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AICPA Professional Standards: Statements on responsibilities in tax practice as of June 1, 1991

American Institute of Certified Public Accountants. Committee on Federal Taxation

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AICPA PROFESSIONAL STANDARDS

Volume 2

Accounting & Review Services

Code of Professional Conduct

Bylaws

International Accounting

International Auditing

Management Advisory Services

Quality Control

Quality Review

Tax Practice

As of June 1, 1991

AICPA

American Institute of Certified Public Accountants

TX

TAX PRACTICE

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[The next page is 18,001.]

STATEMENTS ON RESPONSIBILITIES IN TAX PRACTICE

Preface

This section represents a revision of the Statements on Responsibilities in Tax Practice previously issued by the Federal Taxation Executive Committee of the AICPA. The Statements on Responsibilities in Tax Practice were issued over the period 1964 to 1977 to provide a body of advisory opinions on what are good standards of tax practice, delineating the CPA's responsibilities to the client, the public, the government, and the profession. Statements Nos. 1 through 9 and the Introduction were codified in 1976 as *Statements on Responsibilities in Tax Practice*. Statement No. 10 was issued in 1977.

Statements concerning the CPA's responsibility to sign the return (Statements Nos. 1 and 2, "Signature of Preparers" and "Signature of Reviewer: Assumption of Preparer's Responsibility") were withdrawn in 1982 after Treasury regulations were issued adopting substantially the same standards for all tax return preparers. The previously issued statements have been renumbered as indicated in the Appendix [section 192], and the current statements should be referred to as the 1988 revision and cited as SRTP (1988 Rev.) No. 1, etc.

The current revision is intended to be part of an ongoing process that will require changes to present statements and additions of new statements in recognition of the accelerating rate of change in tax laws and the increasing importance of the practice of taxes to CPAs.

Statements on Responsibilities in Tax Practice are developed by the Responsibilities in Tax Practice Subcommittee and approved by the Federal Taxation Executive Committee. While this revision was approved by the 1987—88 Responsibilities in Tax Practice Subcommittee and the 1987—88 Federal Taxation Executive Committee, acknowledgement is given to the many members whose efforts over the years went into the development of these statements.

Donald H. Skadden
Vice President—Taxation

[The next page is 18,003.]

TX

TAX PRACTICE**STATEMENTS ON RESPONSIBILITIES IN TAX PRACTICE**

Statements on Responsibilities in Tax Practice are published for the guidance of members of the Institute and do not constitute enforceable standards. The statements have been approved by at least two-thirds of the members of the Responsibilities in Tax Practice Committee and the Tax Executive Committee.

Statements containing recommended standards of responsibilities that are more restrictive than those established by the Internal Revenue Code, the Treasury Department, or the Institute's Code of Professional Conduct depend for their authority on the general acceptability of the opinions expressed. These statements are not intended to be retroactive.

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TX Section 102

Introduction

Issue date, unless
otherwise indicated:
August, 1988

The Program

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

The Significance of the Statements

.02 The series of statements constitutes a body of advisory opinion on what are appropriate standards of tax practice, outlining the extent of a CPA's responsibility to clients, the public, the government, and the profession. Each statement covers a particular aspect of tax practice. The statements take into account applicable legal requirements of tax practice as well as the Federal Taxation Executive Committee's opinions as to appropriate standards of responsibilities in tax practice.

The Objectives

.03 The principal objectives of the program are—

- a. To recommend 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 Internal Revenue Service and to urge their officials to promote the application of commensurate standards of responsibilities by their personnel.
- c. To foster increased public understanding of, compliance with, and confidence in our tax system through awareness of the recommended standards of responsibilities of CPAs in tax practice.

The Program in Perspective

.04 There are numerous guides to help determine practice responsibilities. The CPA is required to follow the statutes, regulations, and rules governing practice before the Internal Revenue Service (for example, Treasury Department Circular 230). The Institute's Code of Professional Conduct requires the observance of high moral and ethical standards. These statements are published to clarify the CPA's dual responsibilities to the tax system as well as to clients.

.05 Although the CPA has no separate enforceable statement of standards of conduct relating solely to tax practice, the Institute's Code of Professional Conduct requires attitudes and habits of truthfulness and integrity in all of a CPA's practice, including tax practice. Rule 102 of the Code of Professional Conduct [ET section 102.01] states:

In the performance of any professional service, a member shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.

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

.07 In this environment, the Federal Taxation Executive Committee concludes that while the Code of Professional Conduct 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 responsibilities of CPAs in tax practice for the guidance of taxpayers and CPAs alike.

The Scope and Purpose of the Statements

.08 The statements generally are confined to discussions of the considerations relating to *federal income tax* practice, including the preparation of tax returns, tax planning, and representation before the Internal Revenue Service. The Federal Taxation Executive Committee will consider development of statements of responsibilities in other areas of tax practice in the future as part of its ongoing program to review, revise, and add statements as necessary or appropriate.

