



## THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

2300 Wilson Boulevard, Suite 400 • Arlington, VA 22201-3308

Phone: (703) 548-3118 • FAX: (703) 548-3119 • [www.agc.org](http://www.agc.org)

STEPHEN E. SANDHERR  
Chief Executive Officer

703- 837-5312 (Direct) 703-837-5400 (Fax)  
[sandhers@agc.org](mailto:sandhers@agc.org)

October 30, 2007

Mr. Russell Golden  
Director  
Financial Accounting Standards Board  
401 Merritt 7, PO Box 5116  
Norwalk, CT 06856-5116



LETTER OF COMMENT NO. //

**Re: FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes***

Dear Mr. Golden:

I am writing to express the strong recommendation by the Associated General Contractors of America (AGC) regarding the implementation of FIN 48 and 48-1 to non-public, non-SEC filing construction firms. We urge the Financial Accounting Standards Board to reconsider its decision to make FIN 48 applicable to non-public entities and take appropriate actions on the Private Companies Financial Reporting Committee's (PCFRC) recommendations in their letter dated September 24, 2007 to the FASB.

### **Background**

Construction and construction related companies are predominantly non-public, non-SEC filing businesses. The primary users of our financial statements are owners who are predominantly active in the daily affairs of the business, sureties, and commercial banks. The majority of construction entities are organized as S-corporations or limited liability companies taxable as pass-through entities. However, a significant number, albeit a minority, of construction entities are structured as C-corporations.

### **Pass-through entities**

We strongly support the PCFRC's comments regarding clarity on the applicability of FIN 48 to pass-through entities. We support the argument that since FAS 109 is not applicable to pass-through entities, FIN 48 (an interpretation of FAS 109) should not be applicable. The FASB should consider an affirmative statement to this effect to eliminate uncertainty among financial statement preparers.

### **Taxable entities**

Most private companies engage professional tax preparers, predominately CPA firms, to prepare their income tax returns. The Small Business and Work Opportunity Act of 2007 (May 25, 2007) enacted increased penalties against income tax preparers for taking positions that fail to

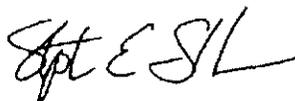
meet the “more likely than not” threshold or “reasonable basis with disclosures” standard. These are both very high standards that are consistent with the spirit of FAS 109 and FIN 48. Briefly, the tax law creates two classes of penalties – the first class penalty is the greater of \$1,000 or 50% of the fees of the preparer – the second class penalty is the greater of \$5,000 or 50% of the fees of the preparer.

AGC believes that these enhanced penalty provisions will substantially curtail the likelihood that non-public companies will file tax returns in the future where frivolous tax positions are taken. In light of these stronger penalty provisions, the cost-benefit to the quality of financial reporting is of great concern as all reporting entities will be required to incur the cost of measuring the possibility, remote as it may be, that an uncertain tax position exists in a tax return.

**AGC recommends that FASB exempt non-public companies from FIN 48.**

We respectfully urge the Board to exempt non-public, non-SEC filing companies from this Interpretation.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen E. Sandherr". The signature is stylized and cursive.

Stephen E. Sandherr  
Chief Executive Officer