

AICPA Clarifies Ethics Standards for Tax Practice

On January 1, 2010, members of the American Institute of Certified Public Accountants (AICPA) became subject to clarified rules of conduct for tax practice. This article highlights the newly-revised AICPA Statements on Standards for Tax Services (the “SSTs” or “Standards”).

What are the SSTs?

The SSTs are enforceable ethics standards under the AICPA Code of Professional Conduct (Rule 201, General Standards [ET§201.01], and Rule 202, Compliance with Standards [ET§202.01]), which apply to all AICPA members providing tax services, whether in public practice or private industry. These Standards apply to work performed in foreign

About the Author & Publisher

Cathy Allen, founder of **Audit Conduct, LLC**, develops courses and customized training on professional ethics and auditor independence for CPA firms, professional organizations, and other stakeholders of the accounting profession. She also helps CPA firms enhance their quality controls over ethics and independence compliance.

and domestic tax jurisdictions, at all levels of government (e.g. federal, state, city), and complement other standards of tax practice, e.g., penalty provisions of the Internal Revenue Code (IRC).

In 2000, the AICPA Tax Executive Committee developed the original eight (8) SSTs to provide helpful, authoritative guidance on how tax practitioners should perform their work under the AICPA Code. The SSTs were based largely on the Statements on Responsibilities in Tax Practice (SRTPs), a set of advisory opinions issued between 1964 and 1977, because courts, state accountancy boards, the Internal Revenue Service (IRS), and others were interpreting the nonauthoritative SRTPs as “de facto” ethics standards for tax practice.

Why were the SSTs clarified and how have they changed?

Since their issuance in August 2000, AICPA members have sought clarification of the SSTs. Generally, the Standards have been updated and clarified to make them more understandable. SSTS no. 1, Tax Return Positions, was re-assessed in light of recent legal and regulatory amendments and is now better aligned

to relevant regulations, such as the preparer penalty provisions in IRC section 6694. In addition, SSTS no. 6 and SSTS no. 7 were consolidated since their content significantly overlapped; the remaining Standard was re-numbered to account for this change.

A brief synopsis of each Standard (as revised, effective January 1, 2010) appears in the following table.

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Summary of the Statements on Standards for Tax Services (SSTS)

SSTS No. 1

Tax Return Positions

Primary Question Addressed: What standard must a member meet to recommend a tax return position and sign a tax return?

- **Nondisclosed Tax Positions**—comply with the tax return reporting standard of the applicable taxing authority. If no such standard exists or the taxing authority’s standard is lower than the “Realistic Possibility” standard, (i.e. the member believes in good faith that the position has at least a realistic possibility of being sustained administratively or in the courts, if challenged), the “Realistic Possibility” standard applies.
- **Disclosed Tax Positions**—comply with the tax return reporting standard of the applicable taxing authority. If no such standard exists or the taxing authority’s standard is lower than the “Reasonable Basis” standard, (i.e., the member believes in good faith that there is a reasonable basis for the position), the “Reasonable Basis” standard applies.
- When relevant, members should advise taxpayers of the disclosure requirements and how to avoid penalties through disclosure.

SSTS No. 2

Answers to Questions on Returns

Primary Question Addressed: May a member sign a tax return if one or more questions on the return have not been answered?

- Members should make a reasonable effort to obtain information from the taxpayer needed to answer to all questions on a tax return before signing the return.
- Discusses when “reasonable grounds” would exist for omitting an answer to a question on a return.
- Not all questions are of equal importance; provides guidelines on the types of matters that should be of particular concern to members.

SSTS No. 3

Certain Procedural Aspects of Preparing Returns

Primary Question Addressed: Must a member examine or verify information provided to him or her by taxpayers or other third parties?