.09 The primary purpose of the program is educational. The statements do not have the force of authority, in contrast, for example, to the regulations contained in Treasury Department Circular 230, the Internal Revenue Code or its regulations, or the AICPA Code of Professional Conduct. Statements containing recommended standards of responsibilities that are more restrictive than those established by the Internal Revenue Code, the Treasury Department, or the AICPA Code of Professional Conduct are advisory opinions and CPAs should use them as guides.

Authority of the Federal Taxation Executive Committee

.10 By resolution of the Institute's Council, the Federal Taxation Executive Committee is authorized to express opinions on matters of broad policy related to taxation including the issuance of Statements on Responsibilities in Tax Practice.

The Procedures

.11 The statements present the opinion of at least two-thirds of the members of the Responsibilities in Tax Practice Subcommittee and two-thirds of the Federal Taxation Executive Committee.

.12 Drafts of a proposed statement are given appropriate exposure before the Federal Taxation Executive Committee issues a statement.

.13 Details of the procedural aspects of issuing the statements can be found in the *AICPA Tax Division Administrative Manual*.

[The next page is 18,051.]

TX Section 112***Tax Return Positions***

Issue date, unless
otherwise indicated:
August, 1988

Introduction

.01 This statement sets forth the standards a CPA should follow in recommending tax return positions and in preparing or signing tax returns including claims for refunds. For this purpose, a "tax return position" is (1) a position reflected on the tax return as to which the client has been specifically advised by the CPA or (2) a position as to which the CPA has knowledge of all material facts and, on the basis of those facts, has concluded that the position is appropriate.

Statement

.02 With respect to the tax return positions, a CPA should comply with the following standards:

- a. A CPA should not recommend to a client that a position be taken with respect to the tax treatment of any item on a return unless the CPA has a good faith belief that the position has a realistic possibility of being sustained administratively or judicially on its merits if challenged.
- b. A CPA should not prepare or sign a return as an income tax return preparer if the CPA knows that the return takes a position that the CPA could not recommend under the standard expressed in paragraph .02a.
- c. Notwithstanding paragraphs .02a and .02b, a CPA may recommend a position that the CPA concludes is not frivolous so long as the position is adequately disclosed on the return or claim for refund.
- d. In recommending certain tax return positions and in signing a return on which a tax return position is taken, a CPA should, where relevant, advise the client as to the potential penalty consequences of the recommended tax return position and the opportunity, if any, to avoid such penalties through disclosure.

.03 The CPA should not recommend a tax return position that—

- a. Exploits the Internal Revenue Service audit selection process; or
- b. Serves as a mere "arguing" position advanced solely to obtain leverage in the bargaining process of settlement negotiation with the Internal Revenue Service.

.04 A CPA has both the right and responsibility to be an advocate for the client with respect to any positions satisfying the aforementioned standards.

Explanation

.05 Our self-assessment tax system can only function effectively if taxpayers report their income on a tax return that is true, correct, and complete. A tax return is primarily a taxpayer's representation of facts, and the taxpayer has the final responsibility for positions taken on the return.

.06 CPAs have a duty to the tax system as well as to their clients. However, it is well-established that the taxpayer has no obligation to pay more taxes than are legally owed, and the CPA has a duty to the client to assist in achieving that result. The aforementioned standards will guide the CPA in meeting responsibilities to the tax system and to clients.

.07 The standards suggested herein require that a CPA in good faith believe that the position is warranted in existing law or can be supported by a good faith argument for an extension, modification, or reversal of existing law. For example, the CPA may reach such a conclusion on the basis of well-reasoned articles, treatises, IRS General Counsel Memoranda, a General Explanation of a Revenue Act prepared by the staff of the Joint Committee on Taxation, and Internal Revenue Service written determinations (for example, private letter rulings), whether or not such sources are treated as "authority" under section 6661. A position would meet these standards even though, for example, it is later abandoned because of practical or procedural aspects of an Internal Revenue Service administrative hearing or in the litigation process.

.08 Where the CPA has a good faith belief that more than one position meets the standards suggested herein, the CPA's advice concerning alternative acceptable positions may include a discussion of the likelihood that each such position might or might not cause the client's tax return to be examined and whether the position would be challenged in an examination.

.09 In some cases, a CPA may conclude that a position is not warranted under the standard set forth in the preceding paragraph, .02a. A client may, however, still wish to take such a tax return position. Under such circumstances, the client should have the opportunity to make such an assertion, and the CPA should be able to prepare and sign the return provided the position is adequately disclosed on the return or claim for refund and the position is not frivolous. A "frivolous" position is one which is knowingly advanced in bad faith and is patently improper.

.10 The CPA's determination of whether information is adequately disclosed by the client is based on the facts and circumstances of the particular case. No detailed rules have been formulated, for purposes of this statement, to prescribe the manner in which information should be disclosed.

