

March 11, 2014

Steve Fodera  
Director of Management Review and Internal Compliance  
New York City Department of Housing Preservation and Development  
100 Gold Street  
New York, N.Y. 10038

Via email: [smf@hpd.nyc.gov](mailto:smf@hpd.nyc.gov)

Dear Mr. Fodera:

**Re: Proposed Amendments to Chapter 5 of Title 28 of the Rules of the City of New York (the "J-51 Rules") Regarding Professional Certification of the Cost of Major Capital Improvements and Related Identified Expenses by Certified Public Accountants**

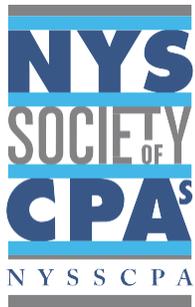
The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 29,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above captioned proposed amendments to rules.

The NYSSCPA's Real Estate Committee deliberated the proposal and prepared the attached comments. We understand that although the comment period has closed, you had been in discussion with our Real Estate Committee last month and recommended that we submit our recommendations. If you would like additional discussion with us, please contact committee chair Michael Giglio at (212) 471-4331, Abraham Haspel at (718) 783-5501, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,

J. Michael Kirkland  
President

Attachment



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

**COMMENTS ON**

**PROPOSED AMENDMENTS TO CHAPTER 5 OF TITLE 28 OF THE RULES OF  
THE CITY OF NEW YORK (THE "J-51 RULES") REGARDING PROFESSIONAL  
CERTIFICATION OF THE COST OF MAJOR CAPITAL IMPROVEMENTS AND  
RELATED IDENTIFIED EXPENSES BY CERTIFIED PUBLIC ACCOUNTANTS**

**March 11, 2014**

**Principal Drafters**

**Ahava Z. Goldman  
Abraham E. Haspel  
Santa J. Marletta  
Grace Singer**

## **NYSSCPA 2013 – 2014 Board of Directors**

J. Michael Kirkland, <i>President</i>	Anthony T. Abboud William Aiken	Kevin Matz Michael E. Milisits
Scott M. Adair, <i>President-elect</i>	Gregory J. Altman Barbara E. Bel	Barbara L. Montour Steven M. Morse
F. Michael Zovistoski, <i>Secretary/Treasurer</i>	Shari E. Berk Christopher G. Cahill	Michael F. Rosenblatt Arthur J. Roth
Ian J. Benjamin, <i>Vice President</i>	Anthony S. Chan John F. Craven	Cynthia A. Scarinci John S. Shillingsford
Adrian P. Fitzsimons, <i>Vice President</i>	Harold L. Deiters Timothy Hedley	Stephen T. Surace Tracy D. Tarsio
Barbara A. Marino, <i>Vice President</i>	Douglas L. Hoffman Scott D. Hosler	Yen D. Tran Mark Ulrich
Warren Ruppel, <i>Vice President</i>	Scott Hotalen Gail M. Kinsella	Richard T. Van Osten Beth van Bladel
Joanne S. Barry, <i>ex officio</i>	Eric M. Kramer Elliot A. Lesser	Mark Weg

## **NYSSCPA 2013 – 2014 Accounting & Auditing Oversight Committee**

William M. Stocker III, <i>Chair</i>	Sharon Sabba Fierstein	Rita M. Piazza
Joseph Caplan	Kenneth Gralak	Karina Pinch
Neil Ehrenkrantz	Julian E. Jacoby	Robert Rollmann
	Renee Mikalopas-Cassidy	

