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May 21, 2010

Internal Revenue Service
CC: PA: LPD: PR (Announcement 2010-9), Room 5203
P.O. Box 7604
Ben Franklin Station, N.W.
Washington D.C. 20044

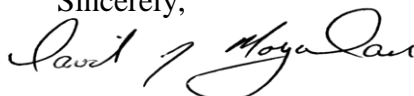
By e-mail: Announcement.Comments@irsconsult.treas.gov

Re: IRS Announcement 2010-9 Uncertain Tax Positions

The New York State Society of Certified Public Accountants, representing 28,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above captioned announcement.

The NYSSCPA's Closely Held & S Corporations Committee deliberated the proposed approach to reporting uncertain tax positions and prepared the attached comments. If you would like additional discussion with us, please contact Stewart Berger, Chair of the Closely Held & S Corporations Committee at (212) 303-1881, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,



David J. Moynihan
President

Attachment

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

**COMMENTS ON
IRS ANNOUNCEMENT 2010-9 UNCERTAIN TAX POSITIONS**

May 21, 2010

Principal Drafters

**Stewart Berger
Scott M. Cheslowitz
Edwin B. Morris
Sydney S. Traum**

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New York State Society of Certified Public Accountants
Closely Held & S Corporations Committee

Comments on
IRS Announcement 2010-9 Uncertain Tax Positions

The New York State Society of Certified Public Accountants welcomes the opportunity to comment on the Internal Revenue Service proposed approach to reporting uncertain tax positions.

We applaud the efforts that the Internal Revenue Service is making to reduce the amount of time needed to conduct examinations of tax returns, and hope that this can be done without creating a duplication of efforts on behalf of taxpayers to complete various forms disclosing the same information.

We have the following comments and concerns about the draft form, designated as Schedule UTP, and the draft instructions.

Paperwork

Our first concern is the additional paperwork required by having separate forms for many of the same items. While the instructions indicate that a complete and accurate disclosure of a tax position on the appropriate year's Schedule UTP will be treated as if the corporation had filed a Form 8275, *Disclosure Statement*, or Form 8275-R, *Regulation Disclosure Statement*, regarding the tax position, there are other forms that should also be coordinated with the new form. Thus, a corporation filing the Schedule UTP should not be required to file a Form 1120, Schedule M-3, *Net Income (Loss) Reconciliation for Corporations With Total Assets of \$10 Million or More*. Similarly, the corporation filing the Schedule UTP should not be required to report the same transaction on a Form 8886, *Reportable Transaction Disclosure Statement*, involving listed transactions. The reduction of paperwork will save both the Service and taxpayers time and money.

Privileged Information

Our second concern is that descriptions of the tax positions taken may violate the work-product privilege if litigation is anticipated and an attorney is involved in the determination of the chances of prevailing if a certain tax position is taken. Page 4 of the instructions requires reporting even when no reserve is recorded if the taxpayer determines that possibility of IRS settlement is less than 50%. This applies even when the chances of prevailing exceed 50%. We think, that when in the opinion of management, no reserve for an uncertain tax position is required, no disclosure should be made in the tax return when the chances of prevailing exceed 50%.

De Minimis Amounts

In addition, a *de minimis* rule should be added. Many of the examples refer to items of \$100 or, in some circumstances, less. While it is true that these are only for illustrative purposes, some guidance should be inserted as to when items are too small to disclose. In instances in which an item is too small to establish a reserve, the draft instructions still require reporting that item

because they require reporting any item for which a reserve has been considered. The *de minimus* rule should relate to a specific dollar amount and/or a specific percentage of assets' values.

Realistic Examples

Finally, the examples should be redrafted to include larger amounts and to be realistic as they pertain to dates. In "Example 1," the corporation recorded a reserve on September 30, 2010 with respect to a tax position to be taken on its 2010 tax return, which would not be due at the earliest until March 15, 2011. The timing is unrealistic. Moreover, the chart that illustrates when and how to report tax positions on Schedule UTP appearing immediately before the "Specific Instructions" for "Part I," should be moved and inserted under a new caption, "When to File," immediately prior to the "Definitions" and just after the section on "Who Must File."