
EXPOSURE DRAFT

PROPOSED STATEMENTS ON STANDARDS FOR TAX SERVICES

November 26, 2008

Prepared by the Tax Executive Committee

Comments should be received by May 15, 2009.

**Comments should be addressed to Edward S. Karl, Director, AICPA Tax Division,
File: SSTS Comments, 1455 Pennsylvania Avenue NW, Washington, DC 20004-1081,
or SSTScomments@aicpa.org.**

Copyright © 2008 by American Institute of Certified Public Accountants, Inc.

Permission is granted to make copies of this work provided that such copies are for personal, intraorganizational, or educational use only and are not sold or disseminated and provided further that each copy bears the following credit line: "Copyright © 2008 by American Institute of Certified Public Accountants, Inc. Used with permission."

November 26, 2008

Accompanying this letter is an exposure draft of proposed Statements on Standards for Tax Services (SSTs) to replace the current SSTs. The reasons for revising the current SSTs are set forth in this exposure draft in the "History" section of the preface. An executive summary regarding the exposure draft and a copy of the current SSTs that has been marked to indicate the proposed revisions are located on the Tax Section of the AICPA Web site. A link to the exposure draft materials can be found on the Professional Standards and Ethics Web page at <http://tax.aicpa.org/Resources/Professional+Standards+and+Ethics/>.

After the exposure period is concluded and the comments are evaluated by the Tax Executive Committee (TEC), the TEC may decide to publish the proposed SSTs as they are now being exposed for comment or as they are modified based on the comments that are received and the further deliberations that are made by the TEC. At this time, the TEC expects that the proposed SSTs will become effective no earlier than January 1, 2010.

Your comments are an important part of the standard-setting process. Please take this opportunity to comment on the proposed SSTs.

Comments must be received at the AICPA by May 15, 2009. All written replies to this exposure draft will become part of the public record of the AICPA and will be available for public inspection at the offices of the AICPA after May 15, 2009 for one year.

Please send your comments to Edward S. Karl, Director, AICPA Tax Division, File: SSTs Comments, 1455 Pennsylvania Avenue NW, Washington, DC 20004-1081, or to SSTscomments@aicpa.org. Submitting comments via e-mail is encouraged and would be appreciated.

Sincerely,

Alan R. Einhorn
Chair
Tax Executive Committee

Conrad M. Davis
Cochair
SSTs Revisions Task Force

Jay M. Levine
Cochair
SSTs Revisions Task Force

Arthur J. Kip Dellinger, Jr.
Chair
Tax Practice Responsibilities Committee

Edward S. Karl
Director
Tax Division

**Tax Executive Committee
(2007–2008)**

Jeffrey R. Hoops, *Chair*
Alan R. Einhorn, *Vice Chair*
Evelyn M. Capassakis
Stephen R. Corrick
Andrew D. Gibson
Cherie J. Hennig
Diane D. Fuller
Andrew M. Mattson
Chris T. Muirhead

Kenneth N. Orbach
Gregory A. Porcaro
Roby Sawyers
Joseph F. Scutellaro
Christopher J. Sokolowski
Norman S. Solomon
Mark Van Deveer
Brian T. Whitlock
Carol E. Zurcher

**Tax Practice Responsibilities Committee
(2007–2008)**

Arthur J. Kip Dellinger, Jr., *Chair*
Eve Elgin, *Immediate Past Chair*
Stephen R. Buschel
Gregory M. Fowler
Jeffrey Frishman
Jan D. Hayden
Douglas Milford

Trenton S. Olmstead
Gerald W. Padwe
Susan J. Rosenberg
James W. Sansone
James H. Schlessler
Lisa G. Workman

**Additional Members
Tax Executive Committee (2003–2007)**

Steven K. Bentley
Barbara A. Bond
Mark H. Ely
John C. Gardner
Lisa C. Germano
Ronald B. Hegt
Nancy K. Hyde
Janice M. Johnson
Dean A. Jorgensen
Annette Nellen

Thomas P. Ochenschlager
W. Val Oveson
Thomas J. Purcell, III, *Chair*
S. Richard Royster, II
James W. Sansone
Judyth A. Swingen
Patricia Thompson
James P. Whitson
Paul H. Wilner
Robert A. Zarzar, *Chair*

**Additional Members
Tax Practice Responsibilities Committee (2003–2007)**

J. Coalter Baker
Timothy J. Burke, Jr.
Lawrence H. Carlton
Conrad M. Davis
Alan R. Einhorn
John C. Gardner
Mary Lou Gervie
Stuart Kessler
Dori Laskin
Sharon S. Lassar
Keith R. Lee

Jay M. Levine
Robin C. Makar
Dan L. Mendelson, *Chair*
Christine K. Peterson
Michael J. Predhomme
Eric E. Santa Maria
Mark N. Schneider
Gerard H. Schreiber, Jr.
Joseph F. Scutellaro
J. Edward Swails, *Chair*
Thomas G. Tierney