.11 Where the particular facts and circumstances lead the CPA to believe that a taxpayer penalty might be asserted, the CPA should so advise the client and should discuss with the client issues related to disclosure on the tax return. Although disclosure is not required if the position meets the standard in paragraph .02a, the CPA may nevertheless recommend that a client disclose a position. Disclosure should be considered when the CPA believes it would mitigate the likelihood of claims of taxpayer penalties under the Internal Revenue Code or would avoid the possible application of the six-year statutory period for assessment under section 6501(e). Although the CPA should advise the client with respect to disclosure, it is the client's responsibility to decide whether and how to disclose.

[The next page is 18,071.]

TX Section 122**Answers to Questions on Returns**

Issue date, unless
otherwise indicated:
August, 1988

Introduction

.01 This statement considers whether a CPA may sign the preparer's declaration on a tax return where 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

.02 A CPA should make a reasonable effort to obtain from the client, and provide, appropriate answers to all questions on a tax return before signing as preparer.

Explanation

.03 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, aside from administrative convenience to the Internal Revenue Service, there are at least two considerations which dictate that a CPA should be satisfied that a reasonable effort has been made to provide appropriate answers to the questions on the return which are applicable to the 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 the omission tends to detract from the quality of the return.
- b. The CPA must sign the preparer's declaration stating that the return is true, correct, and complete.

.04 While an effort should be made to provide an answer to each question on the return that is applicable to the taxpayer, reasonable grounds may exist for omitting an answer. 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, assurance should be given on the return that the data will be supplied upon examination.

.05 The fact that an answer to a question might prove disadvantageous to the client does not justify omitting an answer.

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

[The next page is 18,091.]

TX Section 132***Certain Procedural Aspects of Preparing Returns***

Issue date, unless
otherwise indicated:
August, 1988

Introduction

.01 This statement considers the responsibility of the CPA to examine or verify certain supporting data or to consider information related to another client when preparing a client's tax return.

Statement

.02 In preparing or signing a return, the CPA may in good faith rely without verification upon information furnished by the client or by third parties. However, the CPA 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 CPA. In this connection, the CPA should refer to the client's returns for prior years whenever feasible.

.03 Where the Internal Revenue Code or income tax 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), the CPA should make appropriate inquiries to determine to his or her satisfaction whether such condition has been met.

.04 The individual CPA who is required to sign the return should consider information actually known to that CPA from the tax return of another client when preparing a tax return if the information is relevant to that tax return, its consideration is necessary to properly prepare that tax return, and use of such information does not violate any law or rule relating to confidentiality.

Explanation

.05 The preparer's declaration on the income tax return 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 of which the preparer has any knowledge." This reference should be understood to relate to information furnished by the client or by third parties to the CPA in connection with the preparation of the return.

.06 The preparer's declaration does not require the CPA to examine or verify supporting data. However, a distinction should be made between (1) the need to either determine by inquiry that a specifically required condition (such as maintaining books and records or substantiating documentation) has been satisfied, or to obtain information when the material furnished appears to be incorrect or incomplete, and (2) the need for the CPA to examine underlying information. In fulfilling his or her obligation to exercise due diligence in

preparing a return, the CPA ordinarily may rely on information furnished by the client unless it appears to be incorrect, incomplete, or inconsistent. 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. Thus, where the client 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 the CPA.

.07 Even though there is no requirement to examine underlying documentation, the CPA should encourage the client to provide supporting data where appropriate. For example, the CPA should encourage the client 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. This should reduce the possibility of misunderstanding, inadvertent errors, and administrative problems in the examination of returns by the Internal Revenue Service.

.08 The source of information provided to the CPA by a client for use in preparing the return is often a pass-through entity, such as a limited partnership, in which the client has an interest but is not involved in management. In some instances, it may be appropriate for the CPA to advise the client to ascertain the nature and amount of possible exposure to tax deficiencies, interest, and penalties, by contact with management of the pass-through entity. However, the CPA need not require the client to do so and 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 CPA.

.09 The CPA should make use of the client's prior years' returns in preparing the current return whenever feasible. Reference to prior returns and discussion of prior year tax determinations with the client 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 depends upon the particular circumstances.

[The next page is 18,111.]

TX Section 142***Use of Estimates***

Issue date, unless
otherwise indicated:
August, 1988

Introduction

.01 This statement considers the CPA's responsibility in connection with the CPA's use of the taxpayer's estimates in the preparation of a tax return. The CPA may advise on estimates used in the preparation of a tax return, but responsibility for estimated data is that of the client, who should provide the estimated data. Appraisals or valuations are not considered estimates for purposes of this statement.

Statement

.02 A CPA may prepare tax returns involving the use of the taxpayer's estimates if it is impracticable to obtain exact data, and the estimated amounts are reasonable under the facts and circumstances known to the CPA. When the taxpayer's estimates are used, they should be presented in such a manner as to avoid the implication of greater accuracy than exists.

