

September 9, 2024

Attn: AICPA Professional Ethics Executive Committee (PEEC)  
Ethics-exposuredraft@aicpa.org

Re: Exposure Draft – Proposed Revised Interpretation: Tax Services

Dear AICPA PEEC:

We appreciate the opportunity to provide feedback on the proposed revised interpretation (ET sec. 1.295.160), *Tax Services*, dated June 10, 2024. The proposal is part of AICPA's Professional Ethics Executive Committee (PEEC) project to harmonize with ethics standards promulgated by the International Ethics Standards Board for Accountants (IESBA). Primary revisions include the likelihood of threats being created when providing all types of tax services; an emphasis on the identification and evaluation of self-review and advocacy threats to independence; new requirements that a firm or a network firm shall not provide a tax service or recommend a transaction to an audit client; and new application material to indicate the conditions in which providing tax advisory and tax planning services will not create a self-review threat.

The views expressed herein are written on behalf of the Professional Standards Committee (PSC) of the Texas Society of CPAs. The committee has been authorized by the Texas Society of CPAs' Leadership Council to submit comments on matters of interest to the membership. The views expressed in this document have not been approved by the Texas Society of CPAs' Leadership Council or Board of Directors and, therefore, should not be construed as representing the views or policy of the Texas Society of CPAs. Please find our responses below for the request for comment.

The PSC agrees with the proposal to revise the existing "Tax Services" interpretation to include tax advisory and tax planning services. However, the PSC does not agree with the addition of the advocacy threat when evaluating tax services for independence. The PSC does not believe that members performing tax services, such as tax return preparation, representation in administrative proceedings and representation in court services to an attest client, would compromise a member's independence.

The basis for the proposed changes is related to self-review and advocacy threats, not management participation threat (the original purpose of ET sec. 1.295.160). Thus, co-mingling these standards within the same paragraph may give the impression that these standards are related (based on being "tax services") – which seems irresponsible. Any addition of tax advisory and tax planning services should be separate, with a separate rationale and justification to support it. Also, the proposed provision cites "self-review and advocacy threats" as the basis for the changes, but the rationale, discussion and support of how these are related to tax advisory and tax planning services is severely lacking.

The PSC strongly opposes the proposal to use the more-likely-than-not threshold in determining if providing tax advice or planning impairs audit independence. The more-likely-than-not standard is more restrictive than permitted by other applicable standards. The AICPA Statements on Standards for Tax Services, IRS Circular 230 and the IRS regulations under section 6694 consistently require that a practitioner have a good faith belief that a position is based on



"substantial authority" or a "realistic possibility of success" or a "reasonable basis" if the position is disclosed in the tax return. These standards are generally viewed as requiring about 30-35% likelihood of success for substantial authority and about 20% for a position that is reasonable or has a realistic possibility of success. The more-likely-than-not standard implies a degree of certainty and might involve a FIN-48-type analysis before giving tax advice to an audit client. We believe that the higher standard for tax advice and planning for audit clients will discourage members from taking legitimately aggressive tax positions and intrude on the development of the tax law through the testing of controversial positions. It will also harm CPAs and their clients, particularly local CPAs and their small business clients.

In addition, the PSC believes the existing independence safeguards and rules currently in place are adequate, which include:

- Treasury Department Circular No. 230 regulates practice before the IRS by CPAs, and violating its provisions can result in suspension or termination of the right to practice before the IRS by the IRS Office of Professional Responsibilities. If a practitioner is sanctioned, the practitioner's firm may be similarly sanctioned.
- 26 U.S. Code § 6694 provides penalties applicable to tax return preparers and can result in substantial monetary penalties and potential sanctions by the IRS Office of Professional Responsibilities. For tax shelters and listed transactions, the more-likely-than-not standard applies under IRC Section 6662, but for other positions, the penalty standard is consistent with the standard in Circular 230, substantial authority or if there is just a reasonable basis if the position is disclosed. The PEEC proposed standard would seem to equate legitimate tax planning with planning for tax shelters and listed transactions by requiring a more-likely-than-not standard.
- AICPA Statements on Standards for Tax Services are binding technical standards under the AICPA Code of Professional Conduct. Interpretation 1-1, "Reporting and Disclosure Standards," states that a member may recommend a tax return position with a realistic possibility of success or if there is a reasonable basis for the position and the position is appropriately disclosed on the return.
- AICPA Code of Professional Conduct (AICPA Code) includes rules on independence and ethics for CPAs and firms under the Nonattest Services subtopic (ET §1.295).

The PSC strongly believes the proposal would have a deep impact on small businesses, local practitioners and the development of the tax law:

- Small Businesses – An audit client might not receive legitimately aggressive tax advice and planning services from an auditing CPA who would have to meet the more-likely-than-not standard to maintain audit independence. The client might be better serviced by a second CPA who is not so constrained. However, this would involve the inefficiencies and cost of ramping up a second professional, and in smaller cities and towns, a second professional may not be conveniently available. By serving tax and audit needs of a client, the CPA can know the client and provide better audit and tax services. Overall, the proposed ethical interpretation degrades the practitioner's ability to stay connected with the client and disjoints the tax understanding due to the additional avenues, ultimately increasing the risk to both the client and practitioner.

- Local Practitioners – A CPA could have two standards for tax positions, one for audit clients and one for tax clients, or possibly the CPA would become deterred from providing legitimately aggressive tax advice to all clients. The CPA should be able to advise a client and take a resulting position on a tax return using the same standard. Practitioners who represent taxpayers in audits and appeals are performing a valuable client service and there is no evidence that this separate line of service intrudes on audit independence. In addition, small firms and their CPAs will not be able to enjoy the learning benefits of conducting both the attest engagement and the tax service. The CPA may have to choose between providing tax or audit services to a particular client.
- Testing and Strengthening the Tax Law – Often IRS regulations or provisions are determined by the courts to be incorrect interpretations of the tax law, but they might go unchallenged if the taxpayer is deterred from taking a tax position that may have some controversy. A more-likely-than-not standard will have a chilling effect on taking legitimately aggressive tax positions that, when tested, are proven to be correct.

We appreciate the opportunity to submit comments on the proposed revised interpretation Tax Services (ET sec. 1.295.160) dated June 10, 2024.

Sincerely,



Jeffrey Johanns, CPA

Chair, Professional Standards Committee

Texas Society of Certified Public Accountants