## **NYSSCPA 2013 – 2014 Real Estate Committee**

Michael Giglio, <i>Chair</i>	Heather Goldstein	Michael Maggio
Sean Allen	Bruce Gomberg	Philip Marra
Charles Anastasia	Charles Grossman	Michael Meilak
Moyses Benguigui	Howard Handwerker	Victor Mizzaro
Michael Benison	Abraham Haspel	Michael Morga
Steve Bibas	Alan Hoffman	Alicja Mynarska
Yves Blain	Jason Hoffman	Stephen Natkowitz
Sarah Braun	Arnon Hurvitz	Grace Ng
Kenneth Chan	Jerald Jacobik	Ohanes Ohannessian
Mario Christian	Paul Jhung	Girish Patel
Meihua Deng	Steven Kahn	Jeffery Rapaport
Tara DiGeronimo	Don Kiamie	Robert Reitman
Noelle du Toit	Eoin Kirwan	Daniel Rosenberg
Harry Dublinsky	Scott Knight	Michael Rosenblatt
Jerry Eitel	Anthony LaMalfa	Jan Rothman
Samuel Ende	Howard Landsberg	Abe Schlisselfeld
Michael Esposito	Mark Leeds	Norman Schulman
Guy Finocchiaro	Yingho Leung	Jesse Shemesh
Michael Flood	Seth Levin	Ferdinand Sisto
Marc Fogel	Nicholas Lucca	Stephen Surace

### **NYSSCPA Staff**

Ernest J. Markezin  
William R. Lalli

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

## **Comments on**

### **Proposed Amendments to Chapter 5 of Title 28 of the Rules of the City of New York (the "J-51 Rules") Regarding Professional Certification of the Cost of Major Capital Improvements and Related Identified Expenses by Certified Public Accountants**

#### **General Comments**

We thank the New York City Department of Housing Preservation and Development (HPD) for the opportunity to submit our comments and related recommendations regarding an HPD required opinion letter by an “independent certified public accountant of the cost of the conversion, alterations or improvements” as presented in HPD form J-2 (certification). It is our objective both to meet the HPD’s qualitative requirements and to avoid the conflict that certified public accountants (CPAs) have in meeting their professional standards arising from the certification currently required by HPD.

The certification makes reference to Generally Accepted Auditing Standards (GAAS) and Generally Accepted Accounting Principles (GAAP), yet the form of the certification is not in accordance with GAAS and the content of form J-2 upon which the CPA is opining does not always conform to GAAP. We believe that the requirement for an engagement partner to sign the certification is misleading because it fails to recognize the involvement of the full resources of the CPA firm particularly the quality control function which can, under certain circumstances, override the individual decisions of the engagement partner. We present the following discussion of each of these concerns:

#### **Generally Accepted Auditing Standards (GAAS)**

Rules of the City of NY Title 28 Housing Preservation & Development Section 5.05c2iii application procedure documentation state the following:

“(iii) in the discretion of the Office, a certification by an independent certified public accountant of the cost of the conversion, alterations or improvements, in accordance with generally accepted auditing standards and based upon the books and records of the owner provided that the original records are retained as set forth in §5-07 and are available for audit purposes.” [Emphasis added.]

Rule 29.10(7)(i) of the NYS Rules of the Board of Regents in its “Special Provisions for the Profession of Public Accountancy – Unprofessional Conduct” prohibits a reference to GAAS in a CPA’s report if the accompanying financial information is not in accordance with GAAS. Most entities that file form J-2 are not subject to the requirements of the Securities and Exchange Commission (SEC); thus, the applicable auditing standards for audits of these entities are GAAS as promulgated by the American Institute of Certified Public Accountants (AICPA).

The current CPA certification report required by HPD is not in accordance with GAAS. It should be noted that there have been revisions to the requirements of GAAS that are effective for periods ending on or after December 15, 2012. These requirements address the form and content of the auditor's report that include the use of headers and prescribed language not included in the HPD certification report. In addition, the auditor is required to describe the basis of accounting used to prepare the financial statements. Presented in an Exhibit at the end of this letter is a suggested auditor's report that complies with the requirements of GAAS.

### **Basis of Accounting**

The current certification report required by HPD states that the basis of accounting used to prepare the schedule is GAAP, as follows:

“as is also my opinion that the owner's total cost of the rehabilitation was \$ \_\_\_\_\_, and that this determination was made in accordance with generally accepted accounting principles”  
[Emphasis added.]

However, under GAAP, the cost of rehabilitation is generally understood to comprise capital expenditures—those expenditures that materially extend the original useful life of the building or increase its value or efficiency. The amounts included on Form J-2 are those major capital expenditures and related expenses specified in Form J-2, which may be inconsistent with the aforementioned standard; thus the basis of accounting may not be GAAP. The basis of accounting is the financial reporting provisions of Chapter 5 of Title 28 of the Rules of the City of New York.

