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AICPA Professional Standards: Statements on responsibilities in tax practice as of June 1, 1980

American Institute of Certified Public Accountants. Committee on Federal Taxation

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AICPA PROFESSIONAL STANDARDS

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MANAGEMENT ADVISORY
SERVICES
TAX PRACTICE
ACCOUNTING AND REVIEW
SERVICES

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AS OF JUNE 1, 1980

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AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

IX TAX PRACTICE

STATEMENTS ON RESPONSIBILITIES IN TAX PRACTICE

These statements have been approved by at least two-thirds of the members of the Committee on Responsibilities in Tax Practice and the Federal Taxation Executive Committee by formal vote after examination of the subject matter. They have not been considered and acted upon by the Council of the Institute. These statements are not intended to be retroactive.

Statements on Responsibilities in Tax Practice containing standards of responsibility which are more restrictive than those established by the Treasury Department or by the Institute's Code of Professional Ethics depend for their authority on the general acceptability of the opinions expressed.

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TX Section 101

Introduction

Issue date, unless
otherwise indicated:
February, 1969

I. The Program

.01 The program contemplates publication of a numbered series of Statements on Responsibilities in Tax Practice by the Institute's Division of Federal Taxation.

II. The Significance of Statements

.02 The series of statements is intended to constitute a body of advisory opinion on what are good standards of tax practice, delineating the extent of a CPA's responsibility to his client, the public, the Government and his profession. Each statement will cover a particular aspect of tax practice. In addition to a consideration of the legal requirements of the taxing authority (applicable to all tax practitioners) the statements will present the Division's opinions of what it considers to be appropriate standards of responsibility in tax practice.

III. The Objectives

.03 The principal objectives of the program are:

(a) To identify and develop appropriate standards of responsibilities in tax practice and to promote their uniform application by CPAs;

(b) To encourage the development of increased understanding of the responsibilities of the CPA by the Treasury Department and the Internal Revenue Service and to urge their officials to promote the application of commensurate standards of responsibility by their personnel;

(c) To foster increased public compliance with and confidence in our tax system through awareness of the standards of conduct accepted by CPAs and of reciprocal measures adopted by the Treasury Department and the Internal Revenue Service.

IV. The Program In Perspective

.04 Although the CPA has no separate written statement of standards of conduct relating solely to tax practice, he has available a number of guides to assist him in determining his responsibilities. He is guided by the statutes, regulations and rules governing practice before the Internal Revenue Service (Treasury Department Circular No. 230 Revised) and the Institute's Code of Professional Ethics, which requires the observance of high moral and ethical standards. However, the principles the CPA observes in tax practice require separate articulation and interpretation to avoid any misunderstanding which taxpayers or the Government may have regarding the extent of the CPA's responsibilities.

.05 Studies conducted by the Division have revealed that there are a number of unwritten standards which have general acceptance among Institute members and can serve as a foundation upon which to develop the statement on responsibilities.

.06 The CPA's Code of Professional Ethics requires attitudes and habits of truthfulness and integrity in all of his practice, including his tax practice. It should be evident that there is no intention to apply to tax practice those rules of professional conduct which relate only to examinations of financial statements. Rule of Conduct 102 of the Code of Professional Ethics states:

A member shall not knowingly misrepresent facts, and when engaged in the practice of public accounting, including the rendering of tax and management advisory services, shall not subordinate his judgment to others. In tax practice, a member may resolve doubt in favor of his client as long as there is reasonable support for his position.

[As amended June 1, 1975.]

.07 The statements are not intended to establish a separate code of conduct in tax practice, apart from the general ethical precepts of the Institute's Code of Professional Ethics. That Code imposes upon members and associates obligations to maintain high standards of technical competence and integrity in dealing with clients and the public. These obligations apply in all phases of the professional activities of members and associates, including tax practice.

.08 In this environment the Division concludes that while the Code of Professional Ethics is a major factor in molding the CPA's professional behavior, it is in the public interest and in the self-interest of the CPA to develop separate statements of recommended standards of responsibility in tax practice for the guidance of taxpayers and CPAs alike.

V. The Scope and Effect of the Statements

.09 The statements generally will be confined to discussions in the context of the considerations governing Federal tax practice, including the preparation of tax returns. The Division may consider application of the statements to practice in other jurisdictions when appropriate.

.10 The primary effect of the program will be educational. The Division acknowledges that the statements will not have the force of authority as, for example, the rules contained in Treasury Circular 230. Statements containing standards of responsibility which are more restrictive than those established by the Treasury Department or by the Code of Professional Ethics depend for their authority upon the general acceptability of the opinions expressed. The statements are not intended to be retroactive.

VI. The Division's Authority

.11 By resolution of Council, the Division of Federal Taxation is authorized to express opinions on matters of broad policy related to Federal taxation. No other division or committee is authorized to express such opinions.

VII. The Procedures

.12 The statements will present the opinion of at least two-thirds of the members of the committee on responsibilities in tax practice and two-thirds of the executive group of the Division of Federal Taxation.

.13 Drafts of the proposed statements will be given appropriate exposure before the executive group of the Division reaches a decision.

➤➤➤→ *The next page is 2811.* ←➤➤➤

TX Section 111

Signature of Preparer

Issue date, unless
otherwise indicated:
September, 1964

I. Introduction

.01 Is it proper for a certified public accountant to prepare a Federal tax return and deliver it to the taxpayer without having signed the preparer's declaration?

II. Statement

.02 A CPA should sign as preparer any Federal tax return which requires the signature of a preparer if he prepares it for and transmits it to the taxpayer or another, whether or not the return was prepared for compensation.