SSTS Revisions Task Force

Conrad M. Davis, *Cochair*
Jay M. Levine, *Cochair*
Timothy J. Burke, Jr.
Arthur J. Kip Dellinger, Jr.
Eve Elgin
Jeffrey Frishman

Gregory M. Fowler
John C. Gardner
Keith R. Lee
Mark N. Schneider
Gerard H. Schreiber, Jr.
J. Edward Swails

AICPA Staff

Thomas P. Ochsenschlager
Vice President—Taxation
Tax Division

Edward S. Karl
Director
Tax Division

William R. Stromsem
Director
Tax Division

Jean E. Trompeter
Technical Manager
Tax Division

Contents of Statements

	Page
Preface	7
History	7
Ongoing Process	8
Statement on Standards for Tax Services No. 1, <i>Tax Return Positions</i>	10
Introduction.....	10
Statement	10
Explanation	11
Statement on Standards for Tax Services No. 2, <i>Answers to Questions on Returns</i>	13
Introduction.....	13
Statement	13
Explanation	13
Statement on Standards for Tax Services No. 3, <i>Certain Procedural Aspects of Preparing Returns</i>	14
Introduction.....	14
Statement	14
Explanation	14
Statement on Standards for Tax Services No. 4, <i>Use of Estimates</i>	16
Introduction.....	16
Statement	16
Explanation	16
Statement on Standards for Tax Services No. 5, <i>Departure From a Position Previously Concluded in an Administrative Proceeding or Court Decision</i>	17
Introduction.....	17
Statement	17
Explanation	17
Statement on Standards for Tax Services No. 6, <i>Knowledge of Error: Return Preparation and Administrative Proceedings</i>	19
Introduction.....	19
Statement	19
Explanation	20
Statement on Standards for Tax Services No. 7, <i>Form and Content of Advice to Taxpayers</i>	21
Introduction.....	21
Statement	21
Explanation	21

Preface

1. Standards are the foundation of a profession. The AICPA aids its members in fulfilling their ethical responsibilities by instituting and maintaining standards against which their professional performance can be measured. Compliance with professional standards of tax practice also reaffirms the public's awareness of the professionalism that is associated with CPAs as well as the AICPA.

2. This publication sets forth enforceable tax practice standards for members of the AICPA, Statements on Standards for Tax Services (SSTs or statements). These statements apply to all members providing tax services regardless of the jurisdictions in which they practice. Interpretations of these statements may be issued as guidance to assist in understanding and applying the statements. The SSTs and their interpretations are intended to complement other standards of tax practice, such as Treasury Department Circular No. 230, *Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, Enrolled Retirement Plan Agents, and Appraisers before the Internal Revenue Service*; penalty provisions of the Internal Revenue Code; and state boards of accountancy rules.

3. The SSTs are written in as simple and objective a manner as possible. However, by their nature, practice standards provide for an appropriate range of behavior and need to be interpreted to address a broad range of personal and professional situations. The SSTs recognize this need by, in some sections, providing relatively subjective rules and by leaving certain terms undefined. These terms are generally rooted in tax concepts and, therefore, should be readily understood by tax practitioners. Accordingly, enforcement of these rules, as part of the AICPA's Code of Professional Conduct Rule 201, *General Standards*, and Rule 202, *Compliance With Standards* (AICPA, *Professional Standards*, vol. 2, ET sec. 201 par. .01 and ET sec. 202 par. .01), will be undertaken on a case-by-case basis. Members are expected to comply with them.

History

4. The SSTs have their origin in the Statements on Responsibilities in Tax Practice (SRTPs), which provided a body of advisory opinions on good tax practice. The guidelines as originally set forth in the SRTPs became more important than many members had anticipated when the guidelines were issued. The courts, IRS, state accountancy boards, and other professional organizations recognized and relied on the SRTPs as the appropriate articulation of professional conduct in a CPA's tax practice. The SRTPs became de facto enforceable standards of professional practice, because state disciplinary organizations and courts regularly held CPAs accountable for failure to follow the guidelines set forth in the SRTPs.

5. The AICPA's Tax Executive Committee concluded it was appropriate to issue tax practice standards that would become a part of the Institute's *Professional Standards*. At its July 1999 meeting, the AICPA Board of Directors approved support of the executive committee's initiative and placed the matter on the agenda of the October 1999 meeting of the Institute's governing Council. On October 19, 1999, Council approved designating the Tax Executive Committee as a standard-setting body, thus authorizing that committee to promulgate standards of tax practice. As a result, the original SSTs, largely mirroring the SRTPs, were issued in August 2000.

