

August 16, 2006

Edward S. Karl, Director
AICPA Tax Division
Harborside Financial Center
201 Plaza Three
Jersey City, NJ 07311-3881
By email: ekarl@aicpa.org

**Re: PROPOSED STATEMENT ON STANDARDS FOR TAX SERVICES No. 9,
QUALITY CONTROL, December 30, 2005**

Ladies and Gentlemen:

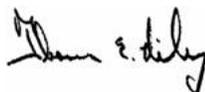
The New York State Society of Certified Public Accountants, representing 30,000 CPAs in public practice, industry, government and education, submits the following comments to you regarding the Proposed Statement on Standards for Tax Services No. 9, Quality Control.

The NYSSCPA thanks AICPA for the opportunity to comment on and provide information with respect to this proposed statement.

We commend the AICPA for the proposal in light of the recent changes to Circular 230, and for its recognition of the need for guidance in this area including for those not in public practice.

The NYSSCPA Tax Division Oversight Committee deliberated the exposure draft and prepared the attached comments. If you would like to discuss the comments further with the committee, please contact Susan R. Schoenfeld, CPA, Chair, Tax Division Oversight Committee at 212-708-9152 or Ernest J. Markezin, CPA or William Lalli, CPA, NYSSCPA staff, at 212-719-8300.

Sincerely,



Thomas E. Riley, CPA
President

Attachment

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

**COMMENTS TO AICPA ON PROPOSED STATEMENT ON STANDARDS
FOR TAX SERVICES No. 9, QUALITY CONTROL, December 30, 2005**

August 16, 2006

Principal Drafter

P. Gerard Sokolski, CPA

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Ernest J. Markezin
William Lalli

New York State Society of Certified Public Accountants

Comments to AICPA on Proposed Statement on Standards for Tax Services No. 9, Quality Control, December 30, 2005

August 16, 2006

GENERAL COMMENTS

The Tax Division Oversight Committee (the "Committee") of the New York State Society of Certified Public Accountants has reviewed the above-referenced AICPA Exposure Draft and offers the following comments for consideration by the Tax Executive Committee of the American Institute of Certified Public Accountants (AICPA).

Proposed Statement on Standards for Tax Services (SSTS) No. 9, *Quality Control*, contains various elements with which the Society concurs. In particular, the use of engagement letters in non-attest engagements is viewed as beneficial. We take exception chiefly to the application of certain elements of the exposure draft as it relates to members working in the nonpublic sector.

It is difficult to attempt to impose the same standards on those in industry and education as on those in public practice. Persons not in public practice may be restricted in their authority and ability to control the actions of others. Unlike in a CPA firm, they are not owners.

Use of Engagement Letters in Non-Attest Engagements

In the delivery of tax services, documenting the client's understanding and acceptance of the scope of services, the responsibility being taken for tax returns and advice and the relationship's financial aspects with the client is a worthy endeavor. Routinely memorializing these understandings, which are the basis of the services to be provided in tax engagements, with engagement letters or alternative documentation is the optimal method of formalizing the agreement and avoiding misunderstandings. Utilizing engagement letters for tax engagements has been a common practice for many practitioners even prior to it becoming an element of the exposure draft.

We concur with the proposed guidance under the caption, Acceptance and Continuance of Clients and Engagements (Public Practice Only), in the exposure draft (paragraph 10. b.) that states, in part:

"The member's firm should consider establishing and maintaining policies and procedures to accomplish the following objectives to the extent applicable to its tax practice... The documentation of the client's understanding and acceptance of the scope of the member's services, the member's responsibility for tax advice and returns, and the financial aspects of the client's relationship with the member.

These understandings should be memorialized through the use of engagement letters or alternative documentation.”

We suggest that the standard might go further to recommend guidelines for certain client representations to be obtained and to suggest basic elements of a “tax organizer” (that includes checklists) to be derived from clients.