III. Explanation

.03 Section 1.6065-1(b)(1) of the Income Tax Regulations requires that a preparer must sign the preparer's declaration on a return providing for such verification where the return is prepared for a taxpayer for compensation or as an incident to the performance of other services for which compensation is received. It is clear that if the CPA is the "preparer" of a return (in the sense of the Regulation) he should sign the preparer's declaration and may not avoid doing so willfully. A CPA also should sign a return prepared by him whether or not it is prepared for compensation. Although this latter requirement goes beyond the scope of the Regulation, it represents a step in the establishment of uniform standards of responsibility in tax return preparation by CPAs.

.04 A typical example of a preparer's declaration (taken from the 1974 Form 1040) follows:

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which he has any knowledge.

[As amended June 1, 1975.]

.05 The following examples reflect the committee's understanding of when the CPA is a "preparer." The examples are intended to be illustrative and are offered to provide a basis for resolving doubts which may arise in the course of a CPA's practice:

- A. Situations considered to constitute the preparation of a return, and in which the CPA's signature as preparer is required.
1. The CPA assembles information pertinent to the taxpayer's return, and completes the return and transmits it to the taxpayer. The CPA is required to sign the return as preparer whether the CPA prepares the return from information supplied by the taxpayer, or from information obtained by the CPA directly or indirectly from the taxpayer's books and records. This requirement is unchanged whether the CPA conducted an examination of the financial statements in accordance with generally accepted auditing standards, or whether he expressed or disclaimed an opinion on them.
 2. The CPA assembles information as in Situation A-1 above and completes a draft of the return but does not perform certain mechanical functions, such as typing or reproducing (e.g., the draft of the return is prepared in pencil), and forwards it to the taxpayer. The CPA's arrangement with the taxpayer should provide that before the return is filed, the taxpayer will make the draft and the return to be filed available to the CPA for proofing and signature.
 3. The CPA prepares a return as in Situation A-1 above and transmits it to the taxpayer ready for filing, except for certain *minor* items or supplemental information which will not affect the taxable income or loss and which are to be inserted in the return by the taxpayer. The CPA should sign the return before it is transmitted to the taxpayer. An example of a minor item is a taxpayer's identification number; pension plan data is an example of supplemental information.
 4. The CPA reviews a return originally prepared by the taxpayer or another and, under authority conferred by the taxpayer, either makes substantial changes in the return or substantial changes are made by the taxpayer or another

at the CPA's direction. In this situation the CPA is considered to be a preparer, should sign the return and, accordingly, should satisfy himself as to the content of the entire return. On the other hand, if the CPA's engagement is limited to submitting recommendations, he is not considered to be a preparer. The term "substantial changes" means the revisions are significant in relation to the taxpayer's taxable income or loss, or the tax liability for the year. (Review situations in which the CPA is not the preparer will be discussed in a subsequent statement.)

- B. Situations not considered to constitute the preparation of a return, and in which the CPA's signature as preparer is not required.
1. A taxpayer transmits to a CPA an otherwise completed return with the request that the CPA perform certain mechanical service, such as typing or reproducing.
 2. In the course of an examination of financial statements the CPA assembles some, but not a preponderant part, of the information which is used for the preparation of a return by the client or another.
 3. The CPA prepares a schedule (e.g., capital gains, foreign tax credit, etc.) and transmits it to the taxpayer for inclusion in a return. The remainder of the return is completed by the taxpayer or another.
 4. In the course of an examination of financial statements:
(a) The CPA makes a determination of taxable income or loss in considering the client's tax liability, but not in connection with the preparation of a return. (b) The CPA reviews a return prepared by the client or another, before it is filed, for the sole purpose of considering the client's tax liability. The CPA neither makes substantial changes (as described in Situation A-4) in the return nor are substantial changes made by the taxpayer or another at the CPA's direction.
 5. During or after the close of the taxable year the CPA advises a taxpayer as to the taxability, deductibility or presentation of certain items in a return.

(In each of the above situations it is assumed that the CPA did not perform additional services which, when taken together with the situation discussed, would constitute preparation of a return.)

C. Other situations.

1. The CPA assembles information pertinent to the taxpayer's return, but discontinues work on it due to a disagreement with the taxpayer as to the presentation of an item. At the taxpayer's request the CPA transmits to him the incomplete return. The CPA is not required to sign the incomplete return, and in his letter of transmittal should disavow responsibility as preparer.
2. The CPA prepared a return, signed and transmitted it to the taxpayer. The taxpayer requests that the CPA make certain changes. If the changes sought by the taxpayer meet with the approval of the CPA, the CPA should sign the return as revised. If the changes sought by the taxpayer are unacceptable to the CPA and an impasse develops, the CPA should refuse to revise the return or to sign a return as revised by the taxpayer.

In connection with an engagement to prepare a return, it should be recognized that the return, upon transmission to the taxpayer, belongs to the taxpayer. Before filing a return prepared by a CPA, a taxpayer could make changes in it without the CPA's knowledge or permission. It is recommended that the CPA preserve a copy of each return in the form in which it was transmitted to the taxpayer.

IV. *Applicability*

.06 This statement is confined to Federal tax practice. It applies to the preparation of Federal tax returns by CPAs in public practice, and by CPAs in private employment to the extent that they prepare returns outside of their regular employment. The Regulations except employees from the requirement of verification of certain tax returns prepared by them, if prepared in the scope of their employment, for their employers or fellow employees. Therefore, they are excepted to that extent from the application of this statement.

.07 Although, for convenience, this statement is written in terms of an individual CPA, it applies equally to the CPA's staff, members of a CPA partnership, and the staff of a CPA partnership.

➤ *The next page is 2821.* ←

TX Section 121

Signature of Reviewer: Assumption of Preparer's Responsibility

Issue date, unless
otherwise indicated:
August, 1965

I. Introduction

.01 Frequently, a certified public accountant is engaged to review a Federal tax return by a taxpayer who seeks added assurance that it has been prepared properly. In many such instances, the taxpayer requests that the CPA sign or cosign the preparer's declaration on the return.

