



National Association of State Boards of Accountancy

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Professional Ethics Executive Committee
American Institute of Certified Public Accountants
1345 Avenue of the Americas
New York, NY 10105

Via e-mail: ethics-exposedraft@aicpa.org

Re: Exposure Draft: Proposed revised interpretation: Tax Services

Dear Members and Staff of the AICPA Professional Ethics Executive Committee (PEEC):

The National Association of State Boards of Accountancy (NASBA) appreciates the opportunity to comment on the above-referenced Exposure Draft, ***Proposed revised interpretation: Tax Services*** (the Exposure Draft). NASBA's mission is to enhance the effectiveness and advance the common interests of State Boards of Accountancy (State Boards) that regulate all Certified Public Accountants (CPAs) and their firms in the United States and its territories, which includes all audit, attest and other services provided by CPAs. State Boards are charged by law with protecting the public.

In furtherance of that objective, NASBA offers the following comments.

Comments on Specific Questions

a. Do you agree with the proposal to move toward a principles-based approach rather than a specific threshold approach in determining if threats to independence are at an acceptable level? If you believe a threshold approach is appropriate, please describe what threshold you believe is appropriate.

As noted in our comment letter to the original proposal, NASBA supports the use of the more-likely-than-not threshold for independence. The more-likely-than-not threshold is a well-established concept that will promote consistency in practice because it is consistent with guidance established by U.S. regulators and standard setters regarding the likelihood of success when evaluating uncertain tax positions.

The project to revise the "Tax Services" interpretation (ET sec. 1.295.160) of the "Independence Rule" was undertaken by PEEC as part of its international harmonization efforts with the International Ethics Standards Board for Accountants (IESBA) and their project to strengthen the international independence standards by addressing public interest concerns about a perceived lack

of independence when firms provide non-assurance services to attest clients. IESBA provided that for tax advice related to an uncertain tax position for an audit client, an auditor must conclude that the position has a basis in applicable tax law and regulation that is “likely to prevail.” The specific threshold is not defined as a percentage but requires a high degree of confidence. In the explanation to the Exposure Draft, PEEC highlighted that the more-likely-than-not threshold was consistent with IESBA’s threshold.

Notwithstanding the examples of factors provided in paragraph .04 to help a member in determining if threats to independence are at an acceptable level, the proposed revised interpretation could be applied by members in varying and even contradictory ways. A principles-based approach brings a risk of diversity in practice, which is not in the public interest.

NASBA encourages PEEC to continue to carefully weigh proposed principles-based revisions to the Code of Professional Conduct (Code) against the impact that such proposals may have on a regulatory body’s ability to bring enforcement actions against an audit firm or individual practitioner due to a violation of the Code.

b. Do you believe the factors presented in paragraph 20 of the explanation as well as in paragraph .04 of the proposed revised interpretation would help a member determine if threats to independence would be at an acceptable level regarding a member’s outputs from tax advisory and planning services for attest clients? Please also share any other factors you believe could be helpful to consider.

As noted above, NASBA supports the use of the more-likely-than-not threshold for independence; however, if PEEC moves forward with the proposed principles-based provisions in determining whether services performed may result in significant threats to independence, NASBA recommends that additional guidance be provided regarding the “level of confidence” noted in paragraphs .04 a. and b. to at least that of substantial authority.

In addition, NASBA noted a difference in wording between paragraph 20 of the explanation and paragraph .04 of the proposed revised interpretation. Paragraph 20 c. of the explanation regarding tax avoidance states: “Whether the tax services are provided in relation to a tax position that is designed solely for the purpose of tax avoidance and lacks in economic substance for the attest client.” Paragraph .04 c. of the proposed revision states: “Whether the tax services are provided in relation to **a restructuring event [emphasis added]** that is designed solely for the purpose of tax avoidance...” Clarification is needed as to what is meant by a restructuring event. If PEEC moves forward with the proposed principles-based approach, NASBA recommends using the broader “tax position” language from paragraph 20 c. in the final rule.

Paragraph .04 e. provides the significance of the tax services to the subject matter of the attest engagement, such as the attest client’s financial statements as a factor to consider whether threats to independence are significant or at an acceptable level. NASBA believes further clarification is needed as to what is meant by “significance of the tax services to the subject matter” (for example,

in terms of materiality considerations to the attest client's financial statements or quantitative and qualitative considerations relative to the tax position).

NASBA recommends including the significance of tax services in relation to the attest fees as a factor or, alternatively, referencing the "Fees" interpretation for consideration.

c. Do you agree that the effective date provides adequate time to implement the proposals? If you disagree, please explain why.

NASBA agrees that the effective date provides adequate time to implement the proposals.

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We appreciate the opportunity to comment on the Exposure Draft.

Very truly yours,

Nicola Neilon

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NASBA Chair

Daniel J. Dustin

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