



Ernst & Young LLP
5 Times Square
New York, NY 10036

Phone: (212) 773-3000
www.ey.com

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Director, TA&I-FSP
Financial Accounting Standards Board
401 Merritt 7, P.O. Box 5116
Norwalk, CT 06856-5116

**Proposed FASB Staff Positions on FASB Statement No. 109
(FSP FAS 109-a and 109-b)**

We appreciate the opportunity to comment on the proposed FASB Staff Positions, 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 (FSP 109-a) and Accounting and Disclosure Guidance for Foreign Earnings Repatriation Provisions within the American Jobs Creation Act of 2004 (FSP 109-b). We strongly support the efforts of the Board to improve the quality and comparability of financial reporting through the issuance of the guidance in the proposed FSP's and would specifically like to commend them for taking action to deal with a pending financial reporting issue on such a timely basis. We do have the following comments for your consideration.

We agree with the conclusion in FSP 109-a that the manufacturing deduction under the American Jobs Creation Act of 2004 (the Act) is more appropriately treated as a special deduction under FAS 109. However, we recommend that the FSP acknowledge that, due to uncertainty in the Act, it is likely that a Company's estimate of the impact of the manufacturing deduction on its effective tax rate will change as additional clarifying regulations are issued by the Treasury and evaluated by affected companies and that such changes in estimate will be properly reflected in future periods. Clarifications we expect include: what activities constitute manufacturing or production under the Act; determining who the manufacturer/producer is in a consignment/contract manufacturing arrangement; and defining the "significant part" manufactured in the United States. Depending on the timing of clarifying regulations, a company may significantly change its estimate of the 2005 manufacturing deduction between the first and future quarters of fiscal 2005, a change which we believe should be reflected as a change in the estimated effective tax rate when it is determined.

We have also read with interest the examples to FSP 109-a. It appears the intent of the examples is to emphasize the Board's view that the impact of a special deduction on effective tax rates and

valuation allowances is determined on an incremental (or “with-and-without”) basis versus the ordering provisions in the tax law. Assuming this is the Board’s conclusion, we would recommend specifically stating such. If that was not the intention of the Board (e.g., the provisions of the tax law should govern or that there are other acceptable means of assessing the impact on valuation allowances of a special deduction) we would recommend that those alternative methods be incorporated herein. While we recognize there may be a view to simply delete the examples that have raised these questions under the theory that relatively few companies will be impacted and the questions raised are beyond the scope of the FSP, we would not endorse that view. Instead, we believe the FASB has appropriately raised an issue that will need to be addressed in conjunction with the Act. We would also note that, due to differences in how the tax law works under the Act, this ordering issue was not present with other special deductions (specifically depletion). Because the Act requires the domestic manufacturing deduction be computed on the lesser of taxable income (after consideration of net operating loss carryforwards) or qualified production activities, following the tax law provisions versus a with and without approach could result in significantly different attribution patterns.

We also agree with the proposed conclusions in FSP 109-b. We do, however, recommend an expansion of the FSP to specifically recognize that clarification under the Act may occur over time. As a result, a company may reflect clarifying provisions of the Act and their impact on repatriation, as well as the rate to be used on earnings that were not previously indefinitely reinvested, in varying periods as clarity becomes evident and decisions are made.

We would be pleased to meet with the FASB or its staff to discuss our comments.

Very truly yours,

Ernst + Young LLP