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March 28, 2007

LETTER OF COMMENT NO. //

Ms. Suzanne Q. Bielstein  
Director – Major Projects and Technical Activities  
Financial Accounting Standards Board  
401 Merritt 7  
Norwalk, CT 06851

**Proposed FASB Staff Position No. FIN 48-a, “Definition of Settlement in FASB Interpretation No. 48”**

Dear Ms. Bielstein:

I am pleased to comment on the Proposed FASB Staff Position No. FIN 48-a, *Definition of Settlement in FASB Interpretation No. 48* (“FSP FIN 48-a” or “FSP”). As a student in the Master of Science in Professional Accounting program at Michigan State University (“MSU”), it has been requested, as part of the required coursework, that I submit a comment letter in response to an exposure document currently out for comment.

The tax specialization within the Master of Science program at MSU places a great deal of emphasis on the financial reporting impact of tax transactions. This letter is required for Financial Reporting Decisions, a class that is not a requirement for the tax specialization. However, due to the integration of the two realms of practice emphasized in the program at MSU, the decision to comment on FSP FIN 48-a came naturally.

I applaud the effort of the FASB staff in clarifying some of the more uncertain terms of art present in Interpretation 48, such as *ultimate settlement*, as used in paragraph 8, and *ultimately settled and negotiation*, as used in paragraph 10(b). The definitions provided are a step in the right direction. However, I believe room for improvement also exists and that these definitions may be made clearer in order to further help management and practitioners understand the appropriate recognition criteria for tax benefits.

“Highly Unlikely” Threshold

In discussing what constitutes an effectively settled tax position under paragraph 10A(c) of the proposed amendment to Interpretation 48, and elsewhere in the FSP, the term “highly unlikely” is used. As a reader I am unsure of what threshold this constitutes. I believe a “more-likely-than-not” threshold would be appropriate and that it is a more desirable threshold since it is defined and relied on elsewhere in Interpretation 48. Readers of Interpretation 48 would not be required to review the meaning of a term of art

used elsewhere in accounting literature and determine whether its usage in Interpretation 48 is to be understood in the same manner, or worse yet, have to consider what threshold a term of art either new to or not frequently used in accounting literature such as “highly unlikely” constitutes.

Presuming the taxing authority has full knowledge of all relevant information

I also believe that the statement “presuming the taxing authority has full knowledge of all relevant information” should be omitted from the revision to Interpretation 48. I am unsure as to what is being suggested by this statement. Two possible scenarios that this statement could be focused on come to mind: 1) a company is engaging in fraud in an attempt to deceive the taxing authority; or 2) the agent of the taxing authority lacks sufficient training or expertise with regard to the type of tax position and signs off on the transaction without fully understanding the transaction. I do not believe the statement fully addresses either scenario, if it were intended to. Standards are already in place to address fraud so it is certainly not necessary for that reason. As for the second scenario, recognition should not hinge on the assumption of management that the taxing authority did not have full knowledge with regard to the type of tax position. The emphasis of paragraph 10A(c) must rest on whether or not it is believed that the taxing authority will examine or reexamine a tax position. If the statement is not omitted, it would be helpful to have an explanation as to the precise meaning of the statement.

With proposed revisions in bold, and the omission of “presuming the taxing authority has full knowledge of all relevant information,” paragraph 10A(c) would read:

“Based on the taxing authority’s widely understood policy, the enterprise considers it **more-likely-than-not** that the taxing authority **will not** subsequently examine or reexamine any aspect of the tax position included in the completed examination.”

“Effectively settled conditions” as technical merits

The second sentence of paragraph 10C of the proposed amendment appears to be in direct conflict with the already authoritative paragraph 7 of Interpretation 48. Sentence one of paragraph 10C of the proposed amendment, which I agree with and believe should be maintained, states, “An enterprise may obtain information during the examination process that enables that enterprise to change its assessment of the technical merits of a tax position for similar tax positions taken in other periods.” However, I disagree with the second sentence, which reads, “The effectively settled conditions in paragraph 10A may not be the sole basis for the enterprise to change its assessment of the technical merits of any tax position in other periods.” Suppose an enterprise takes a tax position, does not believe that it meets the more-likely-than-not recognition threshold, and subsequently does not recognize the tax position for financial accounting purposes. Assume now that the taxing authority issued a deficiency notice for the tax position, the tax was paid by the

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enterprise, the enterprise chose to pursue the issue in court, and successfully sued for refund of the applicable tax. The taxing authority appealed to a higher court, which sustained the lower court decision. In this scenario the change in effectively settled conditions of paragraph 10A of the proposed amendment appears to be the only new information related to the technical merits of the position. Under these circumstances, Paragraph 7 of Interpretation 48 allows the more-likely-than-not criterion to be met, therefore allowing recognition. However if paragraph 10C is maintained as is, it appears that the enterprise would not be able to change its treatment of the same tax position for future periods. This is in direct conflict with paragraph 7(b) of Interpretation 48. If paragraph 10C of the proposed amendment is maintained as-is, additional explanation or the inclusion of an example invoking this provision would be helpful.

### Conclusion

In conclusion, I would like to reiterate my appreciation of the opportunity to offer my comments regarding FSP FIN 48-a. If there are any questions regarding the above comments, or if any clarifications are desired, please do not hesitate to contact me at [kramera5@msu.edu](mailto:kramera5@msu.edu).

Regards,

A handwritten signature in black ink that reads "Andrew J. Kramer". The signature is written in a cursive, flowing style.

Andrew J. Kramer