

new york state society of

NYSSCPA

certified public accountants

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December 22, 2003

Glenn Newman, President
Reed Schneider, General Counsel
New York City Tax Commission
1 Centre Street
Room 936
New York, NY 10007

By email: rschneider@taxcomm.nyc.gov

Dear Messrs. Newman and Schneider:

The New York State Society of Certified Public Accountants, the oldest state accounting association, representing approximately 30,000 CPAs, periodically has brought to your attention concerns expressed by members of its technical committees.

The NYSSCPA Real Estate Committee has prepared the attached suggestions related to Form TC 201. If you would like additional discussion with the committee, please contact Barry Moss, chair of the Real Estate Committee, at (212) 773-5539, or Ernie Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,

Jeffrey R. Hoops
President

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Suggestions to the New York City Tax Commission
Form TC 201
December 22, 2003

The NYSSCPA Real Estate Committee would like to bring the following recommendations to the attention of the New York City Tax Commission.

RELATED PARTY PAYMENTS:

The current instructions to the TC 201 state: “Do not report payments to related persons as expenses, except reimbursement of amounts actually spent on building operations.”

Individuals interpret this instruction differently.

For example, some question whether all payments to a related party for building operations, including the related party’s profit, is allowable. Another interpreted this requirement to exclude any profit to the related party for service or goods rendered because the use of the words “reimbursement of amounts actually spent” generally does not include a profit to the related party; moreover, a conversation with Reed Schneider, General Counsel of the Tax Commission, suggested this interpretation. If the affiliated managing agent incurred actual costs for personnel and allocable centralized accounting costs to manage the property, those costs would be included in the TC 201. On the other hand, that portion of the management fee that represented profit to the affiliated managing agent would be excluded from the TC 201.

The disclosure of related party transactions also raises concerns both because of the additional work this interpretation would require and of the impact on clients (especially REITS) that have significant related party transactions.

The committee recommends that related party transactions should be included in the determination of Net Operating Income and that those related party transactions should be disclosed. The form and content of the related party disclosure would be the same as disclosed in the financial statements issued by the reporting entity.

For most respondents that issue financial statements with disclosures in addition to the TC 201, this disclosure requirement will require very little additional work. Very large entities that have many properties included in their financial statements will have to extract this information for each property for which a TC 201 is filed. Entities that do not prepare financial statements other than the TC 201, or that prepare financial statements which omit disclosures required by Generally Accepted Accounting Principles, would have additional work in preparing the related party disclosure.

CPAs should not ignore the instructions to the TC 201. By disclosing related party transactions, the Tax Commission can evaluate the nature of the related party transactions and the Certiorari Attorney can argue for its inclusion.

**LEASE BUYOUT INCOME/ EXPENSE AND ABONDONMENT OF LEASE
ACQUISITION COSTS:**

The committee recommends that lease termination income should be excluded from the TC 201 with a footnote disclosure of its exclusion. The reason for the exclusion is that appraisers generally disregard this income when valuing real property because it does not reflect a recurring item of income. The full disclosure of this item, however, would give both the Tax Commission and the Certiorari Attorneys more complete information in their negotiations.

Lease buyout costs incurred to acquire an identified replacement tenant should be amortized over the term of the new lease and reported in the miscellaneous expense section (part 9) with appropriate disclosure in the footnotes. Lease buyout costs incurred without an identified replacement tenant (speculative) should be excluded from the TC 201 and disclosed in the footnotes to the TC 201 until such time that a tenant has been secured.