Explanation

.03 Accounting requires the exercise of 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 in the Internal Revenue Code, is acceptable and expected. These judgments are not estimates within the purview of this statement. For example, the income tax regulations provide 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.

.04 In the case of transactions involving small expenditures, accuracy in recording some data may be difficult to achieve. Therefore, the use of estimates by the taxpayer in determining the amount to be deducted for such items may be appropriate.

.05 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 by the taxpayer.

.06 Estimated amounts should not be presented in a manner which provides a misleading impression as to the degree of factual accuracy.

.07 Although specific disclosure that an estimate is used for an item in the return is not required in most instances, there are unusual circumstances where such disclosure is needed to avoid misleading the Internal Revenue Service regarding the degree of accuracy of the return. Some examples of unusual circumstances include the following:

- a. The taxpayer has died or is ill at the time the return must be filed.
- b. The taxpayer has not received a K-1 for a flow-through entity at the time the tax return is to be filed.
- c. There is litigation pending (for example, a bankruptcy proceeding) which bears on the return.
- d. Fire or computer failure destroyed the relevant records.

[The next page is 18,131.]

TX Section 152***Departure From a Position Previously
Concluded in an Administrative
Proceeding or Court Decision***

Issue date, unless
otherwise indicated:
August, 1988

Introduction

.01 This statement discusses whether a CPA may recommend a tax return position that departs from the treatment of an item as concluded in an administrative proceeding or a court decision with respect to a prior return of the taxpayer. For this purpose, a "tax return position" is (1) a position reflected on the tax return as to which the client has been specifically advised by the CPA, or (2) a position about which the CPA has knowledge of all material facts and, on the basis of those facts, has concluded that the position is appropriate.

.02 For purposes of this statement, "administrative proceeding" includes an examination by the Internal Revenue Service or an appeals conference relating to a return or a claim for refund.

.03 For purposes of this statement, "court decision" means a decision by any federal court having jurisdiction over tax matters.

Statement

.04 The recommendation of a position to be taken concerning the tax treatment of an item in the preparation or signing of a tax return should be based upon the facts and the law as they are evaluated at the time the return is prepared or signed by the CPA. Unless the taxpayer is bound to a specified treatment in the later year, such as by a formal closing agreement, the treatment of an item as part of concluding an administrative proceeding or as part of a court decision does not restrict the CPA from recommending a different tax treatment in a later year's return. Therefore, if the CPA follows the standards in SRTP (1988 Rev.) No. 1 [section 112], the CPA may recommend a tax return position, prepare, or sign a tax return that departs from the treatment of an item as concluded in an administrative proceeding or a court decision with respect to a prior return of the taxpayer.

Explanation

.05 A CPA usually will recommend a position with respect to the tax treatment of an item that is the same as was consented to by the taxpayer for a similar item as a result of an administrative proceeding or that was subject to a court decision concerning a prior year's return of the taxpayer. The question is whether the CPA is required to do so. Considerations include the following:

- a. The Internal Revenue Service tends to act consistently with the manner in which an item was disposed of in a prior administrative proceeding, but is 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. An unfavorable court decision does not prevent a taxpayer from taking a position contrary to the earlier court decision in a subsequent year.
 - c. The consent in an earlier administrative proceeding and the existence of an unfavorable court decision are factors that the CPA should consider in evaluating whether the standards in SRTP (1988 Rev.) No. 1 are met.
 - d. The taxpayer's consent to the treatment in the administrative proceeding or the court's decision may have been caused by a lack of documentation, whereas supporting data for the later year is adequate.
 - e. The 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 SRTP (1988 Rev.) No. 1.
 - f. Court decisions, rulings, or other authorities that are more favorable to the taxpayer's current position may have developed since the prior administrative proceeding was concluded or the prior court decision was rendered.
-

[The next page is 18,151.]

TX Section 162**Knowledge of Error:
Return Preparation**

Issue date, unless
otherwise indicated:
August, 1988

Introduction

.01 This statement considers the responsibility of a CPA who becomes aware of an error in a client's previously filed tax return or of the client's failure to file a required tax return. As used herein, the term "error" includes an omission. However, for purposes of this statement, the term "error" does not include (1) a position taken by the client which, at the time the return was filed, satisfied the standards in SRTP (1988 Rev.) No. 1 [section 112]; (2) an item that has no more than an insignificant effect on the client's tax liability; or (3) an erroneous method of accounting continued in a prior year under circumstances believed to require the permission of the Internal Revenue Service to effect a change in the manner of reporting the item involved.¹

.02 This statement applies whether or not the CPA prepared or signed the return that contains the error.

Statement

.03 The CPA should inform the client promptly upon becoming aware of an error in a previously filed return or upon becoming aware of a client's failure to file a required return. The CPA should recommend the measures to be taken. Such recommendation may be given orally. The CPA is not obligated to inform the Internal Revenue Service, and the CPA may not do so without the client's permission, except where required by law.

