the taxpayer to provide supporting data where appropriate. For example, a member should encourage the taxpayer to submit underlying documents for use in tax return preparation to permit full consideration of income and deductions arising from security transactions and from pass-through entities, such as estates, trusts, partnerships, and S corporations.

8. The source of information provided to a member by a taxpayer for use in preparing the return is often a pass-through entity, such as a limited partnership, in which the taxpayer has an interest but is not involved in management. A member may accept the information provided by the pass-through entity without further inquiry, unless there is reason to believe it is incorrect, incomplete, or inconsistent, either on its face or on the basis of other facts known to the member. In some instances, it may be appropriate for a member to advise the taxpayer to ascertain the nature and amount of possible exposure to tax deficiencies, interest, and penalties, by taxpayer contact with management of the pass-through entity.

9. A member should make use of a taxpayer's returns for one or more prior years in preparing the current return whenever feasible. Reference to prior returns and discussion of prior-year tax determinations with the taxpayer should provide information to determine the taxpayer's general tax status, avoid the omission or duplication of items, and afford a basis for the treatment of similar or related transactions. As with the examination of information supplied for the current year's return, the extent of comparison of the details of income and deduction between years depends on the particular circumstances.

Statement on Standards for Tax Services No. 4, Use of Estimates

Introduction

1. This ~~s~~Statement sets forth the applicable standards for members when using the taxpayer's estimates in the preparation of a tax return. A member may advise on estimates used in the preparation of a tax return, but the taxpayer has the responsibility to provide the estimated data. Appraisals or valuations are not considered estimates for purposes of this ~~S~~statement.

Statement

2. Unless prohibited by statute or by rule, a member may use the taxpayer's estimates in the preparation of a tax return if it is not practical to obtain exact data and if the member determines that the estimates are reasonable based on the facts and circumstances known to the member. ~~If~~ ~~the taxpayer's estimates are used, they~~ should be presented in a manner that does not imply greater accuracy than exists.

Explanation

3. Accounting requires the exercise of professional judgment and, in many instances, the use of approximations based on judgment. The application of such accounting judgments, as long as not in conflict with methods set forth by a taxing authority, is acceptable. These judgments are not estimates within the purview of this ~~s~~Statement. For example, a federal income tax regulation provides that if all other conditions for accrual are met, the exact amount of income or expense need not be known or ascertained at year end if the amount can be determined with reasonable accuracy.

4. When the taxpayer's records do not accurately reflect information related to small expenditures, accuracy in recording some data may be difficult to achieve. Therefore, the use of estimates by a taxpayer in determining the amount to be deducted for such items may be appropriate.

5. When records are missing or precise information about a transaction is not available at the time the return must be filed, a member may prepare a tax return using a taxpayer's estimates of the missing data.

6. Estimated amounts should not be presented in a manner that provides a misleading impression about the degree of factual accuracy.

7. Specific disclosure that an estimate is used for an item in the return is not generally required; however, such disclosure should be made in unusual circumstances where nondisclosure might mislead the taxing authority regarding the degree of accuracy of the return as a whole. Some examples of unusual circumstances include the following:

a. A taxpayer has died or is ill at the time the return must be filed.

b. A taxpayer has not received a Schedule K-1 for a pass-through entity at the time the tax return is to be filed.

| c. There is litigation pending (for example, a bankruptcy proceeding) that bears on the return.

| d. Fire, ~~or~~ computer failure, or natural disaster has destroyed the relevant records.

Statement on Standards for Tax Services No. 5, Departure From a Position Previously Concluded in an Administrative Proceeding or Court Decision

Introduction

1. This ~~s~~Statement sets forth the applicable standards for members in recommending a tax return position that departs from the position determined in an administrative proceeding or in a court decision with respect to the taxpayer's prior return.
2. For purposes of this ~~S~~statement, *administrative proceeding* ~~also~~ includes an examination by a taxing authority or an appeals conference relating to a return or a claim for refund.
3. For purposes of this ~~S~~statement, *court decision* means a decision by any court having jurisdiction over tax matters.

Statement

4. The tax return position with respect to an item as determined in an administrative proceeding or court decision does not restrict a member from recommending a different tax position in a later year's return, unless the taxpayer is bound to a specified treatment in the later year, such as by a formal closing agreement. Therefore, ~~as provided in Statement on Standards for Tax Services (SSTS) No. 1, *Tax Return Positions*~~, the member may recommend a tax return position or prepare or sign a tax return that departs from the treatment of an item as concluded in an administrative proceeding or court decision with respect to a prior return of the taxpayer provided the requirements of Statement on Standards for Tax Services (SSTS) No. 1, *Tax Return Positions*, are satisfied.