.02 This statement considers whether a CPA who is not the preparer of a return, and therefore is not required to sign the preparer's declaration, nevertheless in his discretion may sign and thus assume the preparer's responsibility.

.03 TX section 111 discusses the signature requirement for a CPA who is the preparer of a Federal tax return. [As amended June 1, 1975.]

II. Statement

.04 If the CPA is not the preparer of a Federal tax return, he is not required to sign the preparer's declaration. However, in his discretion, the CPA may sign the declaration on a return prepared by the taxpayer or another if he reviews the return and, in the course of the review, acquires knowledge with respect to the return substantially equivalent to that which he would have acquired had he prepared the return. Unless such review is made, the CPA should not sign the preparer's declaration.

III. Explanation

.05 A. *General.* This statement is concerned with situations in which the CPA's role is that of a reviewer with no

obligation to sign as preparer. TX section 111 provides examples and discussion relating to whether in certain situations the CPA is the preparer of a Federal tax return. It also covers one type of situation in which a review becomes tantamount to preparation and the CPA should sign as preparer (TX section 111, Part III A-4).

The Internal Revenue Code, the Income Tax Regulations (including Section 1.6065-1(b)(1)) and tax return forms make no reference to the signing by a reviewer of the preparer's declaration. Thus, it appears that the CPA who signs the preparer's declaration assumes the same responsibility whether he is a preparer or a reviewer. Accordingly, unless the CPA-reviewer intends to assume the same responsibility as a preparer for the entire return, he should not sign the preparer's declaration.

A CPA who has reviewed a return (prepared by the taxpayer or another) to the extent set forth in the following paragraph may sign the preparer's declaration. However, he is not required to sign unless he is considered to have become the preparer in circumstances such as those described in TX section 111.

Before a CPA-reviewer signs the preparer's declaration on a return prepared by a taxpayer or another, he should acquire knowledge with respect to the return substantially equivalent to that which he would have acquired had he prepared the return. It is contemplated that review procedures will vary from return to return and that the CPA will apply his professional judgment in each engagement to determine the extent of the review needed to acquire such knowledge.

B. *Cosigning.* Where a return has been prepared for a taxpayer by a person who signed as preparer and a CPA is asked to review and cosign the return, the CPA may add his signature to the preparer's declaration provided that his review meets the standard set forth in the preceding paragraph.

IV. *Applicability*

.06 This statement is confined to Federal tax practice. It applies to the review of Federal tax returns by CPAs in public practice and by CPAs in private employment to the extent that they practice outside of their regular employment.

.07 Although, for convenience, this statement is written in terms of an individual CPA, it applies equally to the CPA's staff, members of a CPA partnership, and the staff of a CPA partnership.

»»»→ *The next page is 2831.* ←«««

TX Section 131**Answers to Questions
on Returns**

Issue date, unless
otherwise indicated:
August, 1966

I. Introduction

.01 May a certified public accountant sign the preparer's declaration on a Federal tax return where one or more questions on the return have not been answered? The term "questions" is considered to include requests for information on the return which are not stated in the interrogatory form.

II. Statement

.02 A CPA should sign the preparer's declaration on a Federal tax return only if he is satisfied that reasonable effort has been made to provide appropriate answers to the questions on the return which are applicable to the taxpayer. Where such a question is left unanswered the reason for such omission should be stated. The possibility that an answer to a question might prove disadvantageous to the taxpayer does not justify omitting an answer or a statement of the reason for such omission.

III. Explanation

.03 It is recognized that the questions on tax returns are not of uniform importance, that often they are not applicable to the particular taxpayer, and that the frequency of change of the questions on tax return forms from year to year tends to minimize their significance to the preparer as well as to the taxpayer. Nevertheless, aside from administrative convenience to the Internal Revenue Service, there are at least two considerations which dictate that a CPA-preparer should satisfy himself that reasonable effort has been made to provide appropriate answers to the questions on the return which are applicable to the taxpayer:

1. A question may be of importance in determining taxable income or loss, or the tax liability shown on the return, in which circumstance the omission tends to detract from the quality of the return;
2. It is not consistent with the professional stature of the CPA to sign the preparer's declaration on a return which is incomplete.

.04 While an effort should be made to provide an answer to each question on the return which is applicable to the taxpayer, reasonable grounds may exist for omitting an answer. For example, reasonable grounds include the following:

1. 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; or
2. The answer might prove to be significant as to the particular return, but, either:
 - (a) genuine uncertainty exists regarding the meaning of the question in relation to the particular return; or,
 - (b) the information which is obtainable is not sufficiently reliable to warrant reporting on the return.
3. The answer to the question is voluminous; however, assurance should be given on the return that the data will be supplied to the revenue agent in the course of his examination.

.05 Where reasonable grounds exist for omission of an answer to an applicable question, a brief explanation of the reason for the omission should be provided on the return.

.06 The purpose of this statement is to discuss the professional responsibility of the CPA concerning answers to questions on tax returns. It should not be construed to have any bearing on other matters such as whether a return which contains one or more unanswered questions is sufficiently complete to start the running of the statute of limitations.

.07 In tax practice, a member may resolve doubt in favor of his client as long as there is reasonable support for his position. The concept of reasonable support does not justify the omission of an answer merely because it may prove disadvantageous to the taxpayer. [As amended June 1, 1975.]

.08 This statement is based upon the general nature and scope of the questions currently on Federal tax returns.

