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Ethics in Tax Practice: Emerging Standards for Reporting Tax Return Postings

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ETHICS IN TAX PRACTICE: EMERGING STANDARDS FOR REPORTING TAX RETURN POSITIONS

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I. Overview of Discussion: The first part of this discussion briefly reviews the rules and regulations defining the practitioner's legal, ethical and professional responsibilities in the federal tax area. The remainder of the presentation focuses on two issues of current interest in the field of tax ethics: (1) the developing standards governing the practitioner in determining when a questionable position may be resolved in the client's favor on the tax return (or in planning tax-sensitive transactions), and (2) the practitioner's obligations upon discovery of an error on the client's prior year's return.

II. Framework of Rules and Regulations Defining the Practitioner's Duties and Responsibilities.

A. General.

1. The rules and regulations establishing the professional obligations of the federal tax practitioner form an intricate network of authority. Professional organizations such as the American Bar Association ("ABA") and American Institute of Certified Public Accountants ("AICPA"), state legislatures and courts, and the federal government, each have promulgated rules that constrain the practitioner's conduct. Malpractice and civil liability rules further define the nature of practitioner's duties.

2. Dual Obligations to the Client and System. The practitioner owes a basic duty to the client to zealously and loyally represent the interests of the client within the bounds of the law. The practitioner's obligations to the client, however, are not unrestricted. The practitioner also owes a duty, albeit less well defined, to the tax system as a whole. The practitioner is not free to do whatever it is that the client demands, regardless of the client's willingness to incur the risk of penalty. Ordinarily, the practitioner will satisfy his duty to the system while fulfilling his duties to the client. Occasionally, however, the practitioner's duty to the system will directly conflict with his obligations to the client. Both of the ethical issues discussed below--(1) the resolution of questionable positions on the client's return and (2) the practitioner's obligations on the discovery of a prior error--involve balancing the practitioner's dual obligations to the client and the system.

B. ABA Standards for Lawyers.

1. The ABA framework governing lawyers has two primary components; the rules regulating lawyer behavior (Model Rules and Model Code) and opinions of ethics committees interpreting the rules.

2. The Model Rules and Model Code, standing alone, have no legal effect. To become legally operative within a state, the rules must be adopted by the licensing authority of that state. Once adopted, the rules generally have the force of law. A lawyer engaging in conduct violative of the ABA rules is subject to discipline in the state in which he is licensed.

3. Ethics opinions issued by the ABA, like IRS private letter rulings, are not binding on the courts. Although nonbinding, ABA opinions do represent a significant source of guidance for the lawyer practicing in the federal tax area. See, e.g., ABA Opinions 314 and 85-352 discussed in part III below.

C. AICPA Standards for the CPA.

1. Tax practitioners who are licensed as CPAs are also subject to independent professional standards. Two of the more important of these standards promulgated by the AICPA are (1) the AICPA Code of Professional Conduct and (2) the AICPA Statements on Responsibilities in Tax Practice ("SRTPs").

2. A violation of the AICPA Rules of Conduct may trigger disciplinary action resulting in loss of membership in the AICPA. In contrast, the AICPA SRTPs do not represent enforceable standards. The SRTPs do, however, provide an important source of guidance with respect to the CPA's responsibilities in several areas, including return preparation, knowledge of errors, and the form of content of tax advice.

D. Federal Standards.

1. Treasury Circular 230.

a. The Treasury Department is authorized under 5 U.S.C. § 500 to impose standards of conduct for those who practice before it and to discipline practitioners who fail to comply with those standards. Pursuant to this authority, the Secretary of the Treasury has issued Title 31, Part 10, Code of Federal Regulations, which governs practice before the IRS. These regulations, commonly referred to as "Circular 230," address (1) eligibility to practice before the Service, (2) duties and restrictions relating to such practice, and (3) rules applicable to disciplinary proceedings for violation of the regulations.

b. An Office of Director of Practice has the primary responsibility for administering discipline under Circular 230. Failure to comply with a standard of conduct in Circular 230 may result in suspension or disbarment from practice before the Service. This disciplinary action may mark only the first event in an impressive stream of sanctions that may be brought against the practitioner. These sanctions include (1) civil penalties under the Code, (2) referral to the appropriate state licensing board for disciplinary action, and (3) restrictions under Circular 230 prohibiting other practitioners from maintaining a partnership with, or employing a person, under disbarment before the IRS.

