

AMT patch on its way through Congress

Patch will only be good for one year, but further legislation is on the horizon to repeal the AMT.

By Sharon Kreider, CPA, EA

ECP Advisory Board Chair

On October 30, 2007, Charles Rangel, the chair of the House Ways and Means Committee, introduced the Temporary Tax Relief Act of 2007 (TTA '07).¹ The Act, which is expected to quickly clear the House of Representatives, provides a one-year increase to the alternative minimum tax (AMT) exemption. If passed, the 2007 AMT exemption would be \$66,250 for joint filers and \$44,350 for individuals. TTA '07 also extends the use of personal nonrefundable credits for AMT and regular tax purposes

through December 31, 2007. These two changes will save an estimated 23 million taxpayers from paying AMT for the 2007 tax year.

AMT repeal?

The proposed legislation is called “temporary” because the AMT problem raises its ugly head again in 2008. Congressman Rangel hopes to deal with AMT in a more permanent way in 2008 with a major tax reform bill that proposes, among a myriad of other changes, a repeal of the AMT. The AMT repeal would be very expensive — estimated at more than \$800 billion in ten years — and would be offset with an increase to the top tax rate from 35% to 39.6%.

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AICPA adopts new standards for valuation

CPAs who value businesses or assets are subject to new rules.

By Richard Malamud, CPA, J.D., LL.M.

ECP Guest Contributor

The new AICPA Statement for Standards for Valuation Services (SSVS)¹ is effective January 1, 2008, although earlier adoption is encouraged. The 76-page Statement entitled “Valuation of a Business, Business Ownership Interest, Security, or Intangible Asset”² adopts standards for its members who perform valuation services. It states, “AICPA members will be required to follow this standard when they perform engagements to estimate value that culminates in the expression of a conclusion of value or a calculated value.”

All AICPA members, not just those who are members of a professional valuation organization, will have to meet these new standards when they perform covered valuation engagements starting next year.

Even those CPAs who are not AICPA members and are thus not required to meet these standards may find that a court will give great weight to these new standards of practice if a question of valuation malpractice is raised.

Which valuation engagements are covered?

The new standard applies when a member performs a valuation of “a business, business ownership interest, security, or intangible asset” unless an exception applies. This is the case even if the engagement is part of preparing a tax return in which the CPA uses professional skills to determine a valuation.

However, if the work performed is limited to mechanical computations, they are not covered by the standard as long as the work does “...not rise to the level of an engagement to estimate value,” which means that the CPA does not use a valuation approach or professional judgment, as described in the Statement.

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Valuations covered

- Transactions such as acquisitions, mergers, leveraged buyouts, initial public offerings, employee stock ownership plans and other share-based plans, partner and shareholder buy-ins or buyouts, and stock redemptions;
- Litigation relating to matters such as marital dissolution, bankruptcy, contractual disputes, owner disputes, dissenting shareholder and minority ownership oppression cases, and employment and intellectual property disputes; and
- Compliance oriented engagements, including (a) financial reporting; and (b) tax matters, such as corporate reorganizations; S corporation conversions; income, estate, and gift tax compliance; purchase price allocations; and charitable contributions.

Exceptions

The Statement lists broad categories of exceptions for which it does not apply. It is not applicable if:

- The CPA is estimating the value as part of performing an attest engagement (an audit, review, or compilation);
- The valuation is provided by the client or a third party, and valuation approaches and methods are not applied by the CPA;
- It is for internal use assignments from employers to employee members not in the practice of public accounting;
- The engagements are “exclusively” used to determine economic damages “unless those determinations include an engagement to estimate value;”
- It involves mechanical computations where the CPA does not use independent valuation approaches or methods and does not use professional judgment; and
- “It is not practical or not reasonable to obtain or use relevant information,” such as when it is not possible to apply the normal valuation approaches in the Statement.³

A footnote to the statement states that, “Unless prohibited by statute or by rule, a member may use the client’s estimates for compliance reporting to a third party if the

member determines that the estimates are reasonable (based on the facts and circumstances known to the member).”

Some examples

Some specific services that do not rise to the level of an engagement to estimate value include:

“(a) computations of a remainder interest under a grantor retained annuity trust using actuarial tables; (b) determining the value of relatively small blocks (relative to the total amount of corporate stock outstanding) of publicly traded stock whose per share price is readily ascertainable; (c) preparing a tax return using the valuation of a business that was provided by a third-party appraiser, or by the client ...; and (d) calculating cash ‘hold back’ requirements for tax contingencies ...”

