

Mellon Financial Corporation

Michael A. Bryson
Chief Financial Officer

September 12, 2005

Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Letter of Comment No:

File Reference: FSPFAS13-A
Date Received:

RE: Proposed FASB Staff Position FAS 13-a - Accounting for a Change or Projected Change in the Timing of Cash Flows Relating to Income Taxes Generated by a Leveraged Lease Transaction

Dear Director:

Mellon Financial Corporation (Mellon) appreciates the opportunity to comment on the Proposed FASB Staff Position (FSP) FAS 13-a — Accounting for a Change or Projected Change in the Timing of Cash Flows Relating to Income Taxes Generated by a Leveraged Lease Transaction. Mellon is a \$37 billion bank holding company with headquarters in Pittsburgh, Pennsylvania.

Mellon would like to comment specifically on Issue 3 in the FSP. Under Issue 3, the proposed FSP would require that the recalculation of income be based on actual cash flows that occurred up to and including the point of actual settlement or expected settlement and the estimated cash flows thereafter. Additionally, this proposed FSP would require that the recalculation include any interest and penalties assessed or expected to be assessed by the taxing authority. We disagree with the approach of including taxes related to temporary differences, interest and penalties in the recalculation.

When an IRS audit is settled, there is normally more than one issue being settled and the calculation of the revised tax liability and interest thereon can be quite complicated. Even though the leveraged lease audit adjustment may result in an increase to taxable income, the overall results of an audit for a given year could result in a deficiency that is less than the amount due on the leveraged leases or may even result in a refund. Further, the IRS deficiency interest is currently calculated at 6% (if there is an overall deficiency) while the overpayment refund rate is only 3.5%. Therefore, it may be very difficult to accurately calculate the interest related to the leveraged lease adjustments only.

Requiring that the interest expense on a leveraged lease adjustment be included in the recalculation of the lease income for financial statement purposes will result in a FAS 13 income adjustment for taxes and interest cash flows based on assumed amounts that

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reflect trade-offs in a negotiated settlement. The assumed interest on leveraged lease audit adjustments will decrease the book income recognized on the lease itself based on cash flows that effectively never occur while interest on other tax adjustments will be recorded as interest income or expense. We believe it more relevant to record interest on tax assessments consistently for financial statement purposes regardless of the tax issue in question. We believe this unduly complicates the adjustment that we are being asked to make under the proposed FSP. Due to aggregated claims and negotiated settlements, some taxpayers may pay less interest or no interest on a LILO or SILO adjustment that will cause a lack of comparability on the FSP's accounting. Furthermore, it results in anomalous accounting to record a one-time charge to earnings that will then be reversed to income in succeeding years.

If our primary position that taxes related to temporary differences, interest and penalties should not be included in the recalculation is unacceptable, at a minimum, we propose that the recalculation of income be based only on taxes. The tax amount used in the recalculation would be the hypothetical tax that would be paid on the audit adjustment (calculated as the audit adjustment multiplied by the statutory tax rate.) This would eliminate the interest impact that other audit adjustments would have on the recalculation. Further, we simply do not view interest on tax assessments to be an inherent cash flow to be included in the lease. The interest effect of LILOs and all other audit adjustments would be accounted for under FAS 109.

While we believe the pronouncement on Uncertain Tax Positions as written allows a best estimate based on IRS settlement positions, it should be made clearer in this FSP that, in the case of temporary differences, when the "validity" of the deductions are not in question but merely the timing, as is the case with LILO settlements, the best estimate should be built into the FAS 13 calculation. This would be true even though the timing of the deductions in the return as filed may not meet the FAS 5 probability standard.

Regarding the effective date, given the timing and the interrelationship with the proposed interpretation on Accounting for Uncertain Tax Positions under FAS 109, we would recommend a delay beyond January 1, 2006 for calendar year filers.

We would be pleased to discuss this issue with you, so feel free to call either Michael K. Hughey, Controller, at (412) 234-5666 or Scott Ickes, Tax Director, at (412) 234-9148.

Sincerely,

Michael A. Bryson