Aside from the primary purpose of clearly defining the scope of services, there will be additional benefits derived from the use of engagement letters in non-attest engagements. The issue of the specific agreed-upon scope of CPA services often arises in professional ethics investigations and litigation. In ethics investigations of members accused of violating the code of professional conduct in providing tax services at both the AICPA and NYSSCPA, the threshold issue is the scope of the relationship. In litigation, plaintiff and defendant and the public at large are better served having had the relationship scope documented, in order to avoid the scope of services being in dispute. An unsophisticated client might have an unintended understanding of the CPA’s role and responsibilities, or the CPA may not have fulfilled his service obligation. The use of an engagement letter or similar documentation may avoid these situations or help resolve them more expeditiously.

CPAs should undertake to write engagement letters, and should establish and document in writing their understanding with their clients regarding these five key elements:

1. Objectives of the engagement
2. Services to be performed
3. Client's acceptance of its responsibilities
4. The CPA’s responsibilities
5. Any limitations of the tax (or other non-attest) engagement

As no requirement yet exists, the form of documentation is left to the CPA’s discretion. Because content is critical, suggested wording and guidance should be developed for members, with the admonition that proper professional and legal advice be obtained.

If a CPA is engaged to perform tax services for a non-attest client, the CPA may document the understanding in a tax organizer, a memo contained in the tax work papers or a memo of understanding maintained in his or her billing or correspondence files apart from the client work papers. The documentation requirement does not apply to routine services, such as providing advice and responding to clients’ technical questions as part of the normal CPA-client relationship.

If SSTS No. 9 is adopted, failure to prepare the required documentation would be considered an ethics violation of Rule 202–Compliance with Standards [ET section 202]. As such, there is some latitude for remedial action after an ethics investigation finding that a violation has occurred.

We recommend that suggested documentation include:

1. A list of the objectives of the engagement and the scope and services to be performed.
2. A statement to the effect that the CPA firm will not perform management functions or make management decisions on behalf of the client, but that it

will provide advice and recommendations to assist client management in performing its functions and making decisions.

3. A list of the client's responsibilities.
4. A statement that the client agrees to perform certain functions in connection with the CPA firm's provision of bookkeeping and tax services, and to:
 - a. Make all management decisions and to perform all management functions, including determining account codings and approving all proposed journal entries.
 - b. Assign specific personnel to oversee the bookkeeping and tax services and to evaluate the adequacy and results of the services.
 - c. Accept responsibility for the results of the bookkeeping and tax services, including the journal entries, general ledger, trial balance, and tax returns.
 - d. Establish and maintain internal controls over the bookkeeping and tax return preparation.
5. A statement outlining the CPA firm's responsibilities and limitations of the engagement.
6. A statement indicating that the CPA firm will perform the services in accordance with applicable professional standards, including the Statements on Standards for Tax Services issued by the American Institute of Certified Public Accountants.
7. A statement indicating that the engagement is limited to the bookkeeping and tax services outlined above and that the CPA firm, in its sole professional judgment, reserves the right to refuse to perform any procedure or take any action that could be construed as making management decisions or performing management functions, including determining account codings and approving journal entries, and that the CPA firm will advise the client with regard to tax positions taken in the preparation of the tax return, but the client must make all decisions with regard to those matters.

SPECIFIC COMMENTS

In the following section of this document, we address the exposure draft in the order in which it is presented, in further detail.

“INTRODUCTION”

The introduction to the exposure draft creates some potentially problematic situations with respect to members who are not in public practice. Such members do not have control of “officers, employees and other associates” such that they may be held to the proposed standards, and, ultimately, be disciplined for failure to comply with them. Unlike standards of conduct for

which our organizations impose personal culpability, general standards of quality control should not be imposed upon individuals who cannot control the actions of others. This type of quality control is unique to public practice because by nature and by law, the partners are direct owners of the firm and can directly control the practice. In industry, if the proposed rules were in effect, members would be held accountable unfairly for the actions of others and often left no alternative but to resign and seek new employment, an option that, while lofty and altruistic, is unfair and unrealistic. The mere juxtaposition of “or employer” wherever “firm” is mentioned does not impart the parity or equivalence of the two drastically different situations.

