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SECTION

Taxation

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- Business Related Taxes
- Employee Benefits
- Estate Planning/Death  
Related Taxes
- Exempt Organizations
- Legislation and Regulations
- Tax Audits and Litigation

SUMMARY OF COMMENTS ON TREASURY'S  
PROPOSED "DUE DILIGENCE" AND  
"SUBSTANTIAL AUTHORITY" MODIFICATIONS TO  
REGULATIONS GOVERNING PRACTICE BEFORE THE  
INTERNAL REVENUE SERVICE

1. The Section of Taxation agrees with the Treasury Department that a revised ethical standard with respect to tax return advice and preparation should be incorporated in Circular 230 and that such a standard should be uniformly applied to all tax practitioners, including lawyers, accountants and enrolled agents.

2. We support the explicit "due diligence" requirement proposed by Treasury relating to practitioners' obligations with respect to return positions.

3. We oppose the stringent standard of tax practice proposed by Treasury in its notice of proposed rulemaking, i.e., that a practitioner may not advise or recommend a return position (or prepare or sign a return) unless he or she determines that the taxpayer filing the return will not be liable for an addition to tax under Section 6661.

4. We recommend that any modification of Circular 230 be based generally upon the American Bar Association's ("ABA") Formal Opinion 85-352. We have reviewed the proposed text for Section 10.34 which we understand that the ABA Tax Section is submitting to Treasury and which is patterned after ABA Formal Opinion 85-352, and we are in agreement with the language expressed in the ABA Tax Section's draft. The standard expressed in Formal Opinion 85-352 and in the ABA Tax Section's draft of Section 10.34 would require practitioners to exercise "due diligence" in asserting positions and would permit positions to be asserted which were reached in "good faith" with the belief of "some realistic possibility of success."

5. In further agreement with the ABA Tax Section's position, we recommend that, in the context of a return or an amended return that serves as a claim for refund, practitioners be permitted to recommend any position that is not frivolous, provided that such position is recommended in good faith and that such position is adequately disclosed on the return or amended return.