

Letter of Comment No: 15File Reference: 1215-001 Date Received: 9/20/05

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PETER A. BRIDGMAN SENIOR VICE PRESIDENT AND CONTROLLER

September 20, 2005

Technical Director – File Reference 1215-001 Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Dear Madam,

We are in general agreement with the guidance provided in the Exposure Draft (ED), Accounting for Uncertain Tax Positions, an interpretation of Statement of Financial Standards No. 109. Guidance for an area where there is not convergence of practice today and that allows for complex judgments based on the specific facts and circumstances, improves financial reporting. We, however, share the following two concerns.

Firstly, as noted in our letter of November 5, 2004, we support the conclusion in the ED which bases the classification of liabilities for uncertain tax positions on when the enterprise anticipates payment of cash. We believe that the financial statements reflecting these liabilities based on expected payment is representationally faithful, and to do otherwise, could be misleading. We strongly disagree with the view that current classification is appropriate because these are ondemand liabilities. These liabilities result from legitimate but challengeable positions on tax returns. The settlement of these liabilities involves audit by the tax authorities and, if appropriate, a judicial appeal process. This statutory administrative process typically involves years of audit, negotiation and potentially litigation. The classification must reflect the unique timing of this process as well as a taxpayer's ability and intent to negotiate a settlement. This is consistent with reclassification of debt from a short-term liability to a long-term liability under SFAS 6 when an enterprise has both the ability and intent to refinance. As we noted in the attached letter sent last year, there are many examples of liabilities, such as pension liabilities for retirement eligible employees, deferred compensation liabilities and warranty reserves which could be argued are "due" if demanded but are not classified as current.

Secondly, the impact of the proposed changes on tax positions must be thoroughly evaluated by many companies, and there is not sufficient time remaining in 2005 for December year-end companies considering the effort that is being spent by most companies on the SFAS 123R implementation. When coupled with a final statement release late in 2005, we urge the Board to delay the effective date.



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We appreciate the opportunity to express our views and would be pleased to discuss our comments or answer any questions that you may have. Please do not hesitate to contact me at (914) 253-3406.

Sincerely,

Peter A. Bridgman

Senior Vice President and Controller

Tette Bridgman.

cc:

Indra K. Nooyi, President and Chief Financial Officer Matthew M. McKenna, Senior Vice President, Finance Marie T. Gallagher, Vice President & Assistant Controller Mr. Donald B. Thomas
Project Manager
Financial Accounting Standards Board
401 Merritt 7
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Norwalk, CT 06856-5116

Re: Classification of Liabilities Related to Uncertain Tax Positions

Dear Donald,

We are writing to urge the Board to revisit the decision reached in the July 27, 2004 Board meeting regarding the current classification of liabilities related to uncertain tax positions. Reconsideration should be given because the decision was based, in part, on hypothetical scenarios that are not reflective of the tax dispute resolution process. As a result, we believe that the financial statements reflecting these liabilities as current would not be representationally faithful and could be misleading.

In the case of many multinational companies with valuable trademarks, tax-filing positions are based on transfer pricing economist reports that involve valuations for royalties and expense allocations. As any homeowner knows, valuation is an art not a science with no "right" answer. As a result, returns are filed with legitimate but challengable positions for these permanent items. If we can not conclude that it is probable that we will prevail, we reflect higher tax expense and a liability for probable disallowance in our financial statements.

The classification of this liability is based on the expected timing of the audit by the tax authorities and, if appropriate, the expected timing of the judicial appeal process. This process typically involves five or more years of negotiation. For example, our MD&A critical accounting policy disclosure on income taxes indicates that the settlement with the IRS at the end of 2003 was for open tax years through 1997. In fact, the statute of limitations (SOL) is three years for federal income tax returns and most large corporate taxpayers file extensions of the SOLs. We know of no corporate taxpayer with experience that is different. Classifying liabilities subject to this long-term negotiation process as current leads financial statement users to conclude that there is a current call on cash. Such a conclusion is misleading. The measurement and classification of these liabilities is reviewed quarterly and adjusted, if necessary, in light of changing facts and circumstances, including the status of negotiations with tax authorities and progress of a tax audit.

In addition, we believe that some of the arguments in favor of the decision made on July 27 regarding current classification are flawed and the Board should consider the following:

- Most calendar year corporations file their federal returns in September of the following year.
- Even if one were to consider the highly improbable unlimited supply of revenue agents, a taxpayer with a legitimate position can always appeal an agent's determination through the judicial process. The judicial process is generally not short term in nature.
- There are many examples of liabilities arising out of the current business cycle which could be argued are "due" if demanded but are not classified as current. Pension liabilities for retirement eligible employees readily come to mind, as well as, deferred compensation liabilities and warranty reserves covering periods beyond one year. Exclusive consideration of an analogy to accounts payable customarily paid within 30 days is not appropriate.

Finally, with current classification of these liabilities, there is a greater likelihood of separate disclosure in the financial statements that would not be helpful to a taxpayer's negotiating position. The minutes did not reflect any consideration by the Board of this obvious concern.

We ask that the Board reevaluate the decision reached on classification of liabilities related to uncertain tax positions considering the above concerns. We believe that investors and other users of financial statements are best served if the definition of current reflects liabilities or assets that an entity expects to convert into cash within the following business cycle. We further believe that classification should be based on the taxpayer's judgment as to the timing of payment. Such classification combined with disclosure of the nature of such liabilities and the financial statement impact upon ultimate settlement provides representationally faithful financial statements.

We appreciate the opportunity to express our views and would be pleased to discuss our comments or answer any questions that you may have. Please do not hesitate to contact Nancy at (914) 253-3756 or Peter at (914) 253-3406.

Sincerely,

Nancy Schroeder

Director, External Reporting and Technical Accounting

Peter A. Bridgman

Senior Vice President and Controller