2. Internal Revenue Code Penalties.

a. Practitioner Penalties.

i. In recognition of the significant role that professionals play in assisting taxpayers in the reporting process, the Code includes several penalties imposed directly on the practitioner. Some of these penalties, such as Code § 6694(a) discussed in Part III below, define the practitioner's responsibilities with respect to the accuracy of the taxpayer's return. Other penalties are designed to regulate the practitioner's participation in tax shelter activity, (see, e.g., Code § 6700) or, more generally, to discourage practitioners from aiding or abetting taxpayers in the understatement of their tax liability (see Code § 6701).

ii. The above penalty provisions may also trigger referral of the practitioner's conduct to the Director of Practice. In addition, the IRS has been granted the power under Code § 7407 to seek an injunction in District Court prohibiting preparers who have engaged in conduct violative of § 6694 from further engaging in such conduct.

b. Taxpayer Penalties: Implications for the Practitioner.

i. The Internal Revenue Code contains a series of penalties imposed on the taxpayer to encourage the accurate reporting of tax liability. These penalties, along with the remainder of the taxpayer penalty system, were substantially revised as part of the Revenue Reconciliation Act of 1989.

ii. The new law consolidates the three former primary taxpayer accuracy penalties (the negligence, substantial understatement and valuation penalties) in a single 20% accuracy penalty (Code § 6662).

iii. The substantial understatement prong of § 6662, like the former § 6661 penalty, is not dependent on taxpayer behavior that falls below a specified level of care. Instead, the penalty automatically results from an understatement of tax attributable to an undisclosed position that lacks "substantial authority." The concept of "substantial authority" thus states an objective measure of accuracy required of the taxpayer.

iv. The taxpayer penalty structure has both a direct an indirect impact on the practitioner. Imposition of certain taxpayer penalties may result in a referral of the practitioner's conduct to the Director of Practice. Here, the taxpayer's conduct directly triggers scrutiny of the practitioner's conduct. Perhaps more importantly, the taxpayer penalty regime also indirectly defines the appropriate standard of behavior for the practitioner. The practitioner should be able to freely counsel the taxpayer to engage in any conduct that complies with the federal tax laws. Thus, if in the return preparation context, the taxpayer is permitted to advance a return position, the practitioner should not be prohibited from assisting the taxpayer in so doing. Conversely, if the tax system prohibits the taxpayer from advancing a position on the return, the practitioner should likewise be prohibited from preparing the taxpayer's return to incorporate such position. Whether the substantial understatement penalty states a normative standard, prohibiting the taxpayer from advancing certain positions, or instead merely provides a "toll charge" for taking aggressive positions on the return, is discussed in Part III below.

III. Standards for Reporting Tax Return Positions (and Tax Planning).

A. The Central Question.

1. When the interpretation of the tax law, or its application to the taxpayer's facts, is unclear, certain choices must be made regarding the manner in which the taxpayer's activities are reflected on the return. Clearly, the practitioner may not counsel the client to take a position known to be untrue and incorrect. This conduct by the practitioner is a felony under Code § 7206(1). At the other extreme, the practitioner may recommend that the client take any position that is certain to be sustained if challenged by the government. Between these two extremes, however, lie a vast number of return positions that are neither clearly correct nor incorrect. To what extent, may the practitioner resolve questionable positions in favor of the client on the return?

2. Hypothetical. Client ("C"), a corporation which manufacturers jeep automobiles, retains Practitioner ("P") to provide advice regarding whether payments made by C to a wholly owned captive insurance subsidiary can be claimed as deductible premium payments under Code § 162.
P researches the matter and discovers the following relevant authority: one Tax Court case, a provision of the Internal Revenue Code and an IRS Revenue Ruling.

The Tax Court case, which is not on all "fours" with C's case, supports the government's position in result, but contains dictum suggesting that the Court might reach a different result on facts similar to C's. The Internal Revenue Code, and the regulations thereunder, may be construed either to support C's position or the government's position. The Revenue Ruling was issued subsequent to the Tax Court's decision, and, on facts similar to C's, rejects C's position.

Questions. May P advise C that the premium payments may be claimed as a deduction on C's return? Is P required to recommend disclosure of the position? To what extent, if any, is P required to audit C's underlying records to verify the information furnished?

