

November 5, 2008

Susan J. Kassell, Esquire
Internal Revenue Service
Office of the Associate Chief Counsel
1111 Constitution Avenue, NW
Room 4045
Washington, D.C. 20224

Re: Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions (REG-140029-07)

Dear Ms. Kassell:

The American Institute of Certified Public Accountants (AICPA) has prepared the attached comments on the proposed regulations relative to “Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions” (REG-140029-07), as published in the Federal Register on August 7, 2008. These comments were prepared by the Business Valuation Committee and approved by the Forensic & Valuation Services Executive Committee (FVS EC) and the Tax Executive Committee (TEC).

The AICPA is the national professional association of CPAs with more than 350,000 members, including CPAs in business and industry, public practice, government, and education; student affiliates; and international associates. Our members provide audit, tax, retirement consulting, plan administration, and financial planning services. It is from this diverse perspective that we offer our comments.

We commend the Internal Revenue Service for drafting regulations to provide guidance on the new statutory terms that were introduced by Title XII of the Pension Protection Act of 2006 pertaining to appraisals and individuals performing these appraisals. While we are generally in favor of introducing requirements pertaining to appraisers’ education and experience, as well as the introduction of appraisal standards, we feel that there are specific terms within these regulations that require further clarification. Specifically, the terms “generally accepted appraisal standards” and “qualified appraiser.”

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We appreciate the opportunity to comment and urge you to clarify these issues. If we can be of further assistance please contact me at (205) 212-5347 or rtaylor@dixon-hughes.com; Thomas Hilton at (314) 655-5515 or thilton@amdcpa.com; Teighlor S. March, FVS Senior Technical Manager at (919) 402-4804 or tmarch@aicpa.org; or Lisa A. Winton, Taxation Technical Manager at (202) 434-9234.

Sincerely,



Robin E. Taylor
Chair, Business Valuation Committee



Thomas E. Hilton
Chair, FVS Executive Committee



Alan Einhorn
Chair, Tax Executive Committee

Encl.

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Comments on Proposed Regulations Providing Guidance Concerning Substantiation and Reporting Requirements for Cash and Noncash Charitable Contributions November 5, 2008

We commend the Internal Revenue Service for drafting regulations to provide guidance on the new statutory terms that were introduced by Title XII of the Pension Protection Act of 2006 pertaining to appraisals and individuals performing these appraisals. While we are generally in favor of introducing requirements pertaining to appraisers' education and experience, as well as the introduction of appraisal standards, we feel that there are specific terms within these regulations that require further clarification.

1. Clarity surrounding the term "generally accepted appraisal standards"

Proposed regulation section 1.170A-17(a) defines the term "*qualified appraisal*" as an appraisal document that is prepared by a qualified appraiser [as defined in section (b)] in accordance with generally accepted appraisal standards [as defined in paragraph (a)(2)]. "*Generally accepted appraisal standards*" are defined in (a)(2) to mean the substance and principles of Uniform Standards of Professional Appraisal Practice (USPAP), as developed by the Appraisal Standards Board of the Appraisal Foundation. This definition is similar to the transitional guidance of Notice 2006-96, except the proposed regulations require compliance with the substance and principles of USPAP whereas Notice 2006-96 refers to USPAP as an *example* of generally accepted appraisal standards.

Explanatory language in the Federal Register's Notice mentions that many commenters to Notice 2006-96 suggested requiring that appraisal documents be "in accordance with published appraisal standards of national professional appraisal organizations" and include references to certain other specific standards. According to the IRS and Treasury Department, the term "substance and principles of USPAP" is believed to be broad enough to include these suggestions.