➤→ *The next page is 2841.* ←➤

TX Section 141***Recognition of Administrative Proceeding of a Prior Year***

Issue date, unless otherwise indicated:
October, 1966

I. Introduction

.01 This statement considers whether a certified public accountant may sign the preparer's declaration on a Federal tax return in which the treatment of an item differs from that consented to by the taxpayer for a similar item as a result of an administrative proceeding concerning a prior year's return. This statement refers to an administrative proceeding which was concluded by the execution of a waiver by the taxpayer.

.02 An "administrative proceeding" includes an examination by a revenue agent, a district conference or an appellate conference relating to a return or a claim for refund.

.03 The term "waiver" includes a waiver of restrictions on the assessment of a deficiency in tax, the acceptance of the Internal Revenue Service's findings by a partnership, fiduciary or Subchapter S corporation, and the acceptance of an over-assessment.

.04 Any reference to "item" or "year" is intended to cover the plural of those terms.

II. Statement

.05 The selection of the treatment of an item in the course of the preparation of a tax return should be based upon the facts and the rules as they are evaluated at the time the return is prepared. Unless the taxpayer is bound as to treatment in the later year, such as by a closing agreement, the disposition of an item as a part of concluding an administrative proceeding by the execution of a waiver for a prior year does not govern the taxpayer in selecting the treatment of a similar item in a later year's return. Therefore, if justified by the facts and rules then applicable, a CPA may sign the preparer's

declaration on a return containing a departure from the treatment of an item arrived at as a part of concluding an administrative proceeding regarding a prior year's return. Such departure need not be disclosed.

III. Explanation

.06 A taxpayer as a matter of course usually will treat an item in the same manner as was arrived at in concluding an administrative proceeding for a prior year when a similar item arises in a subsequent year. The question is whether the taxpayer is required to do so. The considerations in deriving an answer include:

1. The Internal Revenue Service tends to act consistently with the manner in which a similar item was disposed of in a prior administrative proceeding, but maintains that it must look upon the examination of each return as a new matter. Broadly speaking, it has no alternative to this policy because of its responsibility as an administrative agency.
2. The taxpayer's position may be influenced by facts or circumstances such as the following:
 - (a) his assent in the administrative proceeding may have been caused by a lack of substantiation while supporting data for the later year is adequate,
 - (b) he may have yielded in the administrative proceeding for settlement purposes even though there was and is reasonable support for his position, or
 - (c) taking into account the applicable court decisions, rulings, etc., the climate now may be more favorable to the taxpayer's position than it was when the administrative proceeding was concluded.

.07 When valid reasons exist such as those cited above, there is no requirement that a disclosure of the dissimilarity be made in a later year's return.

➤→ *The next page is 2851.* ←➤

TX Section 151

Use of Estimates

Issue date, unless
otherwise indicated:
February, 1969

I. Introduction

.01 This Statement considers the responsibility of a certified public accountant in connection with the use of estimates in the preparation of a Federal tax return which he signs as preparer.

II. Statement

.02 A certified public accountant may prepare tax returns involving the use of estimates if such use is generally acceptable or, under the circumstances, it is impracticable to obtain exact data. When estimates are used, they should be presented in such a manner as to avoid the implication of greater accuracy than exists. The CPA should be satisfied that estimated amounts are not unreasonable under the circumstances.

III. Explanation

.03 A. *Accounting Judgments*—Accounting requires the exercise of judgment and in many instances the use of approximations based on judgment. For example, in computing depreciation charged against the income of a given time period, judgment enters into the determination of useful life, salvage value, obsolescence, and other factors determining the amount of cost. Similarly, judgment enters into the valuation of inventory, the addition to a reserve for bad debts, the allocation of acquisition costs to individual units of property bought in bulk for a lump sum, the determination of an overhead rate and similar matters. The application of such accounting judgments is accepted and expected and these judgments are not estimates within the purview of this Statement.

B. *Accruals*—The income tax regulations provide, in effect, that if all other conditions for accrual are met, the exact amount

of income or expense need not be known or ascertainable at year end and it is permissible to make a reasonable estimate of the amount.

C. *Small Expenditures*—In the case of transactions involving small expenditures, accuracy in recording some data is difficult to achieve. It is not practicable, for example, to require accurate recording of frequently recurring minor expenditures, such as sales and gasoline taxes. Use of estimates in determining the amount to be deducted for such items is an accepted practice.

D. *Unavailable Data*—In other cases where all of the facts relating to a transaction are not accurately known, either because records are missing or because precise information is not available at the time the return must be filed, estimates of the missing data may be made.

E. *Manner of Presentation*—It is not acceptable practice to present estimates in such a way as to imply greater accuracy than exists. Estimated amounts should be presented in any manner which will avoid deception or a misleading impression of the facts. Under some circumstances it may be necessary to state expressly that an amount has been estimated. In other instances use of a round amount, or an amount suggested in a Treasury Department guideline, may constitute a sufficient designation as an estimate. If a tax return entry is an aggregation of items which includes a significant estimated amount, such estimated amount should be disclosed.

F. *Record keeping*—The CPA should encourage the use of appropriate records to support, where practical, all entries on a client's tax return. The fact that some estimates may be used as set forth in this Statement should not serve to condone poor record-keeping practices.

➤→ *The next page is 2861.* ←➤

TX Section 161**Knowledge of Error:
Return Preparation**

Issue date, unless
otherwise indicated:
August, 1970

I. Introduction

.01 This Statement considers the responsibility of a certified public accountant when he learns of an error in a client's previously filed Federal tax return, or of the failure of a client to file a required Federal tax return. As used herein, the term "error" includes an omission.

.02 For purposes of this Statement, the client will not be considered to have made an error in cases where there is reasonable support for the position taken by the client or there was reasonable support at the time the return was filed.

.03 This Statement applies whether or not the CPA prepared the return which contains the error.

