

Letter of Comment No: 7
File Reference: FSPFAS109

December 1, 2004

Mr. Lawrence W. Smith
Director of Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Re: Proposed FASB Staff Position No. FAS 109-a, Application of FASB Statement No. 109, Accounting for Income Taxes, for the Tax Deduction Provided to U.S. Based Manufacturers by the American Jobs Creation Act of 2004

Dear Mr. Smith:

PricewaterhouseCoopers LLP appreciates the opportunity to respond to the Proposed FASB Staff Position No. FAS 109-a, Application of FASB Statement No. 109, Accounting for Income Taxes, for the Tax Deduction Provided to U.S. Based Manufacturers by the American Jobs Creation Act of 2004 (the "Proposed FSP"). We appreciate the Board's and the FASB staff's prompt attention to this issue in order to prevent the potential for inconsistent practice to develop in the capital markets.

We have the following comments and observations for your consideration.

We agree with the conclusion in the Proposed FSP that the tax deduction provided by the American Jobs Creation Act of 2004 for certain qualified production activities income (the so-called Section 199 deduction) should be accounted for as a special deduction in accordance with paragraphs 231 and 232 of FAS 109. While an argument could be made that the Section 199 deduction is, in substance, a rate reduction for enterprises that engage entirely in activities that qualify for the deduction, given the complexities of applying a rate reduction approach for most entities and the explicit requirement to perform certain activities in future periods, we believe the conclusion in the Proposed FSP is appropriate.

We encourage the FASB to give further consideration to the issue of determining the need for a valuation allowance in situations where the Section 199 deduction would have been available absent a net operating loss (NOL) carryforward. Under the tax code, a taxpayer is required to compute the Section 199 deduction based on the lower of (a) qualifying production activities income or (b) taxable income after NOL carryforwards. Consequently, for periods in which a taxpayer is utilizing NOL carryforwards to shelter all of its current period income from taxes, the taxpayer would not be eligible for the deduction. Due to the way in which the tax law operates, we fail to understand the underlying logic being applied in the examples to the FSP, which



appear to determine the amount of the Section 199 deduction based on taxable income before subtracting NOLs. We believe that any example that illustrates a methodology that hypothetically implements the tax law in a manner in which it is not written will not be useful. Moreover, we consider this special deduction to be analogous to future tax credits that might have been available or realizable to the company had it not been for the existence of NOL carryforwards. In such cases, companies generally do not record valuation allowances at the balance sheet date because, had it not been for the existence of the NOL, they would have been able to generate a particular income tax credit in a subsequent period that would have reduced taxes in that period or a later period. It may be useful, however, for readers of the financial statements to be informed through disclosures that a company that is currently utilizing NOL carryforwards would have otherwise been entitled to a Section 199 deduction.

We appreciate the opportunity to express our views on the Proposed FSP. If you have any questions regarding our comments, please contact Brett Cohen (973-236-7201) or Pat Durbin (973-236-5152).

Sincerely,

PricewaterhouseCoopers LLP