Statements on Standards for Tax Services

American Institute of Certified Public Accountants

http://aicpa.org/INTERESTAREAS/TAX/RESOURCES/STANDARDS/ETHICS/
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

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
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<tbody>
<tr>
<td>Will</td>
<td>Generally 90% or greater probability of success if challenged by IRS</td>
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<tr>
<td>Should</td>
<td>Generally 70 - 80% probability of success if challenged by IRS</td>
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<tr>
<td>More Likely than Not (MLTN)</td>
<td>Greater than 50% probability of success if challenged by IRS</td>
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<td>Substantial Authority</td>
<td>Weight of authorities in support of a position is substantial in relation to the weight of authorities in opposition to the position (40%)</td>
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<tr>
<td>Realistic Possibility of Success</td>
<td>1 in 3 possibility of success if challenged by IRS</td>
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<td>Reasonable Basis</td>
<td>Significantly higher than not frivolous and lower than realistic possibility of success</td>
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<tr>
<td>Not Frivolous</td>
<td>Not patently improper; some merit to position</td>
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<tr>
<td>Frivolous</td>
<td>Patently improper</td>
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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
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).
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
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
<table>
<thead>
<tr>
<th>AICPA</th>
<th>IRC and Circular 230</th>
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<tbody>
<tr>
<td>SSTS No. 1, <em>Tax Return Positions</em>, Interpretation No. 1-1 and</td>
<td>Circular No. 230 § 10.34, <em>Standards for advising with respect to tax return positions and for preparing and signing returns</em></td>
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<td>Interpretation No. 1-2</td>
<td>Circular No. 230 § 10.35, <em>Requirements for covered opinions</em></td>
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<td>Circular No. 230 § 10.37, <em>Requirements for other written advice</em></td>
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<td>Internal Revenue Code (IRC) § 6662, <em>Imposition of accuracy-related penalty on underpayments</em></td>
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<td>IRC § 6694, <em>Understatement of taxpayer’s liability by tax return preparer</em></td>
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<td>SSTS No. 2, <em>Answers to Questions on Returns</em></td>
<td>IRC § 6707, <em>Failure to furnish information regarding reportable transactions</em></td>
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<td>SSTS No. 3, <em>Certain Procedural Aspects of Preparing Returns</em></td>
<td>Circular No. 230 § 10.22, <em>Diligence as to accuracy</em></td>
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<td>Treas. Reg. § 1.6694-1(e)</td>
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<td>SSTS No. 6, <em>Knowledge of Error: Return Preparation and Administrative Proceedings</em></td>
<td>Circular No. 230 § 10.21, <em>Knowledge of client’s omission</em></td>
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