



LETTER OF COMMENT NO. 411

By email

January 16, 2007

Mr. Larry Smith
Director: TA&I
Financial Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856

Mr. Smith:

I have read, with interest, accounts in the financial press of advocacy groups directly lobbying as well as organizing their constituents to lobby to seek a deferral of the implementation date of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*.

I would encourage the Board to disregard those efforts and not defer the current effective date of Interpretation 48. As this letter will describe, I believe that current GAAP requires knowledge of the inventory of tax positions that will require significant work to implement Interpretation 48. I believe that much "noise in the system" underlies a desire to defer the effective date in a hope to revisit the disclosure requirements of Interpretation 48, most of which are simply codifications of those currently required by GAAP, albeit with unsatisfactory compliance.

While Interpretation 48 will take accounting for tax contingencies outside the scope of FASB Statement No. 5, *Accounting for Contingencies*, that guidance has been the core of accounting for tax uncertainties for over 30 years now. Thus, with 30 years practice, most companies should be well versed with the requirements of the guidance on unasserted claims as well as the disclosure requirements of Statement 5. Sadly, however, compliance with that guidance has not been robust.

Paragraph 10 of FASB Statement No. 5, *Accounting for Contingencies*, indicates that "disclosure of a contingency shall be made when there is at least a reasonable possibility that a loss or an additional loss may have been incurred." I understand that reasonable possibility is a qualitative description of a range that is greater than remote but less than probable. Thus, pursuant to both Statement 5 and AICPA Statement of Position 94-6, companies purporting to issue U.S. GAAP financial statements should be well aware of and disclosing the potential financial statement effect of tax positions for which there is more than a remote chance of making an additional payment to taxing authorities.

In addition, the examples in paragraphs 38 and 39 of Statement 5 indicates that unasserted claims should be evaluated to determine if it is probable that a counterparty will discover and pursue an unasserted claim, probable of prevailing on the claim if asserted, and then reasonably estimate the amount of loss. Thus, I believe, appropriate compliance with Statement 5 requires a thorough understanding and evaluation of the universe of the tax positions with more than nominal uncertainty. Said another way, it is not possible to appropriately comply with existing GAAP without a knowledge of the

census of tax positions that may require an additional payment. This same population should serve as the core of the Interpretation 48 implementation efforts.

When I overlay the knowledge of tax positions that would result from application of paragraphs 10, 38, and 39 of Statement 5 and compliance with that guidance, the requirements of AICPA Statement of Position 94-6, as well as the sentiments expressed in Deputy Chief Accountant Scott Taub's recent speech at the 2006 AICPA SEC conference, I am unclear about the source of the volume of work that would suggest that deferral of the Interpretation 48 effective date is necessary. Specifically, I understood Mr. Taub (<http://www.sec.gov/news/speech/2006/spch121106sat.htm>) to indicate that, in his view, registrants should not be expending significant effort on tax positions that have little uncertainty.

Stated differently, Statement 5 requires that I accrue over probable, disclose when greater than remote but less than probable (reasonably possible), consider the probability of an unasserted claim being asserted, and one of the most senior SEC staff members has expressed a view that we have little work to do for certain tax positions which, I believe, is the Statement 5 paradigm "remote" population. While an SEC staff member's views are not necessarily reflective of those of the staff as a whole or indeed of the Commission, they do reflect the sound professional judgment he is asking us to use. Isn't, therefore, the range of uncertainty covered by existing GAAP, sound professional judgment, and common sense?

I would suggest that if a company is making noise that they don't have sufficient time to implement Interpretation 48, that company has a problem not because of Interpretation 48, rather, because they may have compliance issues with existing GAAP. If a company has chosen not to fully comply with the provisions of Statement 5 after 30 years, will they really be helped by another year to implement Interpretation 48? I think not.

In closing, I would like to share an anecdote from my time as the project manager on the Interpretation 48 project. One prominent advocacy organization submitted a comment letter on the Exposure Draft which stated that a probable recognition threshold would not be practicable to implement. That letter was principally drafted and the comment letter process driven by 5 large constituents of the advocacy organization. Of those 5 constituents, 3 were officers of large public companies who shared a common Big Four audit firm. That Big Four audit firm has a long stated, fully articulated, and well understood interpretation that a tax position should not be recognized unless it met a probable recognition threshold. In other words, several constituents who knew that a probable recognition threshold was indeed a practicable accounting threshold for a global Fortune 100 company, because they were then on that accounting method, were principally responsible for drafting a comment letter indicating it was impracticable. The moral of the story, as you might infer, is that while comment letters reflect your constituents' perceptions, they don't always reflect your constituents' realities.

Kind regards,

Donald Thomas