- Members may rely in good faith—without verification—on information provided by taxpayers or third parties unless the information appears to be incorrect, incomplete, or inconsistent with other information that is known to the member (including information related to another taxpayer).
- If information appears to be lacking in some manner, members should make reasonable inquiries of the taxpayer.
- If there is a specific requirement for a tax treatment (e.g., maintaining books and records or substantiating documentation), the member should inquire to determine if the requirement has been satisfied.
- Prior tax returns of the taxpayer should be referred to whenever possible.

SSTS No. 4

Use of Estimates

Primary Question Addressed: May a member rely on a taxpayer’s estimates in preparing the taxpayer’s return?

- In certain circumstances, the member may use taxpayer estimates to prepare a return if based on information known to him or her at the time, the estimate appears to be reasonable. These circumstance are:
 - It is impractical to obtain precise data, and
 - Use of an estimate is not prohibited by statute or rule.

SSTS No. 5

Departure from a Position Previously Concluded in an Administrative Proceeding or Court Decision

Primary Question Addressed: May a member recommend a tax return position to a taxpayer that departs from a position determined in an administrative proceeding or court decision with regards to the taxpayer’s prior return?

- Yes, unless the taxpayer was bound by the court decision or administrative proceeding to apply the same tax position in subsequent years.
- The member must comply with SSTS no. 1, Tax Return Positions.
- Provides examples of circumstances in which it might be appropriate to recommend a different tax treatment to the taxpayer in a later year.

SSTS No. 6

Knowledge of Error: Return Preparation and Administrative Proceedings

Primary Question Addressed: What should a member do if he or she discovers an error on a taxpayer’s previously filed return or one that is subject to an administrative proceeding, or learns that a taxpayer has failed to file a required tax return?

- Upon becoming aware of an error (unless the error would have had only an insignificant impact on the taxpayer’s liability), the member should act promptly to advise the taxpayer of the error, the potential consequences of the error, and recommend that the error be corrected. (Advice may be oral.)
- If a member represents a taxpayer in an administrative proceeding that relates to the return that contains the error, the member should ask the taxpayer for agreement to disclose the error to the taxing authority.

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- The taxpayer—not the member—is responsible for deciding whether to act on the member's advice to correct the error.
- If the taxpayer fails to act on the member's advice, the member should reconsider his or her ongoing association (employment or client relationship) with the taxpayer. Unless required under law or regulation or authorized by the taxpayer, the member may not disclose the taxpayer's failure to act to the taxing authority.

SSTS No. 7

Form and Content of Advice to Taxpayers

Primary Question Addressed: Does a member have a responsibility to communicate with a taxpayer when subsequent events affect the member's previous advice?

- Members are not obligated to communicate with a taxpayer about subsequent developments affecting previous advice unless he or she agreed to do so or is assisting the taxpayer with implementing the advice.
- Members should employ judgment in determining the form (e.g., written or oral) and content of advice and should comply with the taxing authority's requirements when relevant, e.g., when providing written federal tax advice.
- Members' advice should comply with the standards in SSTS No. 1, Tax Return Positions.
- Provides a list of factors members should consider in determining the most appropriate form of advice to provide to a taxpayer.

Effective Date: January 1, 2010



Still to Come

Interpretations of SSTS No. 1, Tax Return Positions, are being updated currently.

Other Sources of Information

The AICPA Tax Center's page on the SSTSs:

<http://tax.aicpa.org/Resources/Professional+Standards+and+Ethics/Statements+on+Standards+for+Tax+Services/>

Proposed Revisions to the SSTSs (Exposure Draft dated November 26, 2008)

<http://tax.aicpa.org/Resources/Professional+Standards+and+Ethics/Statements+on+Standards+for+Tax+Services/2009+Exposure+Draft+-+Proposed+Standards.htm>

Redlined Version of the Changes to the SSTSs

http://tax.aicpa.org/NR/rdonlyres/3D6467B7-BC8E-4BA8-A048-041C4A5EE0F7/0/FINAL_Redlined_120508.pdf

Article appearing in The Tax Adviser in May 2009:

<http://www.aicpa.org/pubs/taxadv/may2009/gardner.pdf>