

March 6, 2006

CC:PA:LPD:PR (REG-137243-02)  
Room 5203  
Internal Revenue Service  
PO Box 7604  
Ben Franklin Station  
Washington, DC 20044

Electronically at: <http://www.regulations.gov> (IRS and REG-137243-02) and  
Comments@irs.counsel.treas.gov

**Re: COMMENTS RESPONDING TO NOTICE OF PROPOSED RULEMAKING  
137243-02**

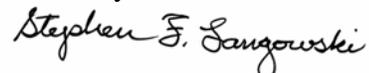
*Guidance Necessary To Facilitate Electronic Tax Administration—Updating Of Section 7216  
Regulations*

Ladies and Gentlemen:

The New York State Society of Certified Public Accountants, the oldest state accounting association, represents approximately 30,000 CPAs that will implement the provisions of any guidance ultimately issued by the Treasury Department and the Internal Revenue Service in this area. The NYSSCPA thanks the Treasury Department and the IRS for the opportunity to comment on and provide information with respect to Treas. Reg. § 301.7216-2, as proposed in 137243-02.

The NYSSCPA Professional Ethics Committee deliberated the need for this regulatory change and directed the preparation of these comments. If you would like to discuss the comments further with the committee, please contact Francis T. Nusspickel, CPA, chair of the Professional Ethics Committee at (201) 891-2754 or James A. Woehlke, Esq. or Dennis M. O'Leary, Esq., NYSSCPA staff, at (212) 719-8300.

Sincerely,



Stephen F. Langowski, CPA  
President

Attachment

**NEW YORK STATE SOCIETY  
OF CERTIFIED PUBLIC ACCOUNTANTS**

**COMMENTS RESPONDING TO NOTICE OF PROPOSED  
RULEMAKING 137243-02**

*Guidance Necessary To Facilitate Electronic Tax Administration—Updating  
Of Section 7216 Regulations*

**March 6, 2006**

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**NEW YORK STATE SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS**

**COMMENTS RESPONDING TO NOTICE OF PROPOSED  
RULEMAKING 137243-02**

*Guidance Necessary To Facilitate Electronic Tax Administration—Updating Of Section  
7216 Regulations*

**March 6, 2006**

The New York State Society of Certified Public Accountants (the “Society” or “NYSSCPA”, herein), the oldest state accounting association, represents approximately 30,000 CPAs that will implement the provisions of any guidance ultimately issued by the Treasury Department and the Internal Revenue Service (“IRS”) in this area.

The CPA profession has a well developed Code of Professional Conduct and elaborate ethics enforcement procedures designed to provide the accused CPA with the due process necessary for a profession’s ethics enforcement program to survive legal scrutiny.<sup>1</sup> An important part of that due process is placing the burden on the profession to assemble sufficient evidence, on which to base a case against the accused, as well as the need to afford the accused an opportunity to present evidence in his or her defense. The proposed regulation would clear a major obstacle that has been precluding the CPA profession from effectively investigating tax-related cases and punishing inappropriate ethical behavior in the tax area. The Society applauds the Treasury Department’s and IRS’ efforts to remove this obstacle. However, as noted below, the Society believes some changes to the regulation are in order to limit its effect to only those investigations of tax return preparers where appropriate safeguards are in place to protect tax return information.

**BACKGROUND**

In Article XII of the Society’s bylaws, its members charged the NYSSCPA Professional Ethics Committee (“PEC”) with investigation of complaints involving alleged professional misconduct by Society members. According to the Society’s bylaws, all members of the Society are bound by the Society’s rules of professional conduct in the rendering of professional services and are subject to investigation and discipline by the PEC. The ethics rules enforced by the PEC are contained in the NYSSCPA’s *Code of Professional Conduct*.

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<sup>1</sup> Attempts to enforce ethics provisions on a member of a professional society must afford the member due process, which at minimum must include “fair proceedings which may be provided for in organization by-laws, carried forward in an atmosphere of good faith and fair play.” *McCune v. Wilson*, 237 So.2d 169 (Fla. 1970). See, also, *Lindemann v. Am. Horse Shows Assoc.*, 164 Misc.2d 937, 624 N.Y.S.2d 723 (N.Y. Sup. Ct. 1994) and *McCune v. Wilson et al.*, 237 So.2d 169 (Fla. 1970). Due process in this context encompasses several requirements among which is adequate evidence to support the charges. *Milkie v. Academy of Medicine*, 246 N.E.2d 587 (Ohio App. 1969). The ability of the Society to receive information regarding alleged ethics violations in tax practice from accused members, and the accused members’ ability to provide such information in their own defense, is critical to the ability of the Society to conduct full and fair hearings.