Explanation

5. If an administrative proceeding or court decision has resulted in a determination concerning a specific tax treatment of an item in a prior year's return, a member will usually recommend this same tax treatment in subsequent years. However, departures from consistent treatment may be justified under such circumstances as the following:

- a. Taxing authorities tend to act consistently in the disposition of an item that was the subject of a prior administrative proceeding but generally are not bound to do so. Similarly, a taxpayer is not bound to follow the tax treatment of an item as consented to in an earlier administrative proceeding.
- b. The determination in the administrative proceeding or the court's decision may have been caused by a lack of documentation. Supporting data for the later year may be appropriate.
- c. A taxpayer may have yielded in the administrative proceeding for settlement purposes or not appealed the court decision, even though the position met the standards in SSTS No. 1.

- d. Court decisions, rulings, or other authorities that are more favorable to a taxpayer's current position may have developed since the prior administrative proceeding was concluded or the prior court decision was rendered.
- 6. The consent in an earlier administrative proceeding and the existence of an unfavorable court decision are factors that the member should consider in evaluating whether the standards in SSTS No. 1 are met.

Statement on Standards for Tax Services No. 6, Knowledge of Error: Return Preparation and Administrative Proceedings

Introduction

1. This ~~S~~statement sets forth the applicable standards for a member who becomes aware of: (a) an error in a taxpayer's previously filed tax return; (b) an error in a return that is the subject of an administrative proceeding, such as an examination by a taxing authority or an appeals conference; or (c) a taxpayer's failure to file a required tax return. As used herein, the term *error* includes any position, omission, or method of accounting that, at the time the return is filed, fails to meet the standards set out in Statement on Standards for Tax Services (SSTS) No. 1, *Tax Return Positions*. The term *error* also includes a position taken on a prior year's return that no longer meets these standards due to legislation, judicial decisions, or administrative pronouncements having retroactive effect. However, an error does not include an item that has an insignificant effect on the taxpayer's tax liability. The term *administrative proceeding* does not include a criminal proceeding.

2. This ~~S~~statement applies whether or not the member prepared or signed the return that contains the error.

3. Special considerations may apply when a member has been engaged by legal counsel to provide assistance in a matter relating to the counsel's client.

Statement

~~43.~~ A member should inform the taxpayer promptly upon becoming aware of an error in a previously filed return, an error in a return that is the subject of an administrative proceeding, or upon becoming aware of a taxpayer's failure to file a required return. A member also should advise the taxpayer of the potential consequences of the error and recommend the corrective measures to be taken. Such advice and recommendation may be given orally. The member is not ~~obligated~~ allowed to inform the taxing authority ~~and a member may not do so~~ without the taxpayer's permission, except when required by law.

~~45.~~ If a member is requested to prepare the current year's return and the taxpayer has not taken appropriate action to correct an error in a prior year's return, the member should consider whether to withdraw from preparing the return and whether to continue a professional or employment relationship with the taxpayer. If the member does prepare such current year's return, the member should take reasonable steps to ensure that the error is not repeated.

6. If a member is representing a taxpayer in an administrative proceeding with respect to a return that contains an error of which the member is aware, the member should request the taxpayer's agreement to disclose the error to the taxing authority. Lacking such agreement, the member should consider whether to withdraw from representing the taxpayer in the administrative proceeding and whether to continue a professional or employment relationship with the taxpayer.

Explanation

~~57.~~ While performing services for a taxpayer, a member may become aware of an error in a previously filed return or may become aware that the taxpayer failed to file a required return. The member should advise the taxpayer of the error and the potential consequences, and recommend the measures to be taken. Similarly, when representing the taxpayer before a taxing authority in an administrative proceeding with respect to a return containing an error of which the member is aware, the member should advise the taxpayer to disclose the error to the taxing authority and of the potential consequences of not disclosing the error. Such advice and recommendation may be given orally. ~~If the member believes that the taxpayer could be charged with fraud or other criminal misconduct, the taxpayer should be advised to consult legal counsel before taking any action.~~

~~86.~~ It is the taxpayer's responsibility to decide whether to correct the error. If the taxpayer does not correct an error, a member should consider whether to withdraw from the engagement and whether to continue a professional or employment relationship with the taxpayer. ~~While~~Although recognizing that the taxpayer may not be required by statute to correct an error by filing an amended return, a member should consider whether a taxpayer's decision not to file an amended return or otherwise correct an error may predict future behavior that might require termination of the relationship.

~~9.~~ Once the member has obtained the taxpayer's consent to disclose an error in an administrative proceeding, the disclosure should not be delayed to such a degree that the taxpayer or member might be considered to have failed to act in good faith or to have, in effect, provided misleading information. In any event, disclosure should be made before the conclusion of the administrative proceeding.