Rule 29.10(7)(ii) of the NYS Rules of the Board of Regents in its “Special Provisions for the Profession of Public Accountancy – Unprofessional Conduct” prohibits reference to GAAP in a CPA's report unless the basis of accounting is promulgated by a standard-setting body recognized to promulgate GAAP which does not include The City of New York.

### **Independent Accounting Firm's Responsibility for Auditor's Report**

The auditor's report includes the word “independent” to indicate clearly that it is the report of an independent auditor. Accordingly, we believe that the declaration that no related party relationship exists with the entity under audit is unnecessary. However, if the declaration is retained, it should be provided as an addendum to the auditor's report and not part of the auditor's report.

In addition, we believe that the appropriate signatory for the auditor's report is the firm and not the engagement partner. GAAS requires that the auditor's report be signed by the firm. However, if the request of the engagement partner's name and license number is retained, it should be provided as an addendum to the auditor's report and not part of the auditor's report.

**RECOMMENDED AUDITOR'S REPORT IN ACCORDANCE WITH GAAS AND  
ACCOMPANYING BASIS OF ACCOUNTING NOTE**

**SAMPLE FORM OF INDEPENDENT AUDITOR'S  
REPORT RELATING TO J-51**

---

**INDEPENDENT AUDITOR'S REPORT**

[Appropriate Addressee]

***Report on the Schedule***

We have audited the accompanying Itemized Schedule Form J-2 ("Schedule") of ABC Company (the "Company") for the premises at \_\_\_\_\_ Street, New York, New York, Block \_\_\_\_\_, Lot \_\_\_\_\_. (the "Project"), which is part of an application for tax exemption and tax abatement pursuant to Section J-51- 11-243 of the City of New York, Administrative Code \_\_\_\_\_ .

***Management's Responsibility for the Schedule***

Management is responsible for the preparation and fair presentation of the Schedule in accordance with Chapter 5 of Title 28 of the Rules of the City of New York. Management is also responsible for the design, implementation, and maintenance of internal controls relevant to the preparation and fair presentation of the Schedule that is free from material misstatement, whether due to fraud or error.

***Auditor's Responsibility***

Our responsibility is to express an opinion on the Schedule based on our audit. We conducted our audit in accordance with Generally Accepted Auditing Standards (GAAS). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the statement is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the Schedule. The procedures selected depend on the auditor's judgment including the assessment of the risks of material misstatement in the Schedule whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the Property's preparation and fair presentation of the Schedule in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of

expressing an opinion on the effectiveness of the Property’s internal controls. Accordingly, we do not express such an opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management as well as evaluating the overall presentation of the Schedule.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

***Opinion***

In our opinion, the Schedule referred to above presents fairly, in all material respects, the costs incurred for the Project, in accordance with Chapter 5 of Title 28 of the Rules of the City of New York.

***Basis of Accounting***

We draw attention to Note 1 to the Schedule that describes the basis of accounting. The Schedule was prepared by the Company on the basis of the financial reporting provisions of Chapter 5 of Title 28 of the Rules of The City of New York, which is an other comprehensive basis of accounting than Generally Accepted Accounting Principles (GAAP) to comply with the requirements of The City of New York Department of Housing Preservation and Development. Our opinion is not modified with respect to this matter.

***Restriction on Use***

Our report is intended solely for the information and use of ABC Company and The City of New York Department of Housing Preservation and Development, and is not intended to be and should not be used by anyone other than these specified parties.

Certified Public Accountants  
[City, State]  
[Date]

***Note 1: Basis of Accounting:***

The schedule was prepared by the Company on the basis of the financial reporting provisions of Chapter 5 of Title 28 of the Rules of the City of New York, which is another comprehensive basis of accounting than Generally Accepted Accounting Principles. The financial reporting provisions of Chapter 5 of Title 28 of the Rules of The City of New York specify Major Capital Improvements (MCI) and certain specified allowable expenses that are eligible costs which may qualify the project for real estate tax exemption or abatements. These itemized costs include some costs that are properly classified as building improvements under GAAP but do not include all costs incurred by the project required to be capitalized under GAAP, and include some specified costs that would not be capitalized under GAAP.