B. Professional Standards

1. Former Standard: Reasonable Basis

a. ABA Opinion 314, issued in 1965, provided that a lawyer could "freely urge the statement of positions most favorable to the client just so long as there [was] a reasonable basis for the position.

b. AICPA former SRTP No.10 (issued in 1977) incorporated the equivalent of the reasonable basis standard (stating that a position may be taken on the client's return without disclosure provided there is reasonable support for the position).

c. Although the reasonable basis standard was probably intended to set a high standard of reporting, respect for the standard substantially eroded from 1965 to 1985.

2. Current Standard: Realistic Possibility of Success

a. Standard.

i. ABA Opinion 85-352 replaced the reasonable basis standard with a new elevated standard of reporting. The new standard requires that the practitioner possess a "good faith" belief that the position is warranted in existing law (or a reversal of such law), which belief must be evidenced by "some realistic possibility of success if the matter is litigated."

ii. AICPA SRTP (1988 Rev.) No. 1 similarly provides that a CPA should not recommend a return position 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. Scope of Standard. To what extent do the above standards apply to advice rendered in the planning context?

c. Meaning of Realistic Possibility of Success.

i. What constitutes a "realistic possibility of success if litigated?" The lawyer need not believe that the position probably will prevail or that it is supported by substantial authority to satisfy the standard. A Special Task Force Report issued by the ABA Tax Section provides some numerical guidelines for determining the degree of success under the realistic possibility of success standard. A position with a 5-10% likelihood of success fails to meet the standard. Conversely, a position with a likelihood of success approaching one-third should satisfy the standard. Between these two end points, the report offers no additional guidance.

Question: How does the practitioner determine the likelihood of success of a given return position? How practical is it to assume that a numerical probability of success can be assigned to a return position?

ii. Discussion of AICPA Exposure Draft, Proposed Interpretation of Statement on Responsibilities in Tax Practice (1988 Rev.) No.1, "Realistic Possibility Standard"(August 15, 1990).

d. Consequences When Position Falls Below the Minimum Standard.

i. Obligation to Withdraw.

(1). Preparation of Return. If the practitioner determines that a position fails to meet the realistic possibility of success test (a "substandard position"), he must counsel the taxpayer not to assert the position on the return (without disclosure). If the client desires to contest the government's interpretation, the position may be advanced instead by payment of the tax and filing a claim for refund. What are the practitioner's obligations if the taxpayer insists upon asserting a substandard position on the return?

(2). Representation Relating to Underlying Transaction.

<u>Hypothetical.</u> Suppose a lawyer is engaged in structuring a Limited partnership transaction for a client, and the lawyer determines with respect to one relatively minor item that there is not a realistic possibility of success if the matter is litigated, e.g. the possibility that certain management expenses may be deducted rather than capitalized is not "realistic" under the applicable standards. Assuming the lawyer may not prepare the taxpayer's return to reflect such position, may the lawyer nevertheless continue to work on planning aspects of the transaction?

ii. Effect of Disclosure.

(1). ABA Opinion 85-352 does not expressly deal with the question of whether adequate disclosure of a nonfrivolous substandard position will permit a lawyer to advance such position on the taxpayer's return without risk of sanction. It is possible, however, to infer such an option from language in the Opinion. In subsequent comments issued by the ABA Tax Section on the Treasury Department's proposed amendments to Circular 230, the ABA Tax Section endorsed a disclosure option for nonfrivolous positions.

(2). AICPA SRTP No.1 expressly adopts a disclosure option for any position that possesses less than a realistic possibility of being sustained but is not frivolous. Although the statement does not purport to define the level of disclosure that will constitute "adequate disclosure," the disclosure standards under Code § 6662(d)(2)(B) would also appear to be relevant under the SRTP.

C. Proposed Circular 230 Standard: Substantial Authority

1. In August of 1986, the Treasury Department, dissatisfied with the tax bar's efforts in formulating an appropriate professional standard for reporting return positions, proposed amendment of Circular 230.

2. The proposed standard is based on the principle that a practitioner fails in his obligations to the tax system when he places a taxpayer in the position of incurring the substantial understatement penalty.