6. The SRTPs were originally issued between 1964 and 1977. The first 9 SRTPs and the introduction were promulgated in 1976; the 10th SRTP was issued in 1977. The original SRTPs concerning the CPA's responsibility to sign the tax return (SRTP No. 1, *Signature of Preparers*, and No. 2, *Signature of Reviewer: Assumption of Preparer's Responsibility*) were withdrawn in 1982 after Treasury Department regulations were issued adopting substantially the same standards for all tax return preparers. The 6th and 7th SRTPs, concerning the responsibility of a CPA who becomes aware of an error, were revised in 1991. The first interpretation of the SRTPs, Interpretation No. 1-1, "Realistic Possibility Standard," was approved in December 1990. The SSTSs and Interpretation No. 1-1, "Realistic Possibility Standard," of SSTS No. 1, *Tax Return Positions* (AICPA, *Professional Standards*, vol. 2, TS sec. 9100 par .01-.41), superseded and replaced the SRTPs and their Interpretation No. 1-1, effective October 31, 2000. Although the number and names of the SSTSs, and the substance of the rules contained in each of them, remained the same as in the SRTPs, the language was revised to both clarify and reflect the enforceable nature of the SSTSs. In addition, because the applicability of these standards is not limited to federal income tax practice (as was the case with the SRTPs), the language was changed to indicate the broader scope. In 2003, in connection with the tax shelter debate, SSTS Interpretation No. 1-2, "Tax Planning," of SSTS No. 1 (AICPA, *Professional Standards*, vol. 2, TS sec. 9100 par. 42-.93), was issued to clarify a member's responsibilities in connection with tax planning; that interpretation became effective December 31, 2003.

7. When the original SSTSs were issued, an effort was made to keep to a minimum any changes in the language of the SSTSs from that of the predecessor SRTPs. This was done to alleviate concerns regarding the enforceability of standards that differed from the SRTPs under which members had been practicing. Since the issuance of the original SSTSs, members have asked for clarification on certain matters, such as the duplication of the language in SSTS No. 6, *Knowledge of Error: Return Preparation*, and No. 7, *Knowledge of Error: Administrative Proceedings* (AICPA, *Professional Standards*, vol. 2, TS sec. 600 and 700). Also, certain changes in federal and state tax laws have raised concerns regarding the need to revise SSTS No. 1. As a result, in 2008, the original SSTS Nos. 1-8 were updated, effective [date].¹ The original SSTS Nos. 6-7 were combined into the revised SSTS No. 6, *Knowledge of Error: Return Preparation and Administrative Proceedings*. The original SSTS No. 8, *Form and Content of Advice to Taxpayers* (AICPA, *Professional Standards*, vol. 2, TS sec. 800), was renumbered SSTS No. 7. In addition, various revisions were made to the language of the original SSTSs.

Ongoing Process

8. The following SSTSs and any interpretations issued thereunder reflect the AICPA's standards of tax practice and delineate members' responsibilities to taxpayers, the public, the government, and the profession. The statements are intended to be part of an ongoing process of articulating standards of tax practice for members. These standards are subject to change as necessary or appropriate to address changes in the tax law or other developments in the tax practice environment.

9. Members are encouraged to assess the adequacy of their practices and procedures for providing tax services in conformity with these standards. This process will vary according to the size of the practice and the nature of tax services performed.

10. The Tax Executive Committee promulgates SSTSs and their interpretations. Acknowledgment is also due to the many members who have devoted their time and efforts over the years to developing and revising the Institute's standards.

¹ This date is to be determined, but will be no earlier than January 1, 2010.

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

Introduction

1. This 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 *tax return position* is (1) a position reflected on a tax return on which a member has specifically advised a taxpayer or (2) 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.
- 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:

- a. A member should not recommend a tax return position or prepare or sign a tax return taking a position 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.
- b. Notwithstanding paragraph 5a, a member may *recommend a tax return position* if the member (1) concludes that there is a reasonable basis for the position and (2) advises the taxpayer to appropriately disclose that position. Notwithstanding paragraph 5a, a member may *prepare or sign a tax return* that reflects a position if (1) the member concludes there is a reasonable basis for the position and (2) the position is appropriately disclosed.

6. When recommending a tax return position or when preparing or signing a tax return on which a 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.

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.

7. 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 a negotiation with a taxing authority.

8. 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.

10. 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 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.

11. 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 4–8 recognize a member's responsibilities to both the taxpayer and the tax system.

12. In reaching 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 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.

13. 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, 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 7.

14. 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 disclosure requirements of the applicable taxing 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.

15. 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.

16. For purposes of this 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 statement 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 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.

7. 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.

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

Introduction

1. This 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 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, there is a need to determine by inquiry that a specifically required condition, such as maintaining books and records or substantiating documentation, has been satisfied and to obtain information when the material furnished 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 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 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. The taxpayer's estimates 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 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, 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 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 statement, *administrative proceeding* 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 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, 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 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 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

4. 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 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 allowed to inform the taxing authority without the taxpayer's permission, except when required by law.

5. 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

7. 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.

8. 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. 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. 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.

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 its effect on the current year's tax return or the tax return that is the subject of the administrative proceeding.

14. 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.

Statement on Standards for Tax Services No. 7, *Form and Content of Advice to Taxpayers*

Introduction

1. This 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 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 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 when communicating or documenting oral advice.

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, for 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 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 upon facts and law existing as of the date the advice is rendered and (b) 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.