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

Explanation

.05 While performing services for a client, a CPA may become aware of an error in a previously filed return or may become aware that the client failed to file a required return. The CPA should advise the client of the error (as required by Treasury Department Circular 230) and the measures to be taken. It is the client's responsibility to decide whether to correct the error. In appropriate cases, particularly where it appears that the Internal Revenue

¹ Future statements will address (1) the appropriate standards to be considered by a CPA when a client's tax return for a prior year is affected by a law, regulation, or court decision having retroactive effect and (2) whether the standards in SRTP (1988 Rev.) No. 1 [section 112] are satisfied when a client continues an erroneous method of accounting in the *current* year's return.

Service might assert the charge of fraud or other criminal misconduct, the client should be advised to consult legal counsel before taking any action. In the event that the client does not correct an error, the CPA should consider whether to continue a professional relationship with the client.²

.06 If the CPA decides to continue a professional relationship with the client and is requested to prepare a tax return for a year subsequent to that in which the error occurred, then the CPA should take reasonable steps to ensure that the error is not repeated.

.07 Whether an error has no more than an insignificant effect on the client's tax liability is left to the judgment of the individual CPA based on all the facts and circumstances known to the CPA.

.08 Where the CPA becomes aware of the error during an engagement which does not involve tax return preparation, the responsibility of the CPA is to advise the client of the existence of the error and to recommend that the error be discussed with the client's tax return preparer.

[The next page is 18,171.]

² The CPA should consider consulting his or her own legal counsel before deciding upon recommendations to the client and whether to continue a professional relationship with the client. The potential for violating AICPA Rule 301 [ET section 301.01] (relating to the CPA's confidential client relationship), the Internal Revenue Code and income tax regulations, or state laws on privileged communications and other considerations may create a conflict between the CPA's interests and those of the client.

TX Section 172***Knowledge of Error: Administrative Proceedings***

Issue date, unless
otherwise indicated:
August, 1988

Introduction

.01 This statement considers the responsibility of a CPA who becomes aware of an error in a return that is the subject of an administrative proceeding, such as an examination by the IRS or an appeals conference relating to a return or a claim for refund. As used herein, the term "error" includes an omission. However, the term "error" does not include (1) a position taken by the client which, at the time the return was filed, satisfied the standards in SRTP (1988 Rev.) No. 1 [Section 112], (2) an item that has no more than an insignificant effect on the client's tax liability, or (3) an erroneous method of accounting continued in the year of the administrative proceeding under circumstances believed to require the permission of the Internal Revenue Service to effect a change in the manner of reporting the item involved.¹

.02 This statement applies whether or not the CPA prepared or signed the return that contains the error; it does not apply where a CPA has been engaged by legal counsel to provide assistance in a matter relating to the counsel's client.

Statement

.03 When the CPA is representing a client in an administrative proceeding with respect to a return which contains an error of which the CPA is aware, the CPA should inform the client promptly upon becoming aware of the error. The CPA should recommend the measures to be taken. Such recommendation may be given orally. The CPA is neither obligated to inform the Internal Revenue Service nor is he or she permitted to do so without the client's permission, except where required by law.

.04 The CPA should request the client's agreement to disclose the error to the Internal Revenue Service. Lacking such agreement, the CPA should consider whether to withdraw from representing the client in the administrative proceeding and whether to continue a professional relationship with the client.

Explanation

.05 When the CPA is engaged to represent the client before the Internal Revenue Service in an administrative proceeding with respect to a return containing an error of which the CPA is aware, the CPA should advise the

¹ Future statements will address the appropriate standards to be considered by a CPA when a client's tax return which is the subject of an administrative proceeding (1) is affected by a law, regulation, or court decision having retroactive effect, or (2) includes an erroneous accounting method.

client to disclose the error to the Internal Revenue Service. It is the client's responsibility to decide whether to disclose the error. In appropriate cases, particularly where it appears that the Internal Revenue Service might assert the charge of fraud or other criminal misconduct, the client should be advised to consult legal counsel before taking any action. If the client refuses to disclose or permit disclosure of an error, the CPA should consider whether to withdraw from representing the client in the administrative proceeding and whether to continue a professional relationship with the client.²

.06 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, in effect, provided misleading information. In any event, disclosure should be made before the conclusion of the administrative proceeding.

.07 Whether an error has an insignificant effect on the client's tax liability should be left to the judgment of the individual CPA based on all the facts and circumstances known to the CPA.

[The next page is 18,191.]

²The CPA should consider consulting his or her own legal counsel before deciding upon recommendations to the client and whether to continue a professional relationship with the client. The potential of violating Rule of Conduct 301 [ET Section 301.01] (relating to the CPA's confidential client relationship), the Internal Revenue Code and income tax regulations, or state laws on privileged communications and other considerations may create a conflict between the CPA's interests and those of the client.

