

Letter of Comment No: 28
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September 12, 2005

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

Re: Proposed Interpretation, “Accounting for Uncertain Tax Positions, An Interpretation of FASB Statement No. 109”

Dear Technical Director:

AmSouth Bancorporation (“AmSouth”) appreciates the opportunity to comment on the above-referenced proposed Interpretation (the “Interpretation”). AmSouth is a regional bank holding company with \$50 billion in assets, more than 680 branch banking offices and over 1,250 ATMs. AmSouth operates in Florida, Tennessee, Alabama, Mississippi, Louisiana and Georgia. AmSouth is a leader among regional banks in the Southeast in several key business segments, including consumer and commercial banking, small business banking, mortgage lending, equipment leasing, and trust and investment management services.

AmSouth submits the following comments on certain Issues outlined in the Interpretation for the Board’s consideration.

Issue 3

We request that the Board provide additional clarification regarding the application of the “probable” standard to uncertain tax positions. Specifically, we could not discern whether the Board intends “probable” (within the context of Statement No. 5) to imply that an entity must be confident it can sustain approximately 75 - 80% (or higher) of the benefits recorded on its tax return related to a transaction, or to imply that an entity is 75-80% certain that it will sustain 100% of the tax benefits. Appendix A (paragraphs A2 through A11) provides guidance on recognition and measurement using an example of a credit consisting of multiple units. This example is very helpful but does not assist in determining recognition when there is only **one** unit or position.

As currently written, we believe that two entities could apply the Interpretation differently to one transaction, while remaining theoretically correct. Consequently, each could arrive at an entirely different result and financial statement treatment from the other. For example, Entity A determines it is probable that the entity will sustain 50% of the benefits (“realizable benefits”) of a transaction. Accordingly, Entity A attains the probable threshold for 50% of the “realizable benefits”, and thus a tax benefit for 50% of the position is recorded. However, Entity B determines that it did not meet the probable threshold because the realizable benefits were only 50% of the total, and thus Entity B recorded no benefit.

Issue 6

AmSouth applauds the Board for selecting the “best estimate” standard, which we believe is the proper standard and is not entirely different from current accounting. However, our concern is that an entity is not permitted to apply the best estimate measurement standard unless the probable threshold is met. For example, assume that an entity determines it is certain it will ultimately sustain approximately 50% of the tax benefits generated by a deduction recorded on its tax return and using the interpretation adopted by Entity B (from Issue 3 above) does not record **any** of the benefits. This is because practitioners would agree that 50% does not rise to the level of the “probable” standard. We believe that such treatment will result in an inaccurate presentation of the effect of the deduction on the entity’s financial statements because the Interpretation will prohibit the inclusion of any amount of the benefits.

Issue 9

AmSouth disagrees with the methodology prescribed by the Interpretation with respect to interest and penalties. The Interpretation presumably requires the accrual of interest on the entire amount of tax benefits that are not recorded in the financial statements (i.e. the gap between the position taken on the tax return and the amounts reported in the financial statements), regardless of the fact that the amount might not be based upon the best estimate of management. As mentioned in the example discussed in Issue #6 above, the Interpretation would require the entity to accrue interest on 100% of the position as opposed to accruing upon the 50% "best estimate" that was determined pursuant to management's analysis of the merits of the position. We believe this will result in a distortion of what an entity recognizes and discloses as the true exposure with respect to an uncertain tax position. We also believe the unintended consequence of the Interpretation will be a lack of transparency and a decrease in the reliability of the recognition and reporting of such transactions.

Moreover, we request that the Board, in conjunction with this Interpretation, address the classification of interest and penalties. The implementation of this Interpretation could result in companies significantly expanding the number of uncertain tax positions upon which interest and penalties are accrued. Depending on the industry in which an entity operates, the classification of interest in the income statement can be a significant issue. Therefore, we believe that this issue needs to be addressed in order to provide consistency between how entities report these components.

Issue 10

The Interpretation proposes to require disclosure of any liability set up for an uncertain tax position. AmSouth emphatically opposes disclosure requirements that would provide the IRS and other taxing authorities with a roadmap of items an entity believes may be issues upon examination. We believe that the disclosures would not only provide the identification of potential issues but also provide management's estimate of the sustainability of the related benefits. Further, the disclosure requirements could force an entity to include a larger volume of items in its disclosures, because not all tax positions will meet the probable standard, resulting in accruals being established. Since a larger volume of positions would need to be accrued at 100%, increased disclosures will be misleading to readers because the entity could appear to have more exposures than it will ultimately incur/realize.

In addition to our objection to the methodology for interest and penalties as outlined in the prior paragraph, we also seek clarification from the Board as to how the standard should be applied to a tax year for which there may be a tax deficiency on one item, but the change in tax liability for the year as a whole results in a refund. For example, an audit adjustment for a particular transaction results in a tax deficiency related to that transaction. The same entity also has several "favorable" adjustments which reduce the tax liability to an extent greater than the deficiency item. The result on the entity's tax liability when viewed in the aggregate is a net refund of taxes paid for the year. Does the Board intend that the entity should accrue interest expense related to the unfavorable adjustment in a vacuum, or should the favorable adjustments be netted against the unfavorable adjustment, resulting in no interest accrual since the entity is in a net refund position?

We also believe the disclosure requirements could lead to an incorrect assessment of tax positions that a taxing authority is challenging strictly due to amounts and positions disclosed without a thorough discussion and consideration of the merits of the taxing authority's position. Again, this approach could have the effect of misrepresenting to users of the financial statements the true exposure that a taxpayer has to a taxing authority's challenges. An important point we believe the Interpretation fails to consider is the fact that a taxing authority is not the final arbiter of tax law, but rather, it is only one party to a potential litigation. Consequently, the mere identification of an issue by a taxing authority should not result in the imposition of financial statement disclosures that present a dire/worst case and potentially distorted image of an entity's tax positions.

Further, we believe that the Board has not considered the cost benefit of defending a challenged tax position. For example, an original tax position was believed to be probable and no changes in tax/case law have occurred. However, the taxing authority takes a stance that is counter to the position taken and offers

50 cents on the dollar as settlement. An entity may determine that the cost of defending the position exceeds the offer received from the taxing authority.

Issue 11

AmSouth believes that the December 15, 2005 effective date prescribed in the Interpretation is not feasible and should be extended. Specifically, we believe that the deadline does not allow sufficient time for companies to fully analyze the effect that the Interpretation will have on their uncertain tax positions. If the proposed effective date remains, we believe that there is a very real risk that entities could inaccurately and incompletely implement the standard in their year-end 2005 financial statements, which could have Sarbanes-Oxley Act ramifications. Finally, the proposed implementation schedule appears to run counter to the objectives of improving the transparency, accuracy, and clarity of the financial statements.

Again, we appreciate the opportunity to comment on this proposal. Thank you for considering our views. If you would like to discuss this matter in further detail, please contact me at (205) 801-0765.

Sincerely,

/s/Alton E. Yother

Alton E. Yother
Executive Vice President
and Controller