

Letter of Comment No:

September 6, 2005

Director, TA&I—FSP

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Date Received:

Financial Accounting Standards Board

401 Merritt 7

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## **Proposed FASB Staff Position**

## Accounting for a Change or Projected Change in the Timing of Cash Flows Relating to Income Taxes Generated by a Leveraged Lease

Dear Sirs/Madams:

We appreciate the opportunity to comment on the above-referenced FSP. BB&T Corporation and its subsidiaries offer full-service commercial and retail banking and additional financial services such as insurance, investments, retail brokerage, corporate finance, treasury services, international banking, leasing and trust. With over \$105 billion in assets, BB&T Corporation is the nation's ninth largest financial holding company.

The Board indicated in footnote 6 to paragraph 12 of the FSP that the guidance in this FSP is subject to change based on changes in the proposed Interpretation on Statement 109. Therefore, our comments on the proposed FSP assume the Interpretation on Statement 109 will be adopted as drafted.

Issue 1: The scope of this proposed FSP would apply to all transactions classified as leveraged leases in accordance with Statement 13. Do you agree that the scope of this proposed FSP should be limited to only leveraged lease transactions or should the scope be expanded to include all leases under Statement 13? Why or why not?

We believe the scope should be expanded to include all leases. Excluding reclassification of lease transactions that subsequently meet the criteria as leveraged leases is inappropriate and inconsistent. Alternatively, the FSP should explicitly state that if

during the lease term the expected timing of the income tax cash flows generated by a lease is revised in a manner that would have resulted in a direct financing lease qualifying as a leveraged lease had the revised assumption been included in the original lease computation, the lessor would reclassify the direct financing lease as a leveraged lease. This position would provide fair and parallel treatment for leveraged leases and direct financing leases. It would also result in financial reporting of lease transactions that more accurately reflects the expected timing of the income tax cash flows under the lease.

Issue 2: This proposed FSP concludes that the timing of the cash flows relating to income taxes generated by a leveraged lease is an important assumption that should be accounted for in accordance with the guidance in paragraph 46 of Statement 13.

Additionally, this proposed FSP would require a leveraged lease to be reclassified if, at any time, a revision of an important assumption requires a recalculation of a leveraged lease and changes the characteristics of the lease in a manner that would have resulted in the lease not qualifying as a leveraged lease had the revised assumption been included in the original or most recent leveraged lease computation. Do you agree? Why or why not?

We believe that the current requirements of paragraph 46 are adequate and appropriate.

Issue 3: This proposed FSP would require that the recalculation be based on actual cash flows that occurred up to and including the point of the 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. Do you agree? Why or why not?

We agree that the basis for recalculation should include the actual cash flows up to the point of recalculation and the estimated cash flows thereafter. Based upon discussions with others, there appears to be confusion regarding how this estimate of cash flows thereafter is related to the amounts that would be recorded under the proposed interpretation regarding uncertain tax positions. For example, suppose an entity's best estimate of cash flows is that it would sustain 35% of the tax benefit claimed for a leveraged lease transaction. Based on paragraph 12 of the proposed interpretation, the magnitude of the difference between this best estimate amount and the amount claimed on the tax return most likely would be construed as not meeting the "probable" threshold articulated in the proposed Interpretation. Therefore, the entity would not record any tax benefit, which is a flaw in that proposal. It is our belief that the intent of this FSP is to use the best estimate, which in this case is 35% of the amount claimed on the tax return, and not what was recorded as a result of the on/off switch embedded in the proposed Interpretation of Statement 109. We believe that the FSP should clarify the intent of the Board in this regard.

We agree with the basis for calculation of interest as stated in footnote 5 to paragraph 9 of the FSP. However, paragraph 17 of the proposed Interpretation of Statement 109 indicates that an enterprise should accrue interest based on the difference between the tax position recognized in the financial statements and the amount claimed or expected to be claimed on the tax return. We disagree with this basis for the calculation of interest and want to be sure that amount of interest required to be reflected in the recalculation of the income tax cash flows from a lease is based on the actual economic amount of interest paid or expected to be paid. If the interest paid or payable to the taxing authorities is included in the calculations, then the imputed interest avoided by having the reduction in income taxes should also be included to more accurately reflect the economics of the transaction.

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We would be pleased to discuss our comments with the Board members or the FASB staff at your convenience.

Very truly yours,

Henry R. Sturkie, III

Senior Accounting Policy Manager