Some specific services that fall within the Statement’s requirements include:

“(a) valuing a block of publicly traded stock, if the analysis includes consideration of a discount for blockage, lockup, or other contractual or market restrictions such that valuation approaches and methods are applied, and professional judgment is used to determine the fair value, fair market value, or other applicable standard of value; (b) valuing stock that is not publicly traded; and (c) computing the fair market value of assets in a charitable remainder trust, if the engagement requires the application of valuation approaches and methods, and the use of professional judgment to estimate the fair market value.”

Estate & financial planning

The Statement provides an example of an estate or financial planning engagement. It says that the planning is not covered so long as the values (for example of a business and a security) are provided by the client or a third party or the report uses assumed or hypothetical values. If instead the report includes a valuation determined by the CPA, the report falls within the Statement requirements. Even if the report is not covered by the new valuation Statement, an illustration points out that a computation of an estate or tax as part of a report would

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Other 2007 changes included in bill

In addition to the one-year AMT patch, TTA '07 includes an extension of several expiring provisions including:

- The tuition deduction;
- The IRA transfer to charity provision;
- The above-the-line schoolteacher deduction;
- The sales tax deduction;
- The mortgage insurance deduction;

- The Research and Development Tax Credit; and
- The 15-year depreciation for restaurants and leasehold improvements.

It would also provide a permanent exclusion from the cancellation of debt rules for the relief of acquisition mortgage debt secured by the personal residence of the taxpayer. While this provision will help some recent home buyers, it will not save those individuals who have refinanced

their homes to pay off credit cards and have had that debt forgiven.

New revenue to offset the tax cuts resulting from the AMT patch and the extender relief is proposed to come from (1) including certain deferred compensation in income, (2) taxing some carried interests as ordinary income, and (3) increasing penalties on late filed partnership returns and adding a penalty for late filed S corporation returns. **§**

¹ H.R. 3996

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be subject to the Statement on Standards for Tax Services.

Valuing an FLP

A very interesting example is one that asks if the Statement applies to determining the valuation of a family limited partnership if a discount is not taken. It concludes that this is a valuation engagement subject to the Statement's requirements unless the valuations are provided by the client or a third party. "The fact that the member does not apply a discount does not exempt the engagement from the Statement..."

There are numerous other examples that involve:

- Depreciation studies;
- Use of stock brokerage statements;
- Partnership allocations; and
- An accountant who moonlights.

The bottom line is that if the client or a third party is the one who determines the value used in a report or tax plan, the valuation is not covered by the statement. If, however, the valuation is determined by the accountant, then — unless one of the specific exemptions applies — the valuation is subject to the requirements of the Statement.

Conclusion

AICPA members who, as part of income tax or estate preparation or financial or tax planning engagements also perform valuations, will be subject to the provisions of this new Valuation Statement. There are numerous exceptions such as performing the attest function or the use of client or third party provided valuations. The bottom line is that if you determine the value of a business, nonpublicly traded stock, intangibles or similar assets as part of a client engagement, take the time to review the new Statement to verify if the job is covered by the new standards.

Additional information can be found in the following articles.

1. *Business Valuation: Professional Guidance in Business Valuation: Applying SSVS1*, by Robert F. Reilly, 9 *Journal of Accountancy* 33, September 2007.⁴
2. *Business Valuation: Suggested Guidelines for How to Implement SSVS1 in Your BV Practice*, by Randie Dial, 9 *Journal of Accountancy* 38, September 2007.⁵
3. *Standards Will Govern Valuations*, by Howard W. Wolosky, 40 *Practical Accountant* 30, August 2007.⁶ **§**

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¹ See <http://bvfls.aicpa.org/Resources/Laws+Rules+Standards+and+Other+Related+Guidance/AICPA+Valuation+Standard+and+Implementation+Toolkit/>

² See http://bvfls.aicpa.org/NR/rdonlyres/672E1DD4-2304-47CA-8F34-8C5AA64CB008/0/SSVS_Full_Version.pdf

³ See Interpretation No. 1, "Scope of Applicable Services" of Statement on Standards for Valuation Services and Statement for Standards on Tax Services No. 4

⁴ See <http://www.aicpa.org/pubs/jofa/sep2007/reilly.htm>

⁵ See <http://www.aicpa.org/pubs/jofa/sep2007/dial.htm>

⁶ See <http://www.webcpa.com/article.cfm?articleid=24847&pg=pracacc>

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