II. Statement

.04 A. A CPA shall advise his client promptly upon learning of an error in a previously filed return, or upon learning of a client's failure to file a required return. His advice should include a recommendation of the measures to be taken. Such advice may be given orally. The CPA is neither obligated to inform the Internal Revenue Service nor may he do so without his client's permission.

B. If the CPA is requested to prepare the current year's return and the client has not taken appropriate action to rectify an error in a prior year's return that has resulted or may result in a material understatement of tax liability, the CPA should consider whether to proceed with the preparation of the current year's return. If he does prepare such return, the CPA should take reasonable steps to assure himself that the error is not repeated. Furthermore, inconsistent double deductions, carryovers

and similar items associated with the uncorrected prior error should not be allowed to reduce the tax liability for the current year except as specifically permitted by the Internal Revenue Code, Regulations, Internal Revenue Service pronouncements and court decisions.

C. Paragraph B is concerned only with errors that have resulted or may result in a material understatement of the tax liability. Moreover, that paragraph does not apply where a method of accounting is continued under circumstances believed to require the permission of the Commissioner of Internal Revenue to effect a change in the manner of reporting the item involved.

III. Explanation

.05 A. Background

Administrative regulations of the Treasury Department (Circular No. 230) prescribe certain rules applicable to practice before the Internal Revenue Service. Section 10.21 of these regulations deals directly with the subject matter of this Statement and presently provides that:

Each attorney, certified public accountant or enrolled agent who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit or other paper which the client is required by law to execute in connection with such matter, shall advise the client promptly of the fact of such noncompliance, error or omission.

Other sections of these rules specifically forbid such actions as becoming a party to the giving of false or misleading information, participating in an attempt to evade a Federal tax, or failing to exercise due diligence in determining the correctness of representations made to the Internal Revenue Service.

Section 1.451-1(a) of the Income Tax Regulations provides that:

If a taxpayer ascertains that an item should have been included in gross income in a prior taxable year, he should, if within the period of limitation, file an amended return and pay any additional tax due. Similarly, if a taxpayer ascertains that an item was improperly included in gross income in a prior taxable year, he should, if within the period of limitation, file claim for credit or refund of any overpayment of tax arising therefrom.

Section 1.461-1(a)(3)(i) of the Income Tax Regulations provides that:

Each year's return should be complete in itself, and taxpayers shall ascertain the facts necessary to make a correct return. The expenses, liabilities or loss of one year cannot be used to reduce the income of a subsequent year. A taxpayer may not take advantage in a return for a subsequent year of his failure to claim deductions in a prior taxable year in which such deductions should have been properly taken under his method of accounting. If a taxpayer ascertains that a deduction should have been claimed in a prior taxable year, he should, if within the period of limitation, file a claim for credit or refund of any overpayment of tax arising therefrom. Similarly, if a taxpayer ascertains that a deduction was improperly claimed in a prior taxable year, he should, if within the period of limitation, file an amended return and pay any additional tax due. However, in a going business there are certain overlapping deductions. If these overlapping items do not materially distort income, they may be included in the years in which the taxpayer consistently takes them into account.

A member shall not knowingly misrepresent facts, and when engaged in the practice of public accounting, including the rendering of tax and management advisory services, shall not subordinate his judgment to others. In tax practice, a member may resolve doubt in favor of his client as long as there is reasonable support for his position. [As amended June 1, 1975.]

B. Discussion

1. *Responsibilities Upon Discovery of Error*—While performing services for a client, a CPA may learn of an error in a previously filed return or may learn that the client failed to file a required return. Whether or not the error resulted in an overstatement or understatement of the tax, the CPA's responsibility is to advise his client of the error and of the measures to be taken. If the error resulted in a material understatement of the tax liability, the most appropriate remedial measure ordinarily will be the filing of an amended return. If the error resulted in a material overstatement of tax the most appropriate remedial measure ordinarily will be the filing of a claim for refund. Where a return was not filed, the remedy ordinarily will be the filing of an original return. Although his advice may be given orally, the CPA may prefer to advise his client in writing.

It is the client's responsibility to decide whether to correct the error. The CPA is neither obligated to inform the Internal Revenue Service nor may he do so without his client's permission. In appropriate cases, particularly where it appears that the Internal Revenue Service might assert the charge of fraud, the client should be advised to consult his attorney before taking any action.

Where the error is discovered during an engagement which does not involve tax return preparation or representation of the client in an administrative proceeding before the Internal Revenue Service, the responsibility of the CPA is to advise the client of the existence of the error and to recommend that the matter be taken up with the client's tax adviser.

2. *Course of Action if the Client Does Not Correct the Error*—In the event that the client does not correct an error which has resulted or may result in a material understatement of tax, the CPA as a matter of sound professional practice should consider the implications of this refusal on his future relationships with the client.

Because the Federal tax system is one of self-assessment, the primary responsibility for a fair and accurate determination of tax liability rests upon the taxpayer. In continuing to serve a client who does not correct a material error, the CPA will want

to satisfy himself that his doing so is compatible with his profession's service to other taxpayers who assess themselves fairly and accurately.

The concept of materiality is not a simple one and generally it has a different connotation in tax practice than in the determination of income for financial reporting purposes. Whether an error is material should be left to the judgment of the individual CPA.

3. *Preparation of a Subsequent Year's Return*—If the CPA concludes that he can continue his professional relationships with the client and is requested to prepare a tax return for a year subsequent to that in which the error was committed, he should take all reasonable steps to assure himself that the error is not repeated. Furthermore, inconsistent double deductions, carryovers and similar items associated with the uncorrected prior error should not be allowed to reduce the tax liability for the current year except as specifically permitted by the Internal Revenue Code, Regulations, Internal Revenue Service pronouncements and court decisions.

