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To: Director - FASB
Cc: Judith O'Dell
Subject: FIN 48 - Small Businesses should be exempt



LETTER OF COMMENT NO. 9

I believe that FIN 48 should not apply to Compilations and Reviews, if nothing other than a cost effectiveness issue - and this is mostly for private companies. I understand that the FASB doesn't make 'service specific GAAP', so I would seek an exemption for private companies.

Public companies must have an audit, private companies do not. The cost of assessing the tax positions and quantifying them are enormous relative to the cost of the CPA service (review or compilation) possibly exceeding the cost of the service itself. And, as I tell my students in the accounting courses I teach, there is no difference between GAAP in a compilation with no footnotes and an audit.

Frankly, I think that there are more pitfalls in the interpretation than one of the speakers let on at the Practitioner's Symposium (he said that the primary danger is with unknown multi state taxes due for a private company). His comment was that 'if you can sign the return under the current preparer penalty environment, then you don't have other issues with Fin 48'. But, when a tax return is effectively compiled (by the CPA) and a review or audit report is issued (where the character of expenses is not as important as the magnitude of them), it appears that we are relying on something akin to a compilation (the tax work) done internally as a basis for assurance (limited or not) in our review or audit.

Having been a CFO in a private company, I was focused on bigger issues and was ignorant of tax consequences of many transactions and whether some inadvertant loan (or long standing loan) to a family member could be reflected as a distribution to an S corp. shareholder which was disproportionate and thus blow the S election - which would in most circumstances, of course, have material tax implications. And, the one area in which I caught grief repeatedly was for 'answering questions people didn't ask' - that is for telling the tax people, banker or other outsider things that resulted in a 'crisis' for the family rather than just 'letting sleeping dogs lie'.

Yes, I have several other examples of concerns where, if you would apply the 100% detection risk and 100% facts on the table criteria, would result in severe impact. Is this an issue of 'earnings per share' as buyers and sellers hold and dispose of the stock? Of course not. These are private companies.

In a \$4,000 compilation (with or without footnotes) or a \$8,000 review, I have a 'hindsight risk' from Fin 48 in which something does come up in an audit that wasn't foreseen (again, not being a tax person, I can only suspect that happens quite a bit) and not accrued for under GAAP. I was told by an IRS CPA that they always win on the personal use of company car issue when it is imposed on audits (normally when other issues are bigger) because no one follows the contemporaneous record keeping rules. So, under FIN 48, should all company deduction of vehicle and related expenses be reserved for?

If FIN 48 is not permanently waived for private companies, I am faced with one of two alternatives from what I see today:

Solution 1: to 'require' an audit of these issues - which I would guess would cost at least \$2000 to \$4000 for a relatively simple company by a tax person who knows the criteria in FIN 48, on which the client would represent to me that all is recorded properly

Solution 2: in light of Solution 1 - to advise the Company that it might be more efficient to not follow FIN 48 and take a GAAP exception on the report.

My understanding of FIN 48 is mostly based on a presentation on what a Big 4 firm was doing last year. Their depth of work, coupled with my CFO experience, spiced with my lack of confidence in tax people finding and solving issues on a proactive basis leads me to believe that there is great risk for a CPA in this area (rather than the unnamed speaker's attitude that there is no problem if you can sign the tax return now). I only do A/A work (no tax) - but I am always amazed at the lack of understanding that most of my a) clients have of their tax exposures and b) their tax advisors have of their client's details.

Thank you

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