

June 14, 2009

Russell G. Golden, CPA Technical Director FASB 401 Merritt 7 PO Box 5116 Norwalk, CT 06856-5116

Re: May 18, 2009, Proposed FASB Staff Position (FSP) FIN 48-d, Application Guidance for Pass-through Entities and Tax-Exempt Not-for-Profit Entities and Disclosure Modifications for Nonpublic Entities

Dear Mr. Golden:

One of the objectives that the Council of the American Institute of Certified Public Accountants (AICPA) established for the PCPS Executive Committee is to act as an advocate for all local and regional firms and represent those firms' interests on professional issues, primarily through the Technical Issues Committee (TIC). This communication is in accordance with that objective. These comments, however, do not necessarily reflect the positions of the AICPA.

TIC has reviewed the Proposed FSP and is providing the following comments for your consideration.

## **GENERAL COMMENTS**

TIC is appreciative of the issuance of this FSP and the guidance included therein. On December 3, 2008, TIC wrote a comment letter to the Board on Proposed FSP FIN 48-c, *Effective Date of FASB Interpretation No. 48 for Certain Nonpublic Enterprises*, to provide its views as to some of the more difficult issues associated with applying FIN 48 to pass-through and not-for-profit entities. TIC is pleased that many of the questions and requests for guidance from the letter have been addressed by the current proposal. TIC also appreciates the reduction in the disclosure burden for nonpublic entities, provided in the FSP, by eliminating the disclosure requirements of paragraphs 21(a) and 21(b) for nonpublic entities.

The members of TIC also appreciate the difficulties encountered by the Board in finally





arriving at this guidance and the efforts of the Board and FASB staff, in particular Paul Glotzer. The guidance will enable thousands of small businesses and not-for-profit organizations to properly prepare their financial statements in accordance with generally accepted accounting principles, in a way that should not add undue cost.

TIC believes that the guidance provided will be operational and provide a logical framework in most cases for applying FIN 48. The clarification as to the incidence of taxation being driven specifically by laws and regulations will enable most preparers to make decisions as to whether or not a liability for an uncertain tax position related to nexus is necessary. While more detailed examples are always welcome, the ones provided should be sufficiently applicable to most situations.

However, TIC requests that the Board remain open to possible future reconsideration of the factors that would dictate when a tax should be defined as an income tax.

## SPECIFIC COMMENTS IN RESPONSE TO QUESTIONS

1. This proposed FSP has taken a principles-based approach to provide guidance on the application of Interpretation 48 to pass-through entities and tax-exempt not-for-profit entities. Will the guidance enable those entities to properly apply Interpretation 48? If not, how should the guidance be improved?

TIC believes the principles, as articulated with respect to the definition of a tax position and the attribution of taxation between an entity and its owners, are workable and can be operationalized without undue cost.

2. Paragraph 8 of this proposed FSP identifies four issues related to questions about the implementation of Interpretation 48 for pass-through entities and tax-exempt not-for-profit entities. The Board decided not to provide guidance on whether or not a tax is an income tax because that issue applies to many types of entities and goes beyond the scope of the current project. Do you agree with the Board's decision? If not, why not? Are there issues other than those identified in paragraph 8 that the Board should address? If so, please identify those issues and provide suggested guidance. Are there any issues that should not be included? If so, please identify those issues and explain your reasoning.

While TIC would welcome more guidance as to the when a tax is an income tax, due to the variety of tax models that states impose, TIC understands the reluctance on the part of the Staff to exceed the scope of these issues. TIC would welcome consideration of this matter further in the future. The EITF has taken up specific state tax models in the past, notably





with the issuance of EITF Issue No. 91-08, Application of FASB Statement No. 96 to a State Tax Based on the Greater of a Franchise Tax or an Income Tax, which was highly specific guidance related to Texas' tax model. In order to avoid a series of similar questions, consideration should be given to clarification as to the definition of an income tax.

TIC has no other issues with respect to the topics.

3. This proposed FSP would modify the disclosure requirements of Interpretation 48 for nonpublic entities, including nonpublic not-for-profit entities, to eliminate the disclosures required by paragraphs 21(a) and 21(b) of that Interpretation. Do you agree with the proposed modification to the disclosure requirements? If not, why not?

TIC agrees with the proposed modifications to the disclosure requirements for nonpublic entities.

TIC appreciates the opportunity to present these comments on behalf of PCPS member firms. We would be pleased to discuss our comments with you at your convenience.

Sincerely,

Stephen Bodine, Chair

Stephen Bodine

**PCPS** Technical Issues Committee

cc: PCPS Executive and Technical Issues Committee

