

2010
TAX FORUM
IRS Nationwide

Statements on Standards for Tax Services

American Institute of Certified
Public Accountants

[http://aicpa.org/INTERESTAREAS/TAX/RESOURCE
S/STANDARDSETHICS/](http://aicpa.org/INTERESTAREAS/TAX/RESOURCE/S/STANDARDSETHICS/)



General Information on SSTs

- Written simply & objectively
- Provides for an appropriate range of behavior
- Some rules are subjective & some terms are left undefined deliberately
- Terms & concepts are generally tax-based
- Many similarities to Circular 230
- Enforcement is undertaken with flexibility
- Recent revisions became effective 1/1/10

Relevant Terms

Will	Generally 90% or greater probability of success if challenged by IRS
Should	Generally 70 - 80% probability of success if challenged by IRS
More Likely than Not (MLTN)	Greater than 50% probability of success if challenged by IRS
Substantial Authority	Weight of authorities in support of a position is substantial in relation to the weight of authorities in opposition to the position (40%)
Realistic Possibility of Success	1 in 3 possibility of success if challenged by IRS
Reasonable Basis	Significantly higher than not frivolous and lower than realistic possibility of success
Not Frivolous	Not patently improper; some merit to position
Frivolous	Patently improper



SSTS No. 1

Tax Return Positions

- Recommending tax return positions & preparing or signing tax returns
- Includes amended return, claims for refund, & information returns filed with **any** taxing authority
- Recognizes responsibility to both taxpayers and to the tax system



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SSTS No. 1

Tax Return Positions

- Follow reporting standard in applicable jurisdiction
- Realistic possibility of success is floor for undisclosed positions
- Reasonable basis is floor for disclosed positions
- Advise taxpayer regarding potential penalty consequences

Interpretation No. 1-1

- Currently under revision
- Provides explanations & illustrations for Statement No. 1
- Warranted in existing law or can be supported by a good-faith argument for an extension, modification, or reversal of existing law
- Not limited to the sources of authority described in IRC Sec. 6662

Interpretation No. 1-2

- Currently under revision
- Provides interpretation of a member's responsibilities in connection with *tax planning*
- Clarifies how the standards apply across the spectrum of tax planning
- The interpretation covers both prospective & completed transactions
- SSTS No. 1 & Interpretation No. 1-1 apply to tax planning services

Interpretation No. 1-2

Suggested Due Diligence Steps

- Establish the relevant background facts
- Consider the reasonableness of the assumptions & representations
- Apply the pertinent authorities to the relevant facts
- Consider whether there is a business purpose & economic substance for the transaction
- Arrive at a conclusion supported by the authorities

SSTS No. 2, *Answers to Questions on Returns*

- Standards when one or more questions on the return have not been answered
- Make a reasonable effort to obtain the information necessary to provide appropriate answers to all questions
- Allows judgment to omit answers to a question if the answer is not readily available & the answer is not significant in terms of taxable income or loss or the tax liability





SSTS No. 3, *Certain Procedural Aspects of Preparing Returns*

- Standards for obligation to examine or verify supporting data or to consider information related to another taxpayer
- May in good faith rely, without verification, on information furnished by taxpayer or third parties
- Should not *ignore* the implications of information furnished



SSTS No. 3, *Certain Procedural Aspects of Preparing Returns*

- Make reasonable inquiries if the information furnished appears to be incorrect, incomplete, or inconsistent
- Refer to the taxpayer's returns for one or more prior years
- Make appropriate inquiries to determine whether tax requirements have been met; i.e. travel and entertainment documentation

SSTS No. 4, *Use of Estimates*

- Taxpayer's estimates may be used unless prohibited by statute or rule, provided the member determines the estimates are reasonable based on the facts known to the member
- Estimates should not imply greater accuracy than exists
- Disclosure of use of estimate is generally NOT required (unless due to unusual circumstances such as fire, illness or death)

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SSTS No. 5, Departure From a Position Previously Concluded in an Administrative Proceeding or Court Decision

- May recommend a tax return position (or prepare or sign a tax return) that departs from the previous treatment; taxpayer facts may have improved, such as proper documentation available
- However, a taxpayer may be bound to a specified treatment in a later year
- When previous-year decision is binding, it may be the only position supported by the standards of SSTS No. 1

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SSTS No. 6, *Knowledge of Error: Return Preparation and Administrative Proceeding*

- Become aware of an error in a taxpayer's previously filed tax return or of a failure to file
- *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 SSTS No. 1
- 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
- An error does not include an item that has an insignificant effect on the taxpayer's tax liability

SSTS No. 6, *Knowledge of Error: Return Preparation and Administrative Proceeding*

- Should promptly inform the taxpayer of the error and recommend corrective measures
- Recommendations may be given orally
- May not inform the taxing authority without the taxpayer's permission, except when required by law or court order
- Should advise client to seek legal counsel if the error could possibly lead to fraud or other criminal charges

SSTS No. 7, *Form and Content of Advice to Taxpayers*

- Standards concerning certain aspects of providing advice to a taxpayer
- Considers responsibility to communicate with client when subsequent developments affect advice previously provided
- Should use judgment to ensure that tax advice reflects professional competence & appropriately serves the taxpayers' needs
- Should always assume the advice given will affect the taxpayer's tax returns; consider Statement No. 1



SSTS No. 7, *Form and Content of Advice to Taxpayers*

- Not required to follow a standard format in communicating written or oral advice
- No obligation to communicate when subsequent developments affect advice previously provided except:
 - While assisting taxpayer in implementing procedures or plans associated with the advice, or
 - When a member undertakes this obligation by specific agreement



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AICPA	IRC and Circular 230
<p>SSTS No. 1, <i>Tax Return Positions</i>, Interpretation No. 1-1 and Interpretation No. 1-2</p>	<p>Circular No. 230 § 10.34, <i>Standards for advising with respect to tax return positions and for preparing and signing returns</i></p> <p>Circular No. 230 § 10.35, <i>Requirements for covered opinions</i></p> <p>Circular No. 230 § 10.37, <i>Requirements for other written advice</i></p> <p>Internal Revenue Code (IRC) § 6662, <i>Imposition of accuracy-related penalty on underpayments</i></p> <p>IRC § 6694, <i>Understatement of taxpayer's liability by tax return preparer</i></p>
<p>SSTS No. 2, <i>Answers to Questions on Returns</i></p>	<p>IRC § 6707, <i>Failure to furnish information regarding reportable transactions</i></p>
<p>SSTS No. 3, <i>Certain Procedural Aspects of Preparing Returns</i></p>	<p>Circular No. 230 § 10.22, <i>Diligence as to accuracy</i></p> <p>Circular No. 230 § 10.34, <i>Standards for advising with respect to tax return positions and for preparing and signing returns</i></p> <p>Treas. Reg. § 1.6694-1(e)</p>
<p>SSTS No. 6, <i>Knowledge of Error: Return Preparation and Administrative Proceedings</i></p>	<p>Circular No. 230 § 10.21, <i>Knowledge of client's omission</i></p>