TX Section 182***Form and Content of Advice to Clients***

Issue date, unless
otherwise indicated:
August, 1988

Introduction

.01 This statement discusses certain aspects of providing tax advice to a client and considers the circumstances in which the CPA has a responsibility to communicate with the client when subsequent developments affect advice previously provided. The statement does not, however, cover the CPA's responsibilities when it is expected that the advice rendered is likely to be relied upon by parties other than the CPA's client.¹

Statement

.02 In providing tax advice to a client, the CPA should use judgment to ensure that the advice given reflects professional competence and appropriately serves the client's needs. The CPA is not required to follow a standard format or guidelines in communicating written or oral advice to a client.

.03 In advising or consulting with a client on tax matters, the CPA should assume that the advice will affect the manner in which the matters or transactions considered ultimately will be reported on the client's tax returns. Thus, for all tax advice the CPA gives to a client, the CPA should follow the standards in SRTP (1988 Rev.) No. 1 [section 112] relating to tax return positions.

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

Explanation

.05 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, neither a standard format nor guidelines for communicating advice to the client can be established to cover all situations.

.06 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.

¹ The CPA's responsibilities when providing advice that will be relied upon by third parties will be addressed in a future statement.

.07 In deciding on the form of advice provided to a client, the CPA 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 client's inquiry
- c. The time available for development and submission of the advice
- d. The technical complications presented
- e. The existence of authorities and precedents
- f. The tax sophistication of the client and the client's staff
- g. The need to seek legal advice

.08 The CPA may assist a client 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.

.09 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 the CPA undertakes this obligation by specific agreement with the client. Thus, the communication of significant developments affecting previous advice should be considered an additional service rather than an implied obligation in the normal CPA-client relationship.

.10 The client should be informed that advice reflects professional judgment based on an existing situation and that subsequent developments could affect previous professional advice. CPAs should use precautionary language to the effect that their advice is based on facts as stated and authorities that are subject to change.

[The next page is 18,211.]

TX Section 192

Appendix

Cross-Reference of Previous and Revised Statements

<u>Previous Statement No.</u>	<u>Previous Section</u>	<u>Changes</u>	<u>1988 Revised Section</u>
1	111	Withdrawn 1982	—
2	121	Withdrawn 1982	—
3	131	Superseded by Statement No. 2, August 1988	122
4	141	Superseded by Statement No. 5, August 1988	152
5	151	Superseded by Statement No. 4, August 1988	142
6	161	Superseded by Statement No. 6, August 1988	162
7	171	Superseded by Statement No. 7, August 1988	172
8	181	Superseded by Statement No. 8, August 1988	182
9	191	Superseded by Statement No. 3, August 1988	132
10	201	Superseded by Statement No. 1, August 1988	112

[The next page is 18,501.]

TX Section 9000**TAX PRACTICE INTERPRETATION**

Statements on Responsibilities in Tax Practice and interpretations of the statements are published for the guidance of members of the American Institute of Certified Public Accountants and do not constitute enforceable standards. The statements and interpretations have been approved by at least two-thirds of the members of the Responsibilities in Tax Practice Committee and the Tax Executive Committee.

Statements or interpretations containing recommended standards of responsibilities that are more restrictive than those established by the Internal Revenue Code, the Treasury Department, or the Institute's Code of Professional Conduct depend for their authority on the general acceptability of the opinions expressed. This interpretation is not intended to be retroactive.

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TX Section 9112**Statements on Responsibilities
in Tax Practice: Tax Practice
Interpretation of TX Section
112****1. Realistic Possibility Standard****Foreword**

This section represents the AICPA interpretation of the realistic possibility standard. "The realistic possibility standard, established by the AICPA in Statement on Responsibilities in Tax Practice [1988 Rev.] No. 1 [section 112], provides that a CPA should not recommend a position or sign a return unless the CPA has a good faith belief that the position has a realistic possibility of being sustained administratively or judicially on its merits if challenged."

This interpretation is part of an ongoing process that requires interpretations, changes to present statements, and additions of new statements. This process recognizes the accelerating rate of change in tax laws and the increasing importance of the practice of taxes to CPAs.

Statements on Responsibilities in Tax Practice and their interpretations are developed by the Responsibilities in Tax Practice Committee and approved by the Tax Executive Committee. While this interpretation was approved by the 1990-1991 Responsibilities in Tax Practice Committee and the 1990-1991 Tax Executive Committee, acknowledgement is given to both former and current members of the Tax Division whose efforts over the years went into the development of the statements and interpretations.

Donald H. Skadden
Vice-President—Taxation

Background

.01 In August 1988 the AICPA Tax Division issued revised Statements on Responsibilities in Tax Practice (SRTPs). The primary purpose of these advisory statements on appropriate standards of tax practice is educational. This interpretation does not have the force of authority contained in such regulations as Treasury Department Circular 230, or in preparer penalty provisions of the Internal Revenue Code.