Although taxable income should be determined on the basis of separate taxable years, there are instances in which a client desires to compensate in the current tax return for a prior year's understatement. This course of action is frequently motivated by the belief that the filing of an amended return will add to the cost and inconvenience of determining the ultimate tax liability over and above the tax deficiencies which might be determined. While there may be circumstances where this practice may be followed, it is not recommended.

Moreover, such a course of action raises the question of disclosure. It can be argued that such a return is not "true, correct and complete" within the meaning of the preparer's declaration, since it overstates the taxpayer's tax liability for the particular year. On the other hand, it can be asserted that the intent of the jurat is not contravened in cases of overpayment. While it is preferred and recommended that disclosure be made, this is not a requirement provided the prior error appears to have been made inadvertently and that the tax effects of this approach are substantially the same as would follow from the filing of an amended return.

➤→ *The next page is 2871.* ←➤

TX Section 171**Knowledge of Error:
Administrative
Proceedings**

Issue date, unless
otherwise indicated:
August, 1970

I. Introduction

.01 This Statement considers the responsibility of a certified public accountant in administrative proceedings when he learns of errors in returns which are the subject of the proceedings. As used herein, the term "error" includes an omission.

.02 This Statement is concerned only with errors that have resulted or may result in a material understatement of the tax liability. For purposes of this Statement, the client will not be considered to have made an error in cases where there is reasonable support for the position taken by the client or there was reasonable support at the time the return was filed. Moreover, it does not apply where a method of accounting is continued under circumstances believed to require the permission of the Commissioner of Internal Revenue to effect a change in the manner of reporting the item involved.

.03 This Statement applies whether or not the CPA prepared the return which contains the error.

II. Statement

.04 When the CPA is representing a client in an administrative proceeding in respect of a return in which there is an error known to the CPA that has resulted or may result in a material understatement of tax liability, he should request the client's agreement to disclose the error to the Internal Revenue Service. Lacking such agreement, the CPA may be under a duty to withdraw from the engagement.

III. Explanation

.05 A. *Background*—Administrative regulations of the Treasury Department (Circular No. 230) prescribe certain rules applicable to practice before the Internal Revenue Service. The Institute's Code of Professional Ethics states that the Rules of Conduct apply to all services performed in the practice of public accounting including tax and management advisory services except where the wording of the rule indicates otherwise. The Institute's ethical rules do not prohibit a CPA from resolving doubts in favor of his client as long as there is reasonable support for his position. Therefore, it is appropriate for the CPA to serve as an advocate for his client. [As amended June 1, 1975.]

In Rule 301 of the Rules of Conduct of the Code of Professional Ethics, it is stated that a CPA shall not violate the confidential relationship with his client. [As amended June 1, 1975.]

In the event that the client refuses to permit disclosure of an error which has resulted or may result in a material understatement of tax liability, the CPA should consider the implications of this refusal on his future relationship with the client.

The concept of materiality is not a simple one and generally it has a different connotation in tax practice than in the determination of income for financial reporting purposes. Whether an error is material should be left to the judgment of the individual CPA.

B. *Discussion*—When the CPA is engaged to represent a client in an administrative proceeding in respect of a return known by the CPA to contain an error that resulted or may result in a material understatement of tax liability, professional responsibility dictates that he not be false or devious in dealing with the matter if a question with respect to the error is raised by the Internal Revenue Service. But what are his responsibilities if a question with respect to the error is not raised by the Internal Revenue Service?

It is arguable that practice before the Internal Revenue Service is a proceeding in which the CPA should be concerned only with those issues which have been placed in controversy in the administrative proceeding. A distinction must be made, however,

between debatable issues and patent errors. A CPA has both the right and responsibility to be an advocate for his client with respect to any position for which he has reasonable support, and he has no obligation to disclose any weakness which may be inherent in such a position. He is in a different position, however, with respect to an error which, if its existence had been known at the time the return was prepared, would have caused him to refuse to sign the preparer's declaration on the tax return.

When, therefore, the CPA is engaged to represent the client before the Internal Revenue Service in an administrative proceeding in respect of a return known by the CPA to contain an error that resulted or may result in a material understatement of tax liability, he should request the client's agreement to a disclosure of the error to the Internal Revenue Service. This does not include cases where the effect of the error on the client's cumulative Federal income tax liability has been compensated for in another year. Once disclosure is agreed upon, it should not be delayed to such a degree that the client or CPA might be considered to have failed to act in good faith or to have become a party to the giving of misleading information. In any event, disclosure should be made before the conclusion of the administrative proceeding.

If the client refuses to disclose a material error, the CPA may have the duty to withdraw from the engagement. If for example, the CPA believes that the Internal Revenue Service relies on him as corroborating significant information which he knows to be false, he is under a duty to disassociate himself from the engagement.

A problem of confidential relationship may arise when the CPA first becomes aware of the error during the course of an administrative proceeding. In Rule 301 of the Rules of Conduct of the Code of Professional Ethics it is stated that a CPA shall not violate the confidential relationship with his client. Moreover, the accountancy laws of a number of states contain privileged communications provisions.[As amended June 1, 1975.]

There may be cases where the effect of the withdrawal itself would clearly constitute a violation by the CPA of the confidential relationship with his client. In such cases, the CPA need

not withdraw. However, he should advise his client that the CPA's inability to answer questions pertinent to the error may have a prejudicial effect on the client's case.

.06 This Statement does not govern the conduct of a CPA who has been engaged by legal counsel to provide assistance to him in a matter relating to the counsel's client.

➤➤➤ → *The next page is 2881.* ← ➤➤➤

TX Section 181

Advice to Clients

Issue date, unless
otherwise indicated:
August, 1970

I. Introduction

.01 This Statement discusses certain aspects of providing tax advice to clients and considers certain circumstances in which the certified public accountant has a responsibility to communicate with his client when subsequent developments affect advice previously provided.