~~10.~~ A conflict between the member's interests and those of the taxpayer may be created by, for example, the potential for violating Code of Professional Conduct ~~Rule 301, Confidential Client Information (AICPA, Professional Standards, vol. 2, ET sec. 301 par. .01)~~ (relating to the member's confidential client relationship); the tax law and regulations; or laws on privileged communications, as well as by the potential adverse impact on a taxpayer of a member's withdrawal, and other considerations. ~~may create a conflict between the member's interests and those of the taxpayer.~~ Therefore, a member should consider consulting with his or her own legal counsel before deciding upon recommendations to the taxpayer and whether to continue a professional or employment relationship with the taxpayer.

~~11.~~ If a member believes that a taxpayer could be charged with fraud or other criminal misconduct, the member should advise the taxpayer to consult with an attorney before the taxpayer takes any action.

~~12.~~ If a member decides to continue a professional or employment relationship with the taxpayer and is requested to prepare a tax return for a year subsequent to that in which the error occurred, the member should take reasonable steps to ensure that the error is not repeated. If the subsequent year's tax return cannot be prepared without perpetuating the error, the member should consider withdrawal from the return preparation. If a member learns that the taxpayer is using an erroneous method of accounting and it is past the due date to request permission to change to a method meeting the standards of SSTS No. 1, the member may sign a tax return for the current year, providing the tax return includes appropriate disclosure of the use of the erroneous method.

~~12. Once the member has obtained the taxpayer's consent to disclose an error in an administrative proceeding, the disclosure should not be delayed to such a degree that the taxpayer or member might be considered to have failed to act in good faith or to have, in effect, provided misleading information. In any event, disclosure should be made before the conclusion of the administrative proceeding.~~

§13. Whether an error has no more than an insignificant effect on the taxpayer's tax liability is left to the professional judgment of the member based on all the facts and circumstances known to the member. In judging whether an erroneous method of accounting has more than an insignificant effect, a member should consider the method's cumulative effect, as well as ~~and~~ its effect on the current year's tax return or the tax return that is the subject of the administrative proceeding.

914. If a member becomes aware of the error while performing services for a taxpayer that do not involve tax return preparation or representation in an administrative proceeding, the member's responsibility is to advise the taxpayer of the existence of the error and to recommend that the error be discussed with the taxpayer's tax return preparer. Such recommendation may be given orally.

~~[NOTE THIS STATEMENT #7 HAS BEEN WRAPPED INTO STATEMENT #6]~~

~~Statement on Standards for Tax Services No. 7, Knowledge of Error: Administrative Proceedings~~

Introduction

~~1. This Statement sets forth the applicable standards for a member who becomes aware of an error in a return that is the subject of an administrative proceeding, such as an examination by a taxing authority or an appeals conference. The term *administrative proceeding* does not include a criminal proceeding. As used herein, the term *error* includes any position, omission, or method of accounting that, at the time the return is filed, fails to meet the standards set out in Statement on Standards for Tax Services (SSTS) No. 1, *Tax Return Positions*. The term *error* also includes a position taken on a prior year's return that no longer meets these standards due to legislation, judicial decisions, or administrative pronouncements having retroactive effect. However, an error does not include an item that has an insignificant effect on the taxpayer's tax liability.~~

~~2. This Statement applies whether or not the member prepared or signed the return that contains the error. Special considerations may apply when a member has been engaged by legal counsel to provide assistance in a matter relating to the counsel's client.~~

Statement

~~3. If a member is representing a taxpayer in an administrative proceeding with respect to a return that contains an error of which the member is aware, the member should inform the taxpayer promptly upon becoming aware of the error. The member should recommend the corrective measures to be taken. Such recommendation may be given orally. A member is neither obligated to inform the taxing authority nor allowed to do so without the taxpayer's permission, except where required by law.~~

~~4. A member should request the taxpayer's agreement to disclose the error to the taxing authority. Lacking such agreement, the member should consider whether to withdraw from representing the taxpayer in the administrative proceeding and whether to continue a professional or employment relationship with the taxpayer.~~

Explanation

~~5. When the member is engaged to represent the taxpayer before a taxing authority in an administrative proceeding with respect to a return containing an error of which the member is aware, the member should advise the taxpayer to disclose the error to the taxing authority. Such recommendation may be given orally. If the member believes that the taxpayer could be charged with fraud or other criminal misconduct, the taxpayer should be advised to consult legal counsel before taking any action.~~

~~6.— It is the taxpayer’s responsibility to decide whether to correct the error. If the taxpayer does not correct an error, a member should consider whether to withdraw from representing the taxpayer in the administrative proceeding and whether to continue a professional or employment relationship with the taxpayer. While recognizing that the taxpayer may not be required by statute to correct an error by filing an amended return, a member should consider whether a taxpayer’s decision not to file an amended return may predict future behavior that might require termination of the relationship. Moreover, a member should consider consulting with his or her own legal counsel before deciding on recommendations to the taxpayer and whether to continue a professional or employment relationship with the taxpayer. The potential for violating Code of Professional Conduct rule 301 (relating to the member’s confidential client relationship), the tax law and regulations, laws on privileged communications, potential adverse impact on a taxpayer of a member’s withdrawal, and other considerations may create a conflict between the member’s interests and those of the taxpayer.~~