.02 SRTP (1988 Rev.) No. 1, *Tax Return Positions* [section 112], contains the standards a CPA should follow in recommending tax return positions and in preparing or signing tax returns and claims for refunds. In general, a CPA should have "a good faith belief that the [tax return] position [being recommended] has a realistic possibility of being sustained administratively or judicially on its merits if challenged" (see SRTP [1988 Rev.] No. 1, paragraph .02a [section 112.02a]). This is referred to here as the "realistic possibility

standard." If a CPA concludes that a tax return position does not meet the realistic possibility standard, the CPA may still recommend the position to the client, or prepare and sign a return containing the position, if the position is not frivolous and is adequately disclosed on the tax return or claim for refund.

.03 A "frivolous" position is one that is knowingly advanced in bad faith and is patently improper (see SRTP [1988 Rev.] No. 1, paragraph .09 [section 112.09]). The CPA's determination of whether information is adequately disclosed on the client's tax return or claim for refund is based on the facts and circumstances of the particular case (see SRTP [1988 Rev.] No. 1, paragraph .10 [section 112.10]).

.04 If the CPA believes there is the possibility that a tax return position might result in penalties being asserted against the client, the CPA should so advise the client and should discuss with the client the opportunity, if any, of avoiding such penalties through disclosure (see SRTP [1988 Rev.] No. 1, paragraph .11 [section 112.11]).

General Interpretation

.05 To meet the realistic possibility standard, a CPA should have a good faith belief that the position is warranted in existing law or can be supported by a good faith argument for an extension, modification, or reversal of existing law through the administrative or judicial process. The CPA should have an honest belief that the position meets the realistic possibility standard. Such belief must be based on sound interpretations of the tax law. A CPA should not take into account the likelihood of audit or detection in determining whether this standard is met (see SRTP [1988 Rev.] No. 1, paragraph .03a [section 112.03a]).

.06 The realistic possibility standard cannot be expressed in terms of percentage odds. The realistic possibility standard is less stringent than the "substantial authority" and the "more likely than not" standards that apply under the Internal Revenue Code (the Code) to substantial understatements of liability by taxpayers. It is more strict than the "reasonable basis" standard that exists under regulations issued prior to the Revenue Reconciliation Act of 1989.

.07 In determining whether a tax return position meets the CPA's realistic possibility standard, a CPA may rely on authorities in addition to those evaluated in determining whether substantial authority exists. Accordingly, CPAs may rely on well-reasoned treatises, articles in recognized professional tax publications, and other reference tools and sources of tax analysis commonly used by tax advisors and return preparers.

.08 In determining whether a realistic possibility exists, the CPA should do all of the following.*

1. Establish relevant background facts.
2. Distill the appropriate questions from those facts.
3. Search for authoritative answers to those questions.
4. Resolve the questions by weighing the authorities uncovered by that search.
5. Arrive at a conclusion supported by the authorities.

.09 The CPA should consider the weight of each authority in order to conclude whether a position meets the realistic possibility standard. In determining the weight of an authority, the CPA should consider its persuasiveness,

* See Ray M. Sommerfeld, et al., *Tax Research Techniques*, 3d rev. ed. (New York: AICPA, 1989), which includes a discussion of this process.

relevance, and source. Thus, the type of authority is a significant factor. Other important factors include whether the facts stated in the authority are distinguishable from those of the client and whether the authority contains an analysis of the issue or merely states a conclusion.

.10 The realistic possibility standard may be met despite the absence of certain types of authority. For example, a CPA may conclude that the realistic possibility standard is met regarding a position that is supported only by a well-reasoned construction of the applicable statutory provision.

.11 In determining whether the realistic possibility standard is met, the extent of research required is left to the judgment of the CPA based on all the facts and circumstances known to the CPA. The CPA may conclude that more than one position meets the realistic possibility standard.

Specific Illustrations

.12 The following illustrations deal with general fact patterns. Accordingly, the application of the guidance discussed above to variances in such general facts or to particular facts or circumstances may lead to different conclusions from those expressed here. In each illustration there is no authority other than that indicated.

Illustration 1. The CPA's client has engaged in a transaction that is adversely affected by a new statutory provision. Prior law supported a position favorable to the client. The client believes, and the CPA concurs, that the new statute is inequitable as applied to the client's situation. The statute is clearly drafted and unambiguous. The committee reports discussing the new statute contain general comments that do not specifically address the client's situation.

The CPA should recommend the return position supported by the new statute. A position contrary to a clear, unambiguous statute would ordinarily be a frivolous position.

Illustration 2. The facts are the same as in illustration 1 except that the committee reports discussing the new statute specifically address the client's situation with a position favorable to the client.

If the statute is clear and unambiguous against the taxpayer's position, but a contrary position exists based on the committee reports specifically addressing the client's situation, return positions based on either the statutory language or the legislative history satisfy the realistic possibility standard.

Illustration 3. The facts are the same as in illustration 1 except that the committee reports can be read to provide some evidence or authority to support the taxpayer's position, but the legislative history does not specifically address the situation.