(The NYSSCPA Bylaws are available at <http://www.nysscpa.org/society/bylaws.htm> and *Code of Professional Conduct* at [http://www.nysscpa.org/prof\\_library/Ethics/ethics.htm](http://www.nysscpa.org/prof_library/Ethics/ethics.htm).)

Before conducting an investigation, the PEC must determine whether there is prima facie evidence that the member's conduct violated any rules set forth in the *Code of Professional Conduct*. Sources of information used to open cases include complaints from taxpayers and other members of the public, news stories and court records about CPAs who allegedly collaborated in tax fraud, failure to file tax returns, and other allegations of professional misconduct.

All investigations by the PEC are conducted pursuant to the *NYSSCPA Professional Ethics Committee Procedures Manual* (rev. 11/2003), copy available upon request. Also, the NYSSCPA participates with other state CPA professional societies and the American Institute of Certified Public Accountants ("AICPA") in the "Joint Ethics Enforcement Program", which operates in accordance with the rules and procedures outlined in the *Joint Ethics Enforcement Program (JEEP) Manual of Procedures* (rev. 10/2004), copy available upon request. Pursuant to the procedures contained in those documents, all investigations conducted by the PEC are carried out in strictest confidence.

Sanctions meted out by the PEC or the AICPA's Professional Ethics Enforcement Committee range from required corrective action to be completed by the member, which may include obtaining specified continuing professional education, to suspension or expulsion from membership. Members who reject a Society, or JEEP-imposed sanction are referred to a joint trial board of the Joint Ethics Enforcement Program maintained by the AICPA and nearly all state CPA societies for final disposition after a confidential hearing.

In certain cases, the results of an ethics investigation are printed in Society or AICPA publications. These publications never include any information about the client taxpayer served by the sanctioned member.

Pursuant to an NYSSCPA bylaw provision adopted in 2003, Article XII, paragraph 16, the PEC reports disciplined members to applicable state and federal regulatory agencies. For instance, pursuant to this bylaw, discipline of a member for professional misconduct regarding preparation of federal tax returns or tax advisory services will be reported to the Internal Revenue Service's Office of Professional Responsibility. The AICPA does not have an analogous provision.

The process described above is conducted by professional associations of CPAs in disciplining their members. In New York and many other states, this process is separate and apart from that used by state licensing agencies (state boards of accountancy, or in New York, the State Board of Regents) to discipline CPA licensees.

### **REQUESTED CHANGE IN PROPOSED REGULATIONS**

The Society respectfully requests three changes in Notice Of Proposed Rulemaking 137243-02.

1. Requested Change. We request that the preamble to the final regulations be changed to reflect that the AICPA works with state CPA societies rather than “state and local bar associations”. The Treasury and IRS may also want to clarify in the preamble, not only that the language of *Prop. Reg. § 301.7216-2(f)(5)* covers professional associations of CPAs, but also other tax return preparer associations, such as state and local bar associations.

Reason for Requested Change. Inclusion of the phrase “state and local bar associations” in describing the disciplinary processes governing the CPA profession is out of place and may confuse readers. If the Treasury and IRS so intend, they may want to clarify in the preamble that professional associations of tax return preparers other than CPAs, such as state and local bar associations, are also covered by the language in *Prop. Reg. § 301.7216-2(f)(5)*.

2. Requested Change. The Society requests that the title of *Prop. Reg. § 301.7216-2(f)* be rephrased to add the word “request” following the word “demand” and replace the phrase “professional ethics board” with the phrase “certain professional association ethics committees or boards”.

Reason for Requested Change. The addition of the word “request” aligns the subsection’s title with the regulation language with the language of *Prop. Reg. § 301.7216-2(f)(5)*.

The use of the term “professional ethics board” may confuse the reader because the word “board” is used in at least two different contexts as noted in the background section, above: first, in reference to the governmental entity that controls CPAs’ licenses, and second, in reference to the appeal body available to assure due process to CPA professional association members in the event discipline is imposed on them by the investigating ethics committee.

3. Requested Change. Rephrase *Prop. Reg. § 301.7216-2(f)(5)* to read as follows:

(5) A written request from a professional association board or committee, duly empowered to investigate the ethical conduct of tax return preparers or hear related appeals; provided that (a) such professional association requires all tax return information to be held in confidence and not used for any purpose other than ethics investigations and related appeals, and (b) no tax return information shall be published as part of any resulting professional discipline without the consent of the taxpayer.

Reason for Requested Change. The Society recognizes that proper safeguards are in place to preserve the confidential nature of tax return information disclosed during the course of CPA ethics investigations and resulting appeals. However, the Society is not familiar with the ethics procedures used by the professional associations of other tax return preparers. As a result, the Society encourages Treasury and the IRS to add the proviso mandating professional associations to maintain proper control over the disclosed tax return information.