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Technical Director, FASB 401 Merritt 7 PO Box 5116 Norwalk, CT 06856-5116



File Reference: Proposed FSP FIN 48-c

Dear Sirs:

In conjunction with the issuance of Proposed FSP on Interpretation 48 ("FSP FIN 48-c") on November 5, 2008, the Financial Accounting Standards Board ("FASB" or "the Board") invited individuals and organizations to send written comments on all matters in the proposed FSP. FSP FIN 48-c would amend FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* ("FIN 48"), to defer the effective date of that Interpretation to fiscal years beginning after December 15, 2008, for nonpublic enterprises. The Board is providing this deferral to give it time to develop guidance about the application of FIN 48 to pass-through entities.

As a Corporate Tax Principal specializing in understanding the implementation of FIN 48 at the public accounting firm of Reznick Group, P.C. ("Reznick"), I have had experience in assisting clients and auditors in complying with the provisions of this Interpretation as originally adopted. Writing on behalf of the firm, Reznick supports FSP FIN 48-c to allow the deferral of the effective date of FIN 48 for certain nonpublic enterprises, and we offer the following comments for consideration.

The issues involved in the application of the recognition, measurement, and disclosure provisions of FIN 48 for public companies were complex and time-consuming. This effort was a result of applying additional procedures and analyses to companies that were at least familiar with the concepts of FASB Statement No. 109, *Accounting for Income Taxes* ("FAS 109"). The implementation of FIN 48 required detailed review of prior tax positions taken, historical transactions, state income tax nexus issues, measurement of potential exposure, and other processes that resulted in additional footnote disclosures designed to assist the reader of the financial statements, the public, and investors in comprehending the potential risk associated with previously taken uncertain tax positions.

This process involved review of company documentation regarding these tax positions that at times were exceedingly difficult to locate, sometimes incurring additional work to reconstruct the tax positions if original documents were missing. The end result of providing additional

information regarding these tax positions, after applying this rigorous methodology, was justified in that it gave theoretical heightened assurance to the reader.

However, applying this process to flow-through entities that rely upon the information reporting of lower tier entities would be exceeding onerous if the same rigorous examination, testing, and documentation standards were to be applied.

Our firm provides auditing and tax services to a variety of entities, including corporations, S-corporations, partnership flow-through entities, real estate investment trusts, and not-for-profit organizations. Some of our most significant engagements are clients that are structured as tiered flow-through entities that may have several different levels of information reporting to investors. In those situations, a Schedule K-1 contains information that is reported at a higher tier entity, but which may have minimal or even no detail regarding the underlying uncertainty involved in any potentially uncertain tax position being reported.

The methodology of FIN 48 would be exceedingly difficult to implement, in that an upper tier entity would theoretically be required to consider all potentially uncertain tax positions reported from a lower tier entity. The only practical way to do so would be to by necessity require the upper tier to rely upon the representations of the lower tier, without the requisite review or testing. This conceivably would require a detailed FIN 48 analysis starting at the lowest tier, which would then be reported up through each tier and incorporated its reporting, and so on. This would create time delays and be prohibitively costly compared to the benefits of the results. Furthermore, the ultimate end user of this information is an individual reporting the flow-through tax components; the information is not designed to assist the public or potential investors in enterprises to understand potentially uncertain tax positions.

There is also a conceptual difficulty of implementing an Interpretation of FAS 109 for entities that have not had a history of addressing income tax issues. Most flow-through and not-for-profit entities have minimal or no income taxes, and therefore have not been required to previously consider these complex issues. The cost-benefit consideration of imposing such a reporting system for entities that are usually not taxpayers is illogical, and results in minimal additional information.

Our firm suggests that the guidance that FASB provides in the application of the provisions of FIN 48 to nonpublic enterprises take these concerns into consideration. We recommend that the recognition, measurement, and disclosure provisions of FIN 48 be modified to reflect the commensurate cost-benefit concerns. For flow-through entities, an analysis should be strictly confined to the operating level that management is responsible for, and should not encompass flow-through information from lower-tier reporting entities, which is outside of its purview for review.

For both flow-through entities and not-for-profit organizations, uncertain tax positions should be treated similarly as under the new tax preparer professional standards, which generally require all undisclosed tax positions to satisfy the substantial authority standard. Substantial authority exists if the weight of authorities supporting the taxpayer's treatment is substantial in relation to the weight of those that take a contrary position. For positions not satisfying the substantial authority standard, such a position should be disclosed by in the financial statements by including a statement in the tax footnote similar to a disclosure statement that would be required to be filed with the entity's tax return. If any position is with respect to a tax shelter or a reportable transaction, the position must achieve a "more likely than not" level of success, which requires that there is a reasonable belief that the position has a greater than fifty percent likelihood of being sustained on the merits, and should also be disclosed as such.

This approach could avoid the additional complexity of the measurement and quantification of any implementation adjustments as currently required by FIN 48 as originally adopted. Including this information would conform the financial statement presentation with current tax return reporting requirements, and would supply additional information about material potentially uncertain tax positions in a more cost-efficient process.

We appreciate your consideration of these comments, and the opportunity to make them on behalf of our clients.

Best regards,

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