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Committee on Private Companies

August 12, 2008

Mr. Robert Herz
Chairman
Financial Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856



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LETTER OF COMMENT NO. 8

RE: FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes

Dear Mr. Herz:

The Standards Subcommittee of the Committee on Private Companies (CPC) of Financial Executives International (FEI) wishes to share its views on FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* (FIN 48). FEI is the leading advocate for the views of corporate financial management in the United States. It is a professional association of more than 15,000 CFOs, treasurers, controllers, and other senior financial executives. With approximately 7,500 members from private companies, FEI has a strong base of knowledge to draw upon with regard to the financial reporting needs and requirements of the private sector.

The Committee on Private Companies is a technical committee of FEI which formulates private company positions for FEI, considering the views of its membership. This letter represents the views of the Committee on Private Companies, Standards Subcommittee, as a whole, and not necessarily the views of FEI. The size of our private companies range upward to in excess of \$1 billion in revenue. The respondents to a recent survey of FEI private company members indicate that 51% of their companies have revenues above \$100 million, and about 10% have revenues above \$1 billion.

We have been provided a copy of the letter addressed to you dated May 30, 2008 from Judith H. O'Dell of the Private Company Financial Reporting Committee regarding FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*. For the record, we wish to support the position that her committee has taken to "exempt private companies from all the requirements of FIN 48".

The purpose of this letter is to point out that there is a very salient and relevant argument that was not mentioned in Ms. O'Dell's letter. We wish to emphasize that the vast majority of private companies are pass through organizations, and as such, the bulk of the income tax attributable to the income of the firm is paid by the owner and not by the firm. Therefore, we believe that the requirement to spend accounting and

auditing effort on the minor portion of tax that is paid by the firm on behalf of the owner is requiring the firm to spend limited resources on an issue that should not be given such a level of importance.

You may recall that on March 29, 2007, several of our committee members met with you and other FASB members and staff wherein we presented some data on the nature of private companies. In that presentation, we shared some data that showed that 62% of all corporate tax returns filed in 2003 were for 'Sub S' corporations. Further, the data showed that there were some 10,000 'Sub S' corporations that had \$50mm or more revenue. The IRS data said that 99.4% of the 'S' corporations had 10 or fewer owners. Our committee's observation is that financial statement audits generally start when the firm is somewhere in the \$5 or \$10 mm revenue range. The implication is that FIN 48 will require thousands of pass through firms to prepare calculations and have them audited to book an entry that will be immaterial. The fact that the accounting standard exists requires the firm to demonstrate that the rule does not apply or that the amount is immaterial.

How is taxation different between private and public companies? Private companies tend to be pass through organizations. This is the case because the ownership is generally limited, and the owners can take advantage of single step taxation, which is the major driver. Single step taxation means that dividends are not taxed a second time. Further, in a number of states, such as Pennsylvania, personal state income tax rates are less than corporate state rates. Therefore, single step taxation means that the owner receives a lower individual rate tax instead of the individual tax *and* the higher corporate rate of tax. An 'S' or LLC saves a lot of tax, both at the federal and state levels. This is a very significant difference between public and private pass-through companies.

Another common taxation difference between private and public companies is that private company owners usually receive a dividend to pay their tax obligations. The money required to pay the income tax obligation arising from the firm's operations is typically sent out as a dividend or profit remittance, which is shown as a balance sheet, not an income statement transaction. Therefore, the vast majority of tax arising from the firm's economic activity is not an income statement item. If so, then we ask why should the firm spend money to compile the FIN 48 disclosures on the small portion of tax that is paid by the firm, and spend even more money having them audited, when the bulk of the cash flow remitted for taxes is a balance sheet transaction? As practitioners and owners, we find this wasteful.

Some may argue that excluding private companies from FIN 48 provides for two standards - one for public companies and one for private companies. As was true for FASB Statement No. 150, *Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity*, there are differences in the two sets of companies. The tax code limits the number of shareholders that a firm may have to elect 'S' status. If the user and owner needs are different, it seems reasonable to us that the standards need not be the same.

Therefore, for the above reasons, we support the PCFRC's position to exempt private companies from all the requirements of FIN 48. It is our belief that the arguments for exemption from FIN 48 by private pass-through companies are extremely strong, and we encourage the Board to act quickly so that the 2008 audit cycle is not impacted.

If you have any questions or wish to discuss our specific concerns, please feel free to contact me at 412-257-3885 or Bill.Koch@ddiworld.com or Serena Dávila at FEI's Washington, DC office at 202-626-7809 or sdavila@financialexecutives.org.

Very truly yours,

A handwritten signature in black ink, appearing to read "William Koch". The signature is fluid and cursive, with the first name "William" being more prominent than the last name "Koch".

William Koch
Chair, Standards Subcommittee
Committee on Private Companies
Financial Executives International

cc: Paul Glotzer
Judy O'Dell