~~7.— Once disclosure is agreed on, it should not be delayed to such a degree that the taxpayer or member might be considered to have failed to act in good faith or to have, in effect, provided misleading information. In any event, disclosure should be made before the conclusion of the administrative proceeding.~~

~~8.— Whether an error has an insignificant effect on the taxpayer’s tax liability is left to the professional judgment of the member based on all the facts and circumstances known to the member. In judging whether an erroneous method of accounting has more than an insignificant effect, a member should consider the method’s cumulative effect and its effect on the return that is the subject of the administrative proceeding.~~

Statement on Standards for Tax Services No. 87, Form and Content of Advice to Taxpayers

Introduction

1. This ~~S~~statement sets forth the applicable standards for members concerning certain aspects of providing advice to a taxpayer and considers the circumstances in which a member has a responsibility to communicate with a taxpayer when subsequent developments affect advice previously provided. The ~~s~~Statement does not, however, cover a member's responsibilities when the expectation is that the advice rendered is likely to be relied on by parties other than the taxpayer.

Statement

2. A member should use professional judgment to ensure that tax advice provided to a taxpayer reflects ~~professional~~ competence and appropriately serves the taxpayer's needs. When communicating tax advice to a taxpayer in writing, a member should comply with relevant taxing authorities' standards, if any, applicable to written tax advice. A member should use professional judgment about any need to document oral advice. A member is not required to follow a standard format ~~or guidelines in when communicating or documenting written or oral advice to a taxpayer.~~

3. A member should assume that tax advice provided to a taxpayer will affect the manner in which the matters or transactions considered would be reported or disclosed on the taxpayer's tax returns. ~~Therefore~~Thus, for all tax advice given to a taxpayer, a member should consider, when relevant: (a) return reporting and disclosure standards applicable to the related tax return position, and (b) the potential penalty consequences of the return position. In ascertaining applicable return reporting and disclosure standards, a member should follow the standards in Statement on Standards for Tax Services (SSTS) No. 1, Tax Return Positions.

4. A member has no obligation to communicate with a taxpayer when subsequent developments affect advice previously provided with respect to significant matters, except while assisting a taxpayer in implementing procedures or plans associated with the advice provided or when a member undertakes this obligation by specific agreement.

Explanation

5. Tax advice is recognized as a valuable service provided by members. The form of advice may be oral or written and the subject matter may range from routine to complex. Because the range of advice is so extensive and because advice should meet the specific needs of a taxpayer, neither a standard format nor guidelines for communicating or documenting advice to the taxpayer can be established to cover all situations.

6. Although oral advice may serve a taxpayer's needs appropriately in routine matters or in well-defined areas, written communications are recommended in important, unusual, substantial dollar value, or complicated transactions. The member may use professional judgment about whether, subsequently, to document oral advice in writing.

7. In deciding on the form of advice provided to a taxpayer, a member should exercise professional judgment and should consider such factors as the following:

- a. The importance of the transaction and amounts involved
- b. The specific or general nature of the taxpayer's inquiry
- c. The time available for development and submission of the advice
- d. ~~The technical complications presented~~ complexity involved
- e. The existence of authorities and precedents
- f. The tax sophistication of the taxpayer
- g. The need to seek other professional advice
- h. The type of transaction and whether it is subject to heightened reporting or disclosure requirements
- i. The potential penalty consequences of the tax return position for which the advice is rendered
- j. Whether any potential applicable penalties can be avoided through disclosure
- k. Whether the member intends for the taxpayer to rely upon the advice to avoid potential penalties.

8. A member may assist a taxpayer in implementing procedures or plans associated with the advice offered. When providing such assistance, the member should review and revise such advice as warranted by new developments and factors affecting the transaction.

9. Sometimes a member is requested to provide tax advice but does not assist in implementing the plans adopted. Although such developments as legislative or administrative changes or future judicial interpretations may affect the advice previously provided, a member cannot be expected to communicate subsequent developments that affect such advice unless the member undertakes this obligation by specific agreement with the taxpayer.

10. Taxpayers should be informed that: ~~(a) the advice reflects professional judgment based on an~~ upon facts and law existing as of the date the advice is rendered ~~situation~~ and (b) that subsequent developments could affect previously rendered professional advice. Members may use precautionary language to the effect that their advice is based on facts as stated and authorities that are subject to change.

11. In providing tax advice, a member should be cognizant of applicable confidentiality privileges.