

Letter of Comment No: 15  
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7915 Xavier Court  
Dallas, Texas 75218-4513

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

Via email to [director@fasb.org](mailto:director@fasb.org)

Re: Proposed Interpretation – *Accounting for Uncertain Tax Positions – an interpretation of FASB Statement No. 109* – File Reference No. 1215-001

I am writing to express my opinions regarding the above referenced Proposed Interpretation. I agree with the Board that diversity in practice exists with respect to the accounting for uncertain tax positions. However, I believe the Proposed Interpretation has conceptual and operational defects, and I do not support issuance of the Proposed Interpretation as exposed.

- The Proposed Interpretation states it is intended to clarify the accounting for uncertain tax positions in accordance with FASB Statement No. 109. Since I could not ascertain where Statement No. 109 directly or indirectly addressed the accounting for uncertain tax positions, I am unclear as to why this document should be an Interpretation of Statement No. 109.
- The Proposed Interpretation is highly complex, creating an entirely new recognition and measurement criteria based on provisions with little or no guidance. Therefore, I believe implementation of the Proposed Interpretation would lead to an even greater diversity in practice than currently exists.
  - I agree with the alternate views expressed by two Board members that the Proposed Interpretation is unduly complex, would prove difficult to apply in practice and would lead to a systematic overstatement of tax liabilities.
  - The proposed recognition and measurement criteria are to be applied to each appropriate “unit of account.” The term “unit of account” is not clearly defined, and the only implementation guidance I could ascertain was contained in footnote 6, which states that the appropriate unit of account may be different based on facts and circumstances. More guidance is required as to how the appropriate unit of account should be determined, since applying different unit of accounts to the same filed tax return could lead to different conclusions regarding recognition and measurement in accordance with the Proposed Interpretation.
  - The alternate thresholds for initial recognition (based on probable, as defined in FASB Statement No. 5), and subsequent derecognition (based on a more-likely-than-not criteria) will lead to a lack of comparability within a single entity. A previously-recognized tax benefit for certain years in which the probable threshold

was met would continue to be recognized in subsequent years when the probable threshold is no longer met so long as it remained more-likely-than-not, while tax benefits for the same items in those subsequent years in which the assessment was now less than probable would not be recognized.

- FASB Statement No. 5 should be the appropriate framework to apply for accounting for uncertain tax positions. In Paragraph B14 of the Proposed Interpretation, the Board concluded that the guidance in paragraph 38 of Statement No. 5 is not applicable to uncertain tax positions because a tax return is generally required to be filed. However, paragraph 39 of Statement No. 5 directly discusses litigation regarding tax matters, and provides guidance on how such litigation is to be evaluated in applying Statement No. 5 to tax matters under litigation. Therefore, Statement No. 5 appears to be the appropriate framework to account for uncertain tax positions. I am unclear as to how the Board envisions that the Proposed Interpretation would relate to the guidance contained in paragraph 39 of Statement No. 5. Is the Proposed Interpretation intended to supersede such guidance? If not, then when an uncertain tax position becomes subject to litigation, does the Proposed Interpretation cease to apply and instead Statement No. 5 becomes applicable? Additionally, if Statement No. 5 is not the appropriate framework for recognition and measurement of uncertain tax positions, then why does the Proposed Interpretation "clarify" that the Statement No. 5 disclosure requirements are to be followed for uncertain tax positions?
- If the Proposed Interpretation is issued as exposed, an effective date later than December 31, 2005 for calendar-year companies is appropriate, since it would not provide preparers with an adequate amount of time to analyze their uncertain tax positions in relation to the complex requirements of the Proposed Interpretation.

Thank you for your consideration of these comments and suggestions.

Sincerely,

Greg Swalwell