3. The Treasury Department's proposed regulations incorporate two principal changes to Circular 230: (1) a requirement that a practitioner exercise "due diligence" in giving advice regarding positions to be taken on a tax return, and (2)a requirement that a practitioner refrain from advising a tax return

position unless the practitioner determines that the taxpayer will not be subject to the substantial understatement penalty as the result of taking the position on the return.

4. As discussed below, Congress's recent amendment of the preparer penalty of § 6694(a) links the practitioner standard to the "realistic possibility of success" test rather than the substantial understatement penalty. In view of this, it appears likely that the Treasury will modify its Circular 230 proposal to conform to the revised § 6694(a) standard.

D. Revised Code § 6694(a).

1. General. Section 6694(a) imposes a monetary penalty on return preparers who fail to exercise a certain degree of care and accuracy in determining a taxpayer's tax liability. In much the same way that § 6662 defines the degree of accuracy of the taxpayer, § 6694(a) defines the preparer's accuracy obligations.

a. Prior to the Revenue Reconciliation Act of 1989, a preparer was subject to penalty under § 6694(a) for negligent or intentional disregard of the Internal Revenue Code and regulations. The 1989 Act replaces the prior negligence standard with a new test requiring that a return position possess "a realistic possibility of success of being sustained on the merits."

b. Under revised § 6694(a), a return preparer is subject to a penalty of $250 for any understatement of tax on a return due to a position for which there was not a realistic possibility of being sustained on the merits, provided (1) the return preparer knew, or reasonably should have known of the position, and (2) the position was not disclosed (as provided in § 6662(d)(2)(B)(ii) or was frivolous.

c. The penalty will not be applied it is shown that there was a reasonable cause for the understatement and the preparer acted in good faith.

d. The new formulation of the preparer accuracy penalty raises several definitional issues that are not addressed in the statute: (1) what does it mean for a position to possess "a realistic possibility of being sustained on the merits," (2) what materials and sources of authority are relevant in determining the likelihood of success of a position, and (3) what positions are "frivolous" and thus may not be cured by disclosure?

2. Meaning of "Realistic Possibility of Being Sustained on the Merits."

a. The new standard under § 6694(a) is not further defined in the Code. The legislative history provides, however that "[t]he committee has adopted this new standard because it generally reflects the professional conduct standards applicable to lawyers and certified public accountants." Thus, ABA Opinion 85-352 and AICPA SRTP No.1 are particularly relevant in interpreting § 6694(a).

b. In IRS Advance Notice 90-20, IRS Bulletin No. 1990-10 (March 5, 1990), the Service takes the position that the new § 6694(a) standard is stricter than the former negligence standard, but does not require certainty nor the conclusion that a position is more likely than not to succeed if challenged.

c. Although not explicitly stated in the legislative history (or Advance Notice 90-20), the new standard under § 6694(a) does not appear to require that the preparer conclude that a position is supported by "substantial authority" to recommend that the position be taken on the return. This is consistent with the interpretation of the realistic possibility of success test under ABA Opinion 85-352 and AICPA SRTP No.1. The Exposure Draft interpreting SRTP No.1 in fact expressly provides that the realistic possibility standard is less stringent than the "substantial authority" standard applied under § 6662.

3. Definition of Authority.

a. Although § 6694(a), much like the substantial understatement penalty of § 6662, now requires a weighing of competing authorities to determine the likelihood of a position's success, the Code does not define what materials may be relied on by the practitioner to reach such determination.

b. The reference to the taxpayer accuracy penalty (§ 6662) for purposes of determining what constitutes adequate disclosure under § 6694(a) suggests that Congress views the two penalties as parallel in nature. It is arguable therefore that the definition of authority for purposes of § 6662 also applies in the case of § 6694. In this regard, the Revenue Reconciliation Act of 1989 expanded the definition of authority for purposes of the substantial understatement penalty to include Bluebook Explanations, proposed regulations, private letter rulings, technical advice memoranda, information or press releases or other similar documents published by the IRS in the Internal Revenue Bulletin. This expanded definition of authority was adopted the Service in Advance Notice 90-20.