We recommend that "generally accepted appraisal standards" be left as is, with no further definition since the term covers more than just one appraisal standard. Our concern is that reference to USPAP may result in undue focus on that particular standard to the exclusion of other appraisal standards of similar rigor and quality. For example, since January 1, 2008, all CPAs who are members of the AICPA¹ are required to follow the AICPA valuation standard, Statement on Standards for Valuation Services No. 1 (SSVS1), *Valuation of a Business, Business Ownership Interest, Security or Intangible Asset*. This standard was the culmination of a six-year process by the AICPA. Additionally, in comparing the standards of various appraisal organizations, a reader will find broad consensus as to what constitutes a competent appraisal process and the elements of the related appraisal report. Members of these various groups are bound by the standards of their respective organizations, except when there are overriding jurisdictional issues such as those that arise in litigation.

Alternatively, if the IRS and Treasury choose to retain reference to USPAP in the final regulations, we recommend that the operative language be revised to state that USPAP is one example of generally accepted appraisal standards. This could be accomplished in a manner similar to the language used in section (b)(iii) of the proposed regulation, which defines "recognized appraisal designation".² and provides examples of those that qualify.

2. Clarity regarding the term "qualified appraiser"

¹ Non-AICPA member CPAs may also be required to adhere to SSVS1 if the standard has been adopted by their governing state board of accountancy.

² "*Recognized appraisal designation*" is defined on page 45918 of the Federal Register Notice as follows: ".... Means a designation awarded by a recognized professional appraiser organization on the basis of demonstrated competency. For example, an appraiser who has earned a designation similar to the Member of the Appraisal Institute (MAI), Senior Residential Appraiser (SRA), Senior Real Estate Appraiser (SREA), or Senior Real Property Appraiser (SRPA) membership designation has earned a recognized appraisal designation."

Proposed regulation section 1.170A-17(b) defines a “*qualified appraiser*” as an individual with verifiable education and experience in valuing the relevant type of property for which the appraisal is performed. Section (b)(2)(i) provides that an individual is treated as having the requisite education and experience in valuing the relevant property if, as of the date the individual signs the appraisal, the individual has –

- (A) Successfully completed professional or college-level coursework in valuing the relevant type of property (as described in (b)(3)³) and has two or more years of experience in valuing the relevant type of property; or
- (B) Earned a recognized appraisal designation (as described in (b)(2)(iii)) for the relevant type of property.

a. Qualified appraiser meeting the requirement of (b)(2)(i)(A)

The three examples in (3)(ii) detail situations in which an appraiser will be deemed to have successfully completed professional coursework in valuing the relevant type of property being valued. These illustrations indicate that, if it is customary in the appraisal field for personal property appraisers to appraise widgets, coursework in valuing personal property generally will suffice rather than specific coursework in valuing widgets.

We propose that the final regulations introduce an illustration specific to the valuation of a business or intangible asset. These types of valuations – both in nature and the professional course materials - are distinct from those of personal property, yet all are subject to the same requirement. We believe that the valuation community would benefit from the addition of this type of illustration with language broad enough to encompass various types of business ownership interests and further, address instances in which industry-specific experience is a pre-requisite.

We recommend that clarification be made as to whether successful completion of professional or college-level coursework (i.e., training) should be obtained prior to the experience requirement, or whether both components can be obtained contemporaneously. We also recommend that further definition and clarity be provided on the “professional or college-level coursework” and “two or more years” of experience requirements. How much coursework – one college semester or forty full-time equivalent hours? In terms of the “two or more years of experience” requirement, does it mean that the appraiser has simply been involved in the related area for two years? Or, does this mean “full-time equivalent” years? For example, the American Society of Appraisers has defined “years of experience” to mean “full-time appraisal experience” for purposes of qualifying for certain credentials. Thus, there could be confusion on the level of training and experience required without further clarity.

b. Qualified appraiser meeting the requirement of (b)(2)(i)(B)

We are concerned that the credentials cited in the proposal are specific to real property/tangible property valuations and do not include any designations related to the appraisal of business interests. We believe the topic of credentials should be broadly addressed in a way that does not create a perception to the end-user of a valuation that they are all-inclusive and/or preferred by the IRS/Treasury.

³ “Relevant type of property” is defined to mean the category of property customary in the appraisal field for an appraiser to value. (See Proposed regulation section 1.170A-17 (b)(3)).