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

The Home Depot respectfully requests your consideration of the following comments on the proposed interpretation, Accounting for Uncertain Tax Positions - an interpretation of FASB Statement No. 109.

While we agree there is a need to improve the consistency of tax reporting among registrants, we believe consistent application of existing accounting rules will better achieve this objective than the proposed interpretation. The proposed interpretation provides that it must be "probable" that a tax position will be sustained before the tax benefit of the position can be recognized in the financial statements. In contrast, existing accounting principles look to whether it is probable that a reported tax position will be disallowed. As such, we believe that the proposed interpretation is impracticable to implement and would lead to material misstatements of a registrant's financial statements. Improved enforcement of the existing standards would avoid these problems. It is certainly admirable and warranted to attempt to make it more difficult and undesirable for registrants to enter into tax advantaged transactions or abusive tax shelters that improperly overstate earnings or understate liabilities, and we applaud this goal. However, the proposed interpretation will result in a systematic overstatement of income tax liabilities or understatement of deferred tax assets, misleading users of financial statements. We submit that the existing SFAS 5 standard, with consistent enforcement, would lead to more appropriate and meaningful financial statements for users.



In determining the realizability of a deferred tax asset under the existing standards, primary consideration is given to evidence of the future existence of sufficient taxable income to realize the deferred asset. The likelihood of disallowance of a reported tax position is not mentioned in SFAS 109 as a factor in considering whether a valuation allowance is required. The potential disallowance of a reported tax position is, however, dealt with by SFAS 5. Assuming it is more likely than not (the SFAS 109 requirement for recording a deferred tax asset) there will be future taxable income, it may be assumed that a company will realize the future benefit of deferred tax assets, resulting in the reduction of future payable taxes. The proposed interpretation apparently goes beyond the more likely than not provisions of SFAS 109, raising the standard for the recognition of deferred tax assets to a probable level. We believe it is inappropriate to expand the recognition standard to a probable level for recognition because of the risk of producing materially inaccurate financial statements.

Risk that the tax benefit recognized in future tax periods will be challenged on audit is more properly analyzed in terms of whether a liability for repayment of the tax benefits should be accrued as prescribed in SFAS 5. The Board's response to Question 4 of the SFAS 109 Implementation Guide implies that current taxes should be recorded based on the positions reported on the tax return, and that a loss contingency reserve be recorded based on the requirements of SFAS 5. We believe that the correct and preferable approach to financial reporting for tax uncertainties is using the existing guidance that states that tax assets and liabilities should initially be recorded in accordance with the tax returns. The risk that the underlying tax position will be disallowed is generally not, and should not, be considered in evaluating whether the deferred tax benefits from that tax position will be realized. Any resulting tax benefit should be evaluated for the need to record a valuation allowance or loss contingency reserve under well-established and long-standing accounting principles articulated in SFAS 109 and SFAS 5. A valuation allowance for any deferred tax asset is recorded if it is more likely than not that the deferred tax asset will not be realized. Under the proposed interpretation, neither current nor deferred tax assets and liabilities would be recorded that reflect the positions on returns as filed. We believe that this standard will result in dramatically increased complexity in computing a registrant's current and deferred tax assets and liabilities, would tend to overstate a registrant's tax liability, and would in large part be impracticable or impossible for external auditors to effectively audit.

Finally, the Board concluded that it would not consider the income statement classification of any related interest in the proposed interpretation, because it was not addressed in SFAS 109. We believe that due to the diversity of practice in the classification of related interest, this interpretation should clearly address the income statement classification of any tax-related interest and penalty charges in order to promote the overarching goal of consistency amongst registrants. Furthermore, with respect to the accrual of tax-related interest and penalties, we believe that SFAS 5 requires the recognition of a loss contingency when the company believes it is probable of incurring the loss. The proposed interpretation would systematically require the over-accrual and subsequent reversal of expense related to interest and penalties in the financial statements.

Although we disagree with many of the requirements in the proposed interpretation, if adopted, we recommend postponing the effective date and transition of any final statement to the first annual period beginning after December 15, 2005. The additional time would allow companies to measure the impact of the new guidance and better inform the public on the new earnings expectations. In addition, changing accounting methods mid-year after earnings guidance has been issued would provide more confusion than benefit to the investing public.

The Home Depot appreciates the opportunity to express our opinion on this matter. We would be pleased to discuss our comments in greater detail.

Sincerely,

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Corporate Controller