4. Disclosure of Nonfrivolous Positions.

a. Under § 6694(a), a preparer can advance a return position that does not possess a realistic possibility of success, provided that the position is adequately disclosed on the return <u>and</u> the position is not frivolous.

b. The disclosure required is the same as that required under the substantial understatement prong of the taxpayer accuracy penalty; the return must disclose facts relating to the tax treatment of the item that are reasonably expected to inform the IRS of the potential controversy concerning the treatment of the item.

c. Section 6694(a) does not define the meaning of "frivolous" for purposes of the disclosure option. Section 6702, which imposes a $500 penalty for returns which, among other things, are based on "frivolous" positions, suggests that a frivolous position is one which has no basis in law or fact or is contrary to existing law and unsupported by any colorable argument for a change in the law.

5. Policy Question: Should § 6694(a) be revised to require that the practitioner conclude that the position will not subject the taxpayer to the substantial understatement penalty of § 6662? What reasons, if any, support a rule which permits the practitioner to incorporate a return position which the practitioner believes, if discovered, will subject the taxpayer to an automatic penalty? See, generally, Harris, Resolving Questionable Positions on a Client's Federal Tax Return: An Analysis of the Revised Section 6694(a) Standard, 47 Tax Notes No.8 971 (May 21, 1990).

IV. Practitioner's Duties on Discovery of an Error on a Prior Year's Return. See, generally, Harris, On Requiring the Correction of Error Under the Federal Tax Law, 42 Tax Lawyer 515 (1989).

A. It is not uncommon for a practitioner, in the course of representing a client, to discover that the client's prior year's return contains an error. While the error may have been the result of a knowing--and possibly criminal--misstatement or omission, oftentimes the error instead results from a misapprehension of law or fact or a computational mistake.

The discovery of the client's error raises several difficult legal and ethical issues not only for the client, but also for the practitioner. Is the practitioner obligated to recommend that the prior year's return be corrected? Does it matter if the error was intentional or innocent? Should it matter whether the applicable statute of limitations has run? What if the return is the subject of current audit proceedings? If the return need not be corrected, are there persuasive reasons for doing so nevertheless? In the event that the taxpayer is advised to correct the error but refuses, may (or must) the practitioner disclose the error to the Service? Under what circumstances, if any, is the practitioner prohibited from continuing to represent a taxpayer who fails to abide by the practitioner's advice to correct a prior error?

B. Taxpayer's Obligations.

1. As in the case of the practitioner's duties with respect to questionable return positions, the practitioner's responsibilities relating to the correction of prior errors depends to a significant extent on the taxpayer's own legal obligations.

2. Most commentators agree that the Internal Revenue Code does not require the taxpayer to file an amended return to correct an unintentional error discovered on a prior year's return. See Bruton, Correcting (Or Not Correcting) Erroneous Tax Returns, 47 NYU Fed Tax Inst, ch 53 (1989); Mcgowan, Individuals Escape Penalties for Failure to Amend Incorrect Federal Income Tax Returns, 24 Idaho L. Rev. 236 (1987); Ronan, Do Clients Have to File Amended Tax Returns, 33 Practical Lawyer 25 (1987).

Although the failure to file an amended return will not, standing alone, constitute an attempt to evade taxes, the absence of an amended return may provide evidence of fraudulent intent at the time of the original filing. See Fink, Defending Taxpayers Who Fail to File Income Tax Returns: A Primer, 46 NYU Fed Tax Inst ch 17 (1988).

3. Despite the absence of a legal duty to file amended returns, the filing of an amended return may, under certain circumstances provide significant benefits for the taxpayer. These benefits include waiver of certain civil penalties (e.g. substantial understatement penalty), as well as possible waiver of criminal prosecution under the IRS's current informal voluntary disclosure policy. Whether the benefits of disclosure outweigh the risk of criminal prosecution in a particular case depends on the facts and circumstances of that particular case.

C. Practitioner's Obligations.

1. Obligations on Discovery.

a. In general, when a practitioner becomes aware of an error on a client's prior return, the practitioner is obligated to inform the client of the existence of the error. Circular 230, § 10.21. See also AICPA SRTP No. 6 (1988 Rev.).

b. Neither Circular 230 nor AICPA SRTP No. 6, however, contain an explicit requirement that the practitioner recommend to the client that the error be corrected. This silence is presumably in recognition of the fact that in the case of an intentional error, where disclosure may subject the client to criminal prosecution, the client may have a constitutional right (under the Fifth Amendment) not to cooperate with the Service.

c. In contrast, ABA Opinion 314 provides that the lawyer must not only advise the client of the existence of an error on a prior year's return, but also of the need for correction. ABA Opinion 314 does not directly address the lawyer's obligations when the error may subject the taxpayer to possible criminal prosecution.

d. In the case of an intentional error, although the practitioner should discuss the possibility of correction of the error with the client, the practitioner should not automatically recommend disclosure, but instead should discuss the risks and benefits of all options available to the client (including any constitutional right to refuse to cooperate with the Service).