II. Statement

.02 In providing tax advice to his client, the CPA must use judgment to assure that his advice reflects professional competence and appropriately serves the client's needs. No standard format or guidelines can be established to cover all situations and circumstances involving written or oral advice by the CPA.

.03 The CPA may communicate with his client when subsequent developments affect advice previously provided with respect to significant matters. However, he cannot be expected to have assumed responsibility for initiating such communication except while he is assisting a client in implementing procedures or plans associated with the advice provided. Of course, the CPA may undertake this obligation by specific agreement with his client.

III. Explanation

.04 Tax advice is recognized as a valuable service provided by CPAs. 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 specific needs of a client in particular circumstances, neither standard format nor guidelines can be established to cover all situations. The need to seek legal advice in appropriate situations should be fully recognized. (See Principle 3,

“Statement of Principles Relating to Practice in the Field of Federal Income Taxation” published in 1951 and promulgated by the National Conference of Lawyers and Certified Public Accountants¹.)

.05 In the exercise of his professional judgment in deciding on the form and content of advice provided to his client, the CPA should consider such factors as the following in the light of all the facts and circumstances:

1. Importance of the transaction and amounts involved.
2. The specific or general nature of the inquiry.
3. The time available for development and submission of the advice.
4. Technical complications presented.
5. Existence of authorities and precedents.
6. Tax sophistication of the client and his staff.

A. *Written Advice*—Although oral advice may serve a client’s needs appropriately in routine matters or in well-defined areas, written communications are recommended in important, unusual or complicated transactions. In the judgment of the CPA, oral advice may be followed by a written confirmation to the client. A written record will limit misunderstandings and provide a basis for future discussions, reference, planning and implementation of suggestions.

B. *Follow-Up on Advice*—The CPA may assist clients in implementing procedures or plans associated with the advice offered. During this active participation, the CPA continues to advise and should review and revise such advice as warranted by new developments and factors affecting the transaction.

Sometimes the CPA is requested to provide tax advice but does not assist in implementing the plans adopted. While developments such as legislative or administrative changes or further judicial interpretations may affect the advice previously provided, the CPA cannot be expected to communicate later developments that affect such advice unless he undertakes this obligation by specific agreement with his client. Thus, the communication of significant developments affecting previous advice should be considered extraordinary service rather than an implied obligation in the normal CPA-client relationship.

¹ Included as appendix A in the statement entitled “Lawyers and Certified Public Accountants: a study of interprofessional relations”, issued February 17, 1970. [Footnote added June 1, 1975.]

C. *Precautionary Statement*—Experience in the accounting and other professions indicates that clients understand that advice reflects professional judgment based on an existing situation. Experience has also shown that clients customarily realize that subsequent developments could affect previous professional advice. Some CPAs use precautionary language to the effect that their advice is based on facts as stated and authorities which are subject to change. Although routine use of such precautionary language seems unnecessary based on accepted business norms and professional relationships, the CPA may follow this procedure in situations he deems appropriate.

»»»→ *The next page is 2891.* ←«««

TX Section 191

Certain Procedural Aspects of Preparing Returns

Issue date, unless
otherwise indicated:
December, 1972

I. Introduction

.01 This Statement considers the responsibility of the CPA in connection with the following procedural aspects of preparing federal tax returns:

1. Examination of supporting data.
2. Use of prior years' returns.
3. Modification of the preparer's declaration.

II. Statement

.02 In preparing a return, the CPA ordinarily may rely on information furnished by his client. He is not required to examine or review documents or other evidence supporting the client's information in order to sign the preparer's declaration. Although the examination of supporting data is not required, the CPA should encourage his client to provide him with supporting data where appropriate.

.03 The CPA should make use of his client's returns for prior years whenever feasible.

.04 The CPA cannot ignore the implications of information known by him and, accordingly, he is required to make reasonable inquiries where the information as presented appears to be incorrect or incomplete.

.05 If a CPA prepares a federal return, he should sign it without modifying the preparer's declaration.

III. Explanation

.06 *Examination of Supporting Data.* Information presented to CPAs by their clients for use in the preparation

of income tax returns takes many forms. In some cases a client presents all his supporting documents. However, it is common for some of the data to be in the form of lists of tax information, such as dividends and interest received, charitable contributions and medical expenses.

.07 The basic question to be resolved in these situations is the extent to which the CPA must go in order to acquire "knowledge" when he prepares a return. The preparer's declaration on the federal income tax return states that the information contained therein is true, correct and complete to the best of his knowledge and belief "based on all information of which he has any knowledge." This reference to "all information of which he has any knowledge" should be understood to relate to information known by the CPA or made available to him in connection with the preparation of the return; it should not imply an investigation in support of material furnished by the client. A distinction should be made between the need to ask questions when the material furnished may appear to be incorrect or incomplete and the need for the CPA to examine underlying information. In fulfilling his obligation to exercise due diligence in preparing returns as required by administrative regulations of the Treasury Department, the CPA ordinarily may rely on information furnished by his client unless it appears incorrect or incomplete. Although the CPA has certain responsibilities in exercising due diligence in preparing a return, the client has ultimate responsibility for the contents of the return.

.08 Even though there is no requirement to examine underlying evidence, the CPA should encourage his client to provide him with supporting data where appropriate. For example, CPAs should encourage the submission of underlying data to permit full consideration of income and deductions arising from security transactions and from entities such as estates, trusts, partnerships and Subchapter S corporations. This should reduce the possibility of misunderstandings, inadvertent errors and administrative problems in the examination of returns by the Internal Revenue Service. Recognition of planning opportunities and other benefits may also result from the review of appropriate underlying data through increased knowledge of a client's affairs.

.09 Reference to books and records of business operations is especially encouraged.

