

EITF ABSTRACTS

Issue No. 86-9

Title: IRC Section 338 and Push-Down Accounting

Date Discussed: March 13-14, 1986

References: FASB Statement No. 96, *Accounting for Income Taxes*
FASB Statement No. 109, *Accounting for Income Taxes*
APB Opinion No. 11, *Accounting for Income Taxes*
APB Opinion No. 16, *Business Combinations*
AICPA Issues Paper, "Push Down" Accounting, dated October 30, 1979
SEC Staff Accounting Bulletin No. 54, *Application of "Push Down" Basis of Accounting in Financial Statements of Subsidiaries Acquired by Purchase*

ISSUE

Historically, a change in legal form of an acquired company through liquidation, corporate reorganization, or statutory merger was necessary to obtain a step-up in tax basis. However, as a result of the Tax Equity and Fiscal Responsibility Act in 1982, it is possible to obtain a step-up in tax basis without formally liquidating an acquired company.

The issues are:

1. Assuming an acquisition in which (a) the acquired corporation is not a party to the transaction effecting change in ownership and is not an SEC registrant, (b) a step-up in tax basis is elected, and (c) there are no compelling reasons for retaining the old basis, whether push-down accounting (that is, use of the acquiring company's basis of accounting in the preparation of the acquired corporation's financial statements) should be required
2. Assuming continuation of the historical basis, which of the following methods is preferable for allocating the consolidated tax provision:
 - a. Modify the intercorporate tax allocation agreement so that taxes are allocated to the acquired corporation on the preacquisition tax basis
 - b. Credit the tax benefit from the tax basis step-up to the acquired corporation's capital surplus when realized
 - c. Credit the tax benefit to income of the acquired corporation as a permanent difference when realized.

EITF DISCUSSION

The Task Force reached a consensus that push-down accounting is not required for companies that are not SEC registrants. While individual Task Force members were divided as to which method of allocating the consolidated tax provision in the above circumstances is preferable, a consensus was reached that each of the three methods described is acceptable with appropriate disclosure. [Note: See STATUS section.]

STATUS

In December 1987, the FASB issued Statement 96, which supersedes Opinion 11. Statement 96 does not address push-down accounting. However, footnote 12 to paragraph 30 indicates that the sum of the amounts allocated to members of the group that files a consolidated tax return (net of consolidation eliminations) shall equal the consolidated amount, which is the amount of current and deferred taxes reported in the consolidated financial statements for the group, or the amount that would be reported if such financial statements were prepared.

In February 1992, the FASB issued Statement 109, which supersedes Opinion 11 and Statement 96. Statement 109 does not address push-down accounting. In addressing the separate financial statements of a subsidiary, the Statement does not require a single tax allocation method for the separate financial statements of members of a group that files a consolidated tax return. However, it does require that the method adopted be systematic, rational, and consistent with the broad principles established by the Statement. Paragraph 40 states "A method that allocates current and deferred taxes to members of the group by applying this Statement to each member as if it were a separate taxpayer meets those criteria." Footnote 10 indicates that in this situation, the sum of the amounts allocated to individual members of the group may not equal the consolidated amount. That may also be the result when there are intercompany transactions

between members of the group. The criteria are satisfied, nevertheless, after giving effect to the type of adjustments (including eliminations) normally present in preparing consolidated financial statements.

A related issue was discussed in Issue No. 94-10, "Accounting by a Company for the Income Tax Effects of Transactions among or with Its Shareholders under FASB Statement No. 109." That Issue addresses whether tax effects caused by transactions among or with shareholders should be included in the income statement or in equity in the separate financial statements of the company affected. The Task Force reached several consensuses in Issue 94-10. (See Issue 94-10 for details of the consensuses reached.)

No further EITF discussion is planned.