[*Tax Practitioners withdrawing due to Errors]*

***□ 1. Know the applicable laws & standards***

1. *Treasury Department. Circular No. 230. (Rev. 6-2014). Regulations Governing Practice before the Internal Revenue Service.*

**§ 10.21 Knowledge of client’s omission.**

A practitioner 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 submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission.

Note: A client’s failure to file an amended return to correct an error can lead to sanctions against the tax practitioner. See Circular 230 rule below on such sanctions.

**§ 10.51 Incompetence and disreputable conduct.**

1. *Incompetence and disreputable conduct.* Incompetence and disreputable conduct for which a practitioner may be sanctioned under §10.50 includes, but is not limited to —

(4) Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, and any other document or statement, written or oral, are included in the term “information.”

1. *AICPA Statements on Standards for Tax Services issued by the Tax Executive
Committee. Nos. 1-8 effective January 1, 2010.*

**Statement No. 6, Knowledge of Error: Return Preparation and Administrative Proceedings**.

 Introduction 1 – The statement sets forth the applicable standards for a member who becomes aware of:

a. an error in a taxpayer’s previously filed tax return;

b. an error in a return that is the subject of an administrative proceeding;

c. a taxpayer’s failure to file a required tax return;

d. a position taken on a prior year’s return that no longer meets these standards due to legislation, judicial decisions, or administrative pronouncements having a retroactive effect.

Note: an error does NOT include an item that has an insignificant effect on the taxpayer’s tax liability.

Statement 4 – A member should inform the taxpayer promptly upon becoming aware of an error in a previously filed return, an error in a return that is the subject of an administrative proceeding, or a taxpayer’s failure to file a required return. A member should advise the taxpayer of the potential consequences of the error and recommend the corrective measures to be taken – either in writing or orally. The member is not allowed to inform the taxing authority without the taxpayer’s permission, except when required by law.

 Statement 5 – If a member is requested to prepare the current year’s return and the taxpayer has not taken appropriate action to correct an error in a prior year’s return, the member should consider whether to **withdraw** from preparing the return and whether to continue a professional or employment relationship with the taxpayer. If the member does prepare such current year’s return, the member should take reasonable steps to ensure that the error is not repeated.

 Statement 6 – If a member is representing a taxpayer in an administrative proceeding with respect to a return that contains an error of which the member is aware, the member should request the taxpayer’s agreement to disclose the error to the taxing authority. Lacking such agreement, the member should consider whether to **withdraw** from representing the taxpayer in the administrative proceeding and whether to continue a professional or employment relationship with the taxpayer.

 Explanation 8 – It is the taxpayer’s responsibility to decide whether to correct the error. If the taxpayer does not correct the error, a member should consider whether to **withdraw** from the engagement and whether to continue a professional or employment relationship with the taxpayer. Although recognizing that the taxpayer may not be required by statute to correct an error by filing an amended return, a member should consider whether a taxpayer’s decision not to file an amended return or otherwise correct an error may predict future behavior that might require termination of the relationship.

 Explanation 12 – If a member decides to continue a professional or employment relationship with the taxpayer and is requested to prepare a tax return for a year subsequent to that in which the error occurred, the member should take reasonable steps to ensure that the error is not repeated. If the subsequent year’s tax return cannot be prepared without perpetuating the error, the member should consider **withdrawal** from the return preparation. If the member learns that the taxpayer is using an erroneous method of accounting and it is past the due date to request permission to change to a method meeting the standards of SSTS No. 1- Tax Return Positions, the member may sign a tax return for the current year, providing the tax return includes appropriate disclosure of the use of the erroneous method.

***□ 2. Know which law or standard is the strictest because that’s the one you have to follow.***

Rule of Thumb: When applicable law is stricter than the standards, members must adhere to applicable law. If conduct is governed by laws that are less strict than the standards, members must adhere to the standards.

***□ 3. Even though the standards allow for oral communications, best practices require written communications.*** All communications, especially the ones telling your client about an error, its potential consequences, and the fact that you may be withdrawing should be confirmed in a writing that is preserved in your client file.

***□ 4. If your analysis of the applicable laws, standards and circumstances lead you to continue the relationship, make sure:***

1. you take all appropriate measures to ensure that the error will not be repeated in subsequent returns
2. you prepare the amended return and send it to your client to facilitate the re-submission or re- filing

***□ 5. If your analysis of the applicable laws, standards and circumstances lead you to withdraw from the representation, consider this language:***

Dear Client:

Pursuant to the laws and standards that govern my accountancy practice and the fact that the error noted on last year’s return will not be corrected and refiled, I must withdraw from preparing this year’s tax return, unless you immediately direct me to rectify the error, and agree to re-submit the amended return.

Sincerely,

 Tax Practitioner