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Technical Director
Financial Accounting Standards Board
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We are pleased to respond to the proposed FASB Staff Position (FSP) FAS 109-a, "Application of FASB Statement No. 109, *Accounting for Income Taxes*, for the Tax Deduction Provided to U.S. Based Manufacturers by the American Jobs Creation Act of 2004," and proposed FASB Staff Position (FSP) FAS 109-b, "Accounting and Disclosure Guidance for the Foreign Earnings Repatriation Provision within the American Jobs Creation Act of 2004." We support the Board's decision to provide clarification on the financial accounting treatment for these two unique provisions of the American Jobs Creation Act of 2004 (Act).

We have the following comments on the proposed FSPs.

Proposed FSP FAS 109-a

We agree with the proposed treatment of the domestic production activities deduction (DPAD) as a special deduction and the FASB staff's reasoning that this treatment is appropriate because of the future performance requirement of specific activities, including the level of wages. We have the following suggestions that we believe will enhance the FSP:

Background and Issue

- explain that the DPAD is not limited to income from domestic manufacturing. It is also available for other qualifying domestic production activities, such as the production, growth, or extraction of tangible personal property, the development of software, the production of certain films and sound recordings, the processing of

certain agricultural goods, the production of electricity, natural gas, or potable water in the U.S., and construction and related engineering and architectural services performed in the U.S. Since the DPAD is not limited to manufacturing activities, we encourage the use of more descriptive labels, such as “qualifying domestic production activities” and “domestic production activities deduction.”

- include a discussion of the limitation on the deduction based on annual wages paid.

Appendix A

We believe that the use of examples will help preparers better understand and apply the guidance in the proposed FSP. However, we believe that the illustrations should reflect the effects of graduated tax rates and the need for a valuation allowance using the same computation of the DPAD as would be used by an enterprise in preparing its tax return. In these examples, taxable income of the enterprise is reduced by the amount of the DPAD with any remaining taxable income reduced by NOL carryforwards. Under Section 199 of the Internal Revenue Code of 1986, as amended (the Code), which is the relevant statutory provision, the DPAD is computed by applying the applicable deduction percentage to the lesser of (1) the taxable income of the enterprise (after reduction by any NOL carryforwards) or (2) the income from domestic production activities. Accordingly, NOL carryforwards reduce the taxable income of the enterprise before the DPAD is computed. If an enterprise has no taxable income after NOL carryforwards are taken into account, then the enterprise will have no DPAD arising from that taxable year. As a result, the utilization of NOL carryforwards can displace the availability of the DPAD, but the DPAD cannot displace the utilization of NOL carryforwards. Accordingly, the deferred tax asset relating to the future benefit of NOL carryforwards is not affected by any future DPAD, whether anticipated or not. We would be pleased to provide to the FASB staff our calculations of amounts to be included in the Conclusion section of each example utilizing the ordering used in tax return preparation.

We acknowledge, however, that tax credit carryforwards can be displaced by the DPAD. Unlike NOL carryforwards, tax credit carryforwards can only be utilized once taxable income has been reduced by the amount of the DPAD. As a result, an example demonstrating the impact of this provision of the Act on the need for a valuation allowance pertaining to tax credit carryforwards would be meaningful.

We also have the following suggestions to enhance the examples:

- consider adding additional language in each example clarifying that “expected taxable income” (the first line) is already inclusive of “expected income from qualified production activities” (the second line), and not the sum of these two lines
- the examples illustrate tax year 2005, the first year in which the DPAD is available to taxpayers. However, the examples then use nine percent (9%) as the applicable percentage of the DPAD, which is the applicable percentage only in tax years beginning in 2010 and later. We recommend that the examples either use three percent (3%), the applicable percentage for tax years beginning in 2005, or include a footnote indicating that the 9%, although not available until tax years beginning in

2010, is used to illustrate the results that would occur when the provision is fully phased in.

- explain that DPAD may have an effect on State and local income taxes; however, for simplicity State and local taxes have not been considered in the examples.

Proposed FSP FAS 109-b

We do not object to allowing an enterprise additional time beyond the financial reporting period of the Act's enactment to evaluate the effect of the Act on its plan for reinvestment or repatriation of earnings if it needs clarifying interpretations from Congress or the Treasury Department to determine that plan. However, we are uncertain as to the meaning of phrase "in a position to determine" included in paragraph 8 of the proposed FSP. We interpret that phrase to mean that an enterprise can determine its repatriation/reinvestment plans without the need for additional clarifying regulations. If our interpretation is correct, would an enterprise recognize the deferred taxes in the current period if it makes a determination of the amount to be repatriated subsequent to year end but before issuance of the financial statements and that determination did not involve the use of clarifying regulations issued subsequent to year end? The staff may want to clarify its intentions with respect to the phrase "in a position to determine."

Also, the enacted provision of the Act pertaining to the dividends-received deduction on the repatriation of certain foreign earnings is potentially subject to a technical correction that has already been introduced in Congress (H.R. 5395, S. 3019). The technical correction, which would be retroactively effective to the original date of the enactment of this provision, would, in essence, allow an enterprise to claim the dividends-received deduction not only with respect to the cash portion of the dividend, but also the portion of the dividend attributable to the gross-up required under Section 78 of the Code for foreign taxes deemed to be paid by the enterprise. Passage of the technical correction could have a material or decisive impact on the decision by an enterprise as to whether to avail itself of this provision of the Act. Accordingly, we recommend that the proposed FSP suggest that an enterprise consider including a discussion of the impact of any technical corrections or clarifying regulations related to the Act that may be enacted subsequent to an enterprise's year end in its disclosures regarding the Act.

Finally, the proposed FSP does not address whether repatriation under the Act could call into question an enterprise's intent to indefinitely reinvest other foreign earnings. We believe guidance in this area is needed.

We appreciate the opportunity to comment on the proposed FSPs and would be pleased to discuss our comments with Board members or the FASB staff. Please direct your questions or comments to Joseph Graziano at (732) 516-5560 or L. Charles Evans at (832) 476-3614.

Very truly yours,

/s/ Grant Thornton LLP