2. Obligations When Client Refuses to Correct.

a. When the client refuses to correct an error on a prior year's return, the practitioner faces the difficult task of balancing his duty of loyalty to the client and his duty to the system to encourage accurate reporting (even if not required by the present tax laws).

b. Generally, the practitioner may <u>not</u> disclose the client's error unless the client consents. See Model Rule 1.6 (prohibiting disclosure except where the lawyer reasonably believes disclosure is necessary (1) to prevent a criminal act likely to result in death or serious bodily harm or (2) for the lawyer to defend himself). See also AICPA SRTP No. 6(providing that a CPA is not obligated to inform the Service of a discovered error and is prohibited from doing so unless the client consents or the disclosure is required by law).

c. May the practitioner continue to represent a client who fails to correct a discovered error? The answer here depends on the nature of the continued representation.

(1). <u>Preparation of Current Year's Return.</u> There is little question that the practitioner may not prepare the client's current return in a manner which incorporates the prior error. Such conduct would constitute participating in the giving of false or misleading information to the Service in violation of Circular 230.

Example. Client overstated his prior year's closing inventory, resulting in an understatement of profits on last year's return. Practitioner discovers the error and recommends that Client correct the error, but Client refuses. Practitioner may prepare Client's current year's return, but only if the prior year's ending inventory is properly adjusted for use as the current year's beginning inventory.

If the discovered error is not continued on the client's current return, the practitioner is generally free to prepare the return, notwithstanding the client's failure to correct. Several factors, however, may suggest that the practitioner consider withdrawing including (1) removing any suspicion that the practitioner was involved in wrongdoing, (2) preventing the possibility that the error maybe furthered in the practitioner's future representation of the client, and (3) because the mutual trust on which the practitioner-client relationship is based is gone.

(2). Ongoing Audit. What are the practitioner's obligations when the return containing the error is the subject of an ongoing IRS audit and the practitioner is representing the client in the audit? The practitioner, as noted above, is generally prohibited under Circular 230 from participating in the giving of false or misleading information to the Service. When the client's error involves an item directly at issue in the audit, if the practitioner fails to inform the Service of the error, such conduct constitutes corroboration of the client's false statement and thus is prohibited. Since, the practitioner is prohibited from disclosing the client's error without the client's consent, the appropriate course of conduct for the practitioner will generally be to withdraw, provided such withdrawal can be accomplished without breach of the client's confidentiality.

What if instead the discovered error is not directly at issue in the audit proceedings? Should this relieve the practitioner of his obligation to withdraw? Because an audit involves a resolution of the taxpayer's entire tax liability for the year, it is arguable that if the practitioner fails to notify the IRS of the unrelated error, the practitioner is corroborating the taxpayer's statement of his correct tax liability for the year (excluding the error), which statement the practitioner knows to be false. Since the practitioner is prohibited from disclosing the error without the client's consent, the practitioner again should generally considering withdraw (provided such withdrawal can be accomplished without breaching the client's confidentiality).

D. Proposal Requiring Filing of Amended Returns to Correct Prior Errors.

1. Should current law be amended to require taxpayers who discover errors within the statute of limitations period to file an amended return correcting such errors?

2. Argument In Favor of Required Correction. The tax system requires accurate self-assessment. Where the taxpayer discovers an error during the statutory period, the failure to correct the error represents a knowing omission from the date of discovery onward that is not substantially different from an intentional omission on the original return. The failure to require the correction of prior errors inequitably shifts a greater portion of the tax burden to taxpayers who accurately report. Moreover, the failure to require correction weakens taxpayer confidence in the foundations of the self-assessment system.

3. Problems with a Proposal Requiring the Correction of Discovered Errors. Administrative difficulties in defining what constitutes "knowledge" of a prior error. Protection of taxpayers who might be subject to criminal prosecution in connection with a reported error. Strain placed on the practitioner-client relationship.