“STATEMENT”

This concern recurs throughout the proposed standard. A member or partner in charge of a public tax practice is not equivalent to a member who heads a tax function in a nonpublic setting (industry, education or government). This standard cannot seek to accomplish the imposition of formal accountability in the manner that legislation, such as “The Sarbanes-Oxley Act of 2002,” did on accountants in industry. The standard seeks to impose responsibility upon someone who has fiduciary responsibility but not ultimate authority.

The last sentence of paragraph 2 creates the same concerns identified above relating to control and responsibility.

In paragraph 3, the exposure draft attempts to dismiss the unique differences between public and non-public practice that we view as irreconcilable with the development of this standard as written. With respect to public practice, we concur with the goals and comprehensiveness of the proposed standard’s language.

“Elements of Quality Control”

In paragraph 4, the five elements of quality control that the AICPA identifies are consistent in theory with those that exist in public practice.

“EXPLANATION”

“Integrity and Objectivity”

In paragraph 5, the irreconcilable differences between a partner in charge of a public tax practice and the head of a tax department in industry become more apparent. It should be understood that members operating in a tax function (in a nonpublic environment) should act as an advocate if such advocacy keeps their conduct within the law. As a member working in a non-public arena, it is possible that the members’ superiors are not covered members and may not be willing or able to be objective with regard to positions that are taken.

The standard requires that members in public practice consider any applicability of auditor independence to their practice. This is gratuitous in a new standard because it is covered by existing standards.

Paragraph 6 mandates that the member’s firm or employer require strict adherence to AICPA Code of Professional Conduct, including the SSTS, Treasury Department Circular 230 and other relevant tax and regulatory agencies. For an educator or tax department employee in industry, this is beyond his personal scope of responsibility and authority. It contains language regarding the treatment of confidential information—another subject that is covered by existing standards. Lastly, it contains a requirement to document compliance relating to the new elements of the standard we question.

“Personnel Management”

In a public accounting firm, the proper supervision of employees is a long-standing tenet of generally accepting auditing standards. In the non-public sector, the supervision of staff should be outside of the scope of the professional standards. Management may not necessarily control Human Resources functions such as placement, training, hiring, firing, etc. Additionally, with respect to paragraph 8.d., a member may not have control over ensuring that employees complete their CPE requirements. This is a departure from regulatory tenets of personal responsibility.

Paragraphs 6 through 8 seem to vacillate between compliance by a member and the member’s firm. There is a systemic logical issue with this requirement that relates to the actual degree of control that any individual may exercise when operating for an employer.

“Acceptance and Continuance of Clients and Engagements (Public Practice Only)”

This section of the exposure draft pertains only to members in public practice; we have no objection, other than to note that it is already covered by existing standards.

“Performance of Professional Services”

As discussed above, it is reasonable to assign responsibility to owners of CPA practices for work performed by employees because they have complete control of the environment. It may not be appropriate to assign the same level of responsibility to members in private practice, for their own work or the work of employees they supervise.

“Monitoring and Inspection”

Paragraphs 13 and 14 suggest the creation of an extensive monitoring and reporting system. It encompasses documentation, libraries, educational activities, inspections and reporting, and would create a new system that would undoubtedly have to be further developed in future standards. AICPA should evaluate whether a standards overload might result, instead of the intended overall improvement in the quality of tax practice.

“Administration and Documentation of a Quality Control System”

Herein again, the potential for an explosion in standard-setting may result. This should be left to practicing firms within their own Quality Control Divisions.

SUMMARY

In conclusion, we find the exposure draft to contain worthwhile objectives. It attempts to define what constitutes an adequate system of quality control and the resultant issues of documentation, monitoring and reporting. The proposal, like any standard, sets minimum required principles that can always be exceeded voluntarily.

Nevertheless, we recommend serious re-consideration of the applicability of the draft to members in the nonpublic sector. A more practical approach may be devised and presented for such members.