



Letter of Comment No: 51
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September 12, 2005

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

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Re: Accounting for Uncertain Tax Positions

Dear Sir or Madam:

America's Community Bankers ("ACB")¹ appreciates the opportunity to comment on FASB's Exposure Draft on the *Accounting for Uncertain Tax Positions – an interpretation of FAS No 109*. In the Exposure Draft ("ED"), FASB seeks to clarify the accounting guidance and provide a more prescriptive method for entities to use in accounting for uncertain tax positions.

ACB Position

Generally, ACB supports the FASB's efforts to address the diverse accounting practices that have developed with respect to what level of confidence is used by institutions when estimating the benefit of an uncertain tax position in its financial statements. While we agree with the general direction of the proposed guidance, we have concerns about the practicability of the guidance and potential problems it may cause community bankers upon adoption.

ACB does not support the dual threshold model and the "probable" recognition threshold as proposed in the ED. The ED prescribes the use of a "probable" threshold for recognition and a "more likely than not" threshold for derecognition. In practice, the "probable" threshold is generally understood to mean a 70 to 75 percent confidence level while the "more likely than not" threshold generally equates to 50 percent or less. ACB believes that this dual threshold approach introduces increased subjectivity, reduces the comparability of financial statements and is not likely to improve practices in accounting for uncertain tax positions. Furthermore, ACB is concerned that the ED does not provide

¹ America's Community Bankers is the member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit www.AmericasCommunityBankers.com.

adequate clarification of the FAS 5 definition of “probable”. Thus, we are concerned that the use of a 70 to 75 percent confidence level will result in artificially decreased earnings as institutions will be over-reserving for the tax positions.

ACB urges FASB to consider abandoning the dual threshold model and adopt a single standard approach using the “more likely than not” threshold for recognition and derecognition. This “more likely than not” standard would be consistent with the FAS No. 109 threshold for recognizing deferred tax benefits. We believe that this single threshold approach would be easier for preparers of financial statements to understand and implement, will allow for more consistent practices when accounting for uncertain tax positions and would provide more useful information to the end users of financial statements. We believe that FASB’s concerns expressed in the deliberations of the proposed ED over the potential volatility that might be caused by corresponding thresholds for recognition and derecognition should be mitigated by an entity’s determination of its “best estimate” of the recognition value.

State Tax and Nexus Issues

ACB is also concerned about the potential impact that the proposed guidance would have on banks that do business in multiple states. Many institutions often are not required to file state income tax returns in certain states in which they do business because they do not have a physical “nexus” to those states. The proposed guidance is likely to cause some potential problems for institutions that are not required to file a tax return in certain states, but may now be required to recognize a liability for an uncertain tax position, even if it is very unlikely it would ever be challenged as there is no return for the state authorities to review. In the final guidance, ACB urges FASB to consider including a more explicit discussion of how to address and resolve the potential nexus issues raised by the proposed Interpretation.

Conclusion

ACB is unconvinced that the dual threshold approach proposed in the ED will lead to improved financial reporting, and respectfully recommends FASB revisit the criteria in the proposed model, and consider establishing a model with one threshold. We urge that the single threshold be “more likely than not.” We also urge FASB to reconsider the potential unintended consequences that the guidance would likely have on institutions doing business in multiple states.

Thank you for the opportunity to comment on this important matter. If you should have any questions, please contact me at 202-857-3158 or via e-mail at dhild@acbankers.org.

Sincerely,



Dennis M. Hild
Vice President – Accounting and Financial Management Policy