

November 30, 2015

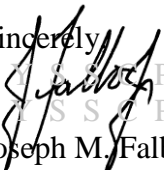
Internal Revenue Service  
POB 7604, Ben Franklin Station  
CC:PA:LPD:PR (REG-138344-13) Room 5203  
Washington, DC 20044

Electronically via Federal eRulemaking Portal:  
[www.regulations.gov](http://www.regulations.gov) (IRS REG-138344-13)

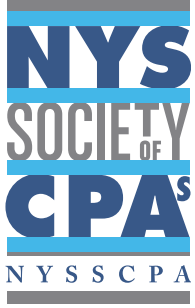
**Re: Proposed REG-138344-13 Substantiation Requirement for Certain Contributions**

The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 28,000 CPAs in public practice, business, government and education, welcomes the opportunity to comment on the above captioned proposed regulation.

NYSSCPA's Exempt Organizations Committee deliberated the proposal and prepared the attached comments. If you would like additional discussion with us, please contact Kevin Sunkel, Chair of the Exempt Organizations Committee, at (212) 682-2783, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,  
  
NYSSCPA  
NYSSCPA  
Joseph M. Falbo, Jr.  
President

Attachment



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

**PROPOSED REG-138344-13 SUBSTANTIATION REQUIREMENT FOR CERTAIN  
CONTRIBUTIONS**

**November 30, 2015**

**Principal Drafter**

**John Vazzana**

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**NYSSCPA Staff**

Ernest J. Markezin

# **The New York State Society of Certified Public Accountants**

## **Comments on**

### **Proposed REG–138344–13 Substantiation Requirement for Certain Contributions**

The New York State Society of Certified Public Accountants (NYSSCPA) welcomes the opportunity to comment on the proposed regulations to implement the exception to the “contemporaneous written acknowledgement” requirement for substantiating charitable contribution deductions of \$250 or more.

#### **General Comments**

Although the proposed amendments are currently optional, we are opposed to the proposed change. The contemporaneous written acknowledgement (CWA) system in place works well. We agree with the statement in your proposal, *“The present CWA system works effectively, with minimal burden on donors and donees, and the Treasury Department and the IRS have received few requests since the issuance of TD 8690 to implement a donee reporting system.”*

We understand the ambiguity that exists with Section 170(f)(8)(D) and the mention of the “prescribed form.” For clarity, we recommend removing the exception to the CWA by striking Section 170(f)(8)(D) and the mention of the prescribed form. This would remove the ambiguity and mitigate the taxpayer attempting to apply the Section 170(f)(8)(D) exception (e.g., by somehow including the donee reporting on a Form 990.)

#### **Specific Comments**

We see minimal benefit, if any, from the donee reporting form for an overwhelming majority of 501(C)(3) organizations. Even larger, national organizations would probably stay with the systems they developed over the years of issuing CWA letters. CWA letters report the needed information to the donor per IRS rules, but also serve as a “thank you letter” that encourages future donations. That notwithstanding, the application of donee reporting forms by some larger charities would indirectly cause a burden for other, mainly smaller, volunteer-run organizations. When donors start to receive 1098 type forms from some charities, they may assume they are mandatory (like other common IRS prescribed forms.) They may then be inclined to reach out to the other organizations that did not use the prescribed form. This would result in a logistical burden for smaller organizations. For the vast numbers of organizations that are operated by unpaid volunteers, this could be detrimental and diminish their ability to achieve their mission of serving those in need.

Although optional as proposed, there is a fear that if the reporting system is implemented, it would eventually become mandatory to some, if not all, organizations. This possible step towards greater information gathering, including the possible need for donors to give social security numbers, could also drive away would-be donors from supporting charitable

organizations. As the proposed regulation indicates, there is concern on a number of levels about donors giving their social security numbers. Leaving the current system in place removes that issue entirely. Additionally, the administrative burden and cost to the IRS in implementing the new donee reporting form may be better allocated to outreach and customer service.

Although we are opposed to the implementation as stated above, we have these comments on the proposed amended language should implementation occur:

In the proposed revisions it states:

*“1.170A-13 (f)(18)(D) - The amount of cash and a description (but not necessarily the value) of any property other than cash contributed by the donor to the donee;”*

Since the donee should not report the value of noncash contributions to the donor, the parenthetical of “(but not necessarily the value)” should be removed entirely or changed to “(but not the value).” IRS Publication 1771, Charitable Contributions–Substantiation and Disclosure Requirements, uses the phrase “description (but not the value) of non-cash contributions.”

### **Comments on Other Specifically Requested Items**

**Item: Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility**

**Response:** We believe the current system of an organization issuing CWAs to the donor when required is sufficient for IRS purposes.

**Item: Use of February 28th as the Due Date for Filing a Return and Furnishing a Copy to a Donor**

**Response:** We believe the prescribed form would be more directly related, in its function, with a CWA than with other types of existing information returns. The CWA can be received by the taxpayer by October 15 (the extended due date of the personal return). We believe the October 15 date would be the most effective due date for the prescribed form as well. By keeping the dates aligned it would enhance clarity. Additionally, if an organization misses a February 28 due date for the prescribed form, they would still ultimately be able to use a CWA to fulfill their requirements up until October 15.

We have no comments on any of the other specifically requested items.