In a case where the statute is clear and unambiguous, a contrary position based on an interpretation of committee reports that do not explicitly address the client's situation does not meet the realistic possibility standard. However, since the committee reports provide some support or evidence for the taxpayer's position, such a return position is not frivolous. The CPA may recommend the position to the client if it is adequately disclosed on the tax return.

Illustration 4. A client is faced with an issue involving the interpretation of a new statute. Following passage, it was broadly recognized that the statute contained a drafting error and a technical correction proposal has been introduced. The Internal Revenue Service (IRS) issues an announcement

indicating how it will administer the provision. The IRS pronouncement interprets the statute in accordance with the proposed technical correction.

Return positions based on either the existing statutory language or the IRS pronouncement satisfy the realistic possibility standard.

Illustration 5. The facts are the same as in illustration 4 except that no IRS pronouncement has been issued.

In the absence of an IRS pronouncement interpreting the statute in accordance with the proposed technical correction, only a return position based on the existing statutory language will meet the realistic possibility standard. A return position based on the technical correction proposed may be recommended if it is adequately disclosed, since it is not frivolous.

Illustration 6. A client is seeking advice from a CPA regarding a recently amended Code section. The CPA has reviewed the Code section, committee reports that specifically address the issue, and a recently published IRS Notice. The CPA has concluded in good faith that, based upon the Code section and the committee reports, the IRS's position as stated in the Notice does not reflect congressional intent.

The CPA may recommend the position supported by the Code section and the committee reports since it meets the realistic possibility standard.

Illustration 7. The facts are the same as in illustration 6 except that the IRS pronouncement is a temporary regulation.

In determining whether the position meets the realistic possibility standard, the CPA should determine the weight to be given the regulation by analyzing factors such as whether the regulation is legislative, interpretative or inconsistent with the statute. If the CPA concludes the position does not meet the realistic possibility standard, the position may nevertheless be recommended if it is adequately disclosed, since it is not frivolous.

Illustration 8. A tax form published by the IRS is incorrect, but completion of the form as published provides a benefit to the client. The CPA knows that the IRS has published an announcement acknowledging the error.

In these circumstances, a return position in accordance with the published form is a frivolous position.

Illustration 9. The client wants to take a position that the CPA has concluded is frivolous. The client maintains that even if the return is examined by the IRS, the issue will not be raised.

The CPA should not consider the likelihood of audit or detection in determining if the realistic possibility standard is met. The CPA should not prepare or sign a return that contains a frivolous position even if it is disclosed.

Illustration 10. Congress passes a statute requiring the capitalization of certain expenditures. The client believes, and the CPA concurs, that in order to comply fully the client will need to acquire new computer hardware and software and implement a number of new accounting procedures. The client and the CPA agree that the costs to comply fully are significantly greater than the resulting increase in tax due under the new provision. Because of cost considerations, the client makes no effort to comply. The client wants the CPA to prepare and sign a return on which the new requirement is simply ignored.

The return position desired by the client is frivolous, and the CPA should neither prepare nor sign the return.

Illustration 11. The facts are the same as in illustration 10 except that the client has made a good faith effort to comply with the law by calculating an estimate of expenditures to be capitalized under the new provision.

In this situation, the realistic possibility standard is met. When using estimates in the preparation of a return, the CPA should refer to SRTP (1988 Rev.) No. 4, *Use of Estimates* [section 142].

Illustration 12. On a given issue, the CPA has located and weighed two authorities. The IRS has published its clearly enunciated position in a Revenue Ruling. A court opinion is favorable to the client. The CPA has considered the source of both authorities and has concluded that both authorities are persuasive and relevant.

The realistic possibility standard is met with regard to either position.

Illustration 13. A tax statute is silent on the treatment of an item under such statute. However, the committee reports explaining the statute direct the IRS to issue regulations that will require specified treatment of this item. No regulations are issued at the time the CPA must recommend a position on the tax treatment of the item.

The CPA may recommend the position supported by the committee reports since it meets the realistic possibility standard.

Illustration 14. The client wants to take a position that the CPA concludes meets the realistic possibility standard based on an assumption regarding an underlying nontax legal issue. The CPA recommends that the client seek advice from his or her legal counsel, and the client's attorney opines on the nontax legal issue.

A legal opinion on a nontax legal issue may, in general, be relied upon by the CPA. The CPA must, however, use professional judgment when relying on a legal opinion. If on its face, the opinion of the client's attorney appears to be unreasonable, unsubstantiated, or unwarranted, the CPA should consult his or her attorney before relying on the opinion.

Illustration 15. The client has obtained from his or her attorney an opinion on the tax treatment of an item and requests that the CPA rely on the opinion.

The authorities on which a CPA may rely include well-reasoned sources of tax analysis. If the CPA is satisfied as to the source, relevance, and persuasiveness of the legal opinion, then the CPA may rely on the opinion when determining whether the realistic possibility standard is met.

[Issue Date: December 1990.]

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