.10 *Use of Prior Years' Returns.* The CPA should make use of his client's prior years' returns in preparing current returns whenever feasible. Reference to prior returns and discussion with the client of prior year tax determinations should provide information as to the client'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 will depend upon the particular circumstances.

.11 *Modification of the Preparer's Declaration.* The Internal Revenue Code provides the authority for the Secretary or his delegate to require a return to be verified by the preparer's declaration. The signer acknowledges that he has prepared a true, correct and complete return based on all information of which he has any knowledge. A CPA is required to sign a return he has prepared (TX section 111). [As amended June 1, 1975.]

.12 Variations in the preparer's declaration have been used which state that the information included in the return was obtained from (1) an examination of the accounting records of the taxpayer (with an indication of the type of opinion expressed thereon), (2) the taxpayer's records without audit, or (3) data furnished by the taxpayer. Other variations in the declaration have been used to disclose the treatment of a particular item.

.13 If the CPA prepares a federal return, he should sign it without modifying the declaration. A CPA's role in preparing a tax return is different from his role in making an examination of financial statements in accordance with generally accepted auditing standards. An examination is not necessary in order to prepare a return under our self-assessment tax system. There is doubt that a modification of the prescribed declaration affects the signer's responsibilities as preparer of the return. Unusual circumstances may be disclosed in the return by a rider not constituting a modification of the standard preparer's declaration.

»»→ *The next page is 2901.* ←««

TX Section 201***Positions Contrary to Treasury
Department or Internal Revenue
Service Interpretations
of the Code***

Issue date, unless
otherwise indicated:
April, 1977

Introduction

.01 This Statement discusses whether a CPA should provide in tax returns information about positions taken therein that are contrary to the Internal Revenue Code or to interpretations of it by the Treasury Department or the Internal Revenue Service.

Statement

.02 In preparing a tax return a CPA may take a position contrary to Treasury Department or Internal Revenue Service interpretations of the Code without disclosure, if there is reasonable support for the position.

.03 In preparing a tax return a CPA may take a position contrary to a specific section of the Internal Revenue Code where there is reasonable support for the position. In such a rare situation, the CPA should disclose the treatment in the tax return.

.04 In no event may a CPA take a position that lacks reasonable support, even when this position is disclosed in a return.

Explanation

.05 Rule 102 of the AICPA Code of Professional Ethics provides that "A member shall not knowingly misrepresent facts, and when engaged in the practice of public accounting, including the rendering of tax and management advisory services, shall not subordinate his judgment to others. In tax practice, a member may resolve doubt in favor of his client as long as there is reasonable support for his position." Section 10.22 of Treasury Department Circular No. 230 requires CPAs to exercise due diligence in preparing returns.

.06 The preparer's declaration on a federal return requires the preparer to attest that the return "to the best of (his) knowledge and belief . . . is true, correct and complete." A CPA must disclose the facts necessary to discharge this responsibility as preparer.

.07 No detailed rules can be formulated to prescribe the manner in which a CPA should disclose relevant supplementary information about particular transactions included in a return. Each situation must be judged on its merits and particular facts. Since a CPA has an obligation to protect his client's interests while not misleading the Internal Revenue Service, he must apply judgment in deciding upon the extent and form of disclosure.

.08 Treasury Department regulations and Internal Revenue Service pronouncements such as revenue rulings are interpretations of the Internal Revenue Code designed in general to give guidance, and disclosure of contrary positions is therefore not required. However, certain Treasury Department regulations are promulgated by the department as directed by the Internal Revenue Code and may be deemed quasi-legislative (for example, regulations under sections 1502 and 472). For that reason and in light of the possible penalties for negligence and fraud described below, a CPA should consider whether disclosure of positions contrary to such regulations, though not required, might be prudent. Such consideration is warranted only as to regulations that have been adopted, not as to proposed regulations.

.09 In deciding whether a position is contrary to a specific section of the Internal Revenue Code, Supreme Court decisions interpreting code sections are final authority, and contrary positions taken with reasonable support should be disclosed. Generally, it would be difficult to envision reasonable support for a position in conflict with a Supreme Court decision. Decisions of lower courts do not have the same finality as Supreme Court decisions and, therefore, a contrary position does not usually require disclosure.

.10 Reasonable support for taking a position contrary to Internal Revenue Service interpretations or lower court decisions exists when, in the professional judgment of the CPA, it is fair to conclude that a contrary interpretation may be supported by such competent authority as the Internal Revenue Code, legislative history, or court decisions. Disclosure is not required when such reasonable support exists.

.11 Examples of reasonable support for taking a position contrary to the Internal Revenue Code include (1) legal opinions as to the

constitutionality of a specific provision, (2) published writings of tax specialists asserting the possibility of a lack of constitutionality, and (3) possible conflicts between two sections of the Internal Revenue Code. In such instances the return should state the position taken.

.12 Even in circumstances where disclosure is not required, the CPA may sometimes choose to make disclosure of a contrary position in a return. Such choice may be made as a result of considering the possible advantages of disclosure in relation to fraud or negligence penalties under section 6653 or in avoiding possible application of the six-year statutory period for assessment under section 6501(e). Preparer penalties under section 6694(a) may also at times be averted by disclosure (see Conference Committee Report on section 1203 of H.R. 10612 (94th Congress) which states that while there may be instances in which some form of disclosure on a return would be necessary to avoid penalties, it "would depend on all the relevant facts and circumstances in the particular case"). Further, temporary regulations specifically state (at section 404.6694-1, **Q** and **A-6**) in reference to a disagreement in good faith that where there is no case law which "conflicts with the regulation or ruling in dispute, the preparer may disclose on the return . . . the grounds for his disagreement . . . in evidence of his good faith."

.13 A tax return is primarily a client's representation, and the client has the final responsibility for whatever positions are taken in the return. Such positions should therefore be taken only with the full acquiescence of the client.

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