Ms. Suzanne Bielstein
Director of Major Projects and Technical Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

RE: File Reference No. 1215-001, the Exposure Draft of the Proposed Interpretation of FASB Statement No. 109, “Accounting for Uncertain Tax Positions”

Dear Ms. Bielstein:

We appreciate the opportunity to comment on the Financial Accounting Standards Board’s (“FASB” or “the Board”) Exposure Draft of the Proposed Interpretation of Statement of Financial Accounting Standards No. 109 (SFAS No. 109), “Accounting for Uncertain Tax Positions” (the “Proposed Interpretation” or “Exposure Draft”).

We had previously submitted letters dated November 5, 2004 and March 29, 2005 regarding the Board’s deliberations on accounting for uncertain tax positions. In our November 5, 2004 letter to the Board, we first raised our concerns regarding the Board’s initial tentative conclusions. As we indicated in our March 29, 2005 letter, we were encouraged by the tentative conclusions subsequently reached at the Board’s February 16, 2005 and November 17, 2004 meetings which addressed several of these concerns, including use of the best estimate in measuring tax benefits (rather than a binary approach), determination of the balance sheet classification based on the expected timing of the cash flows and the necessary, although insufficient, delay in the proposed effective date for implementation from fiscal years ending after March 15, 2005 to fiscal years ending after December 15, 2005. However, we remain gravely concerned with the overall approach and methodology.

The combination of the proposed approach, recognition and derecognition thresholds and measurement methodology for recognition of tax benefits arising from uncertain tax positions unquestionably would systematically and materially overstate corporate tax obligations to the disadvantage of current investors. In addition, the proposed approach would be overly complex and difficult to apply in practice. Accordingly,
we do not think the Proposed Interpretation would result in a representationally faithful accounting for an enterprise’s tax provisions and related obligations.

**Approach and Recognition Threshold**

The proposed approach and “probable” recognition threshold would result in material overstatements of corporate tax liabilities and substantially greater inaccurate volatility in reported corporate tax provisions. Moreover, the proposed approach is generally inconsistent with the balance sheet approach implicit in SFAS No. 109. The overstatement in corporate tax accruals would result in systematic reversals of excess accruals upon completion of tax audits or expiration of the applicable statute of limitations. The dual thresholds for recognition and derecognition are inherently problematic and would result in inconsistencies and a lack of comparability in reported financial results across enterprises.

The proposed approach fails the common sense standard. The best estimate of an enterprise’s taxes is fundamentally dependent on the judgment of corporate management. Arcane rules can not supplant reasoned judgment of ultimate tax obligations across jurisdictions and time. The complex rules-driven nature of the proposed approach is wholly inconsistent with the movement toward a principles-based approach to standard-setting which has been undertaken by the Board and supported by the Securities and Exchange Commission.

In its deliberations regarding accounting for uncertain tax positions, the Board considered two alternative approaches: the “Asset Approach” and the “Impairment Approach.” As most corporations already will have deducted any known available tax benefits in arriving at net taxes paid for any given year, disallowance of tax benefits by a tax authority will ordinarily take the form of unasserted claims or potential contingent liabilities, rather than assets which may not be realizable. As a consequence, the principles and methods of accounting for unasserted claims and contingencies under Statement of Financial Accounting Standards No. 5, “Accounting for Contingencies” seem to provide the closest analogous accounting framework and most pragmatic approach for addressing uncertain tax benefits. The “Impairment Approach,” the alternative approach developed by the FASB staff, is more nearly consistent with the precepts of SFAS No. 5 than the “Asset Approach” and, therefore, would seem to result in the most appropriate financial accounting for uncertain tax benefits.

The Board’s meeting materials summarize the “Impairment Approach” as follows:

“[Under the Impairment Approach]...the benefit from a tax position would be recognized when (a) it is probable that the tax position will meet the minimum requirements under the relevant tax law to avoid statutory penalties for underpayment of a tax liability to a taxing authority and (b) it is not probable that the tax payer will have to make additional payments to taxing authorities to settle underpayment controversies. The benefit would be measured using
the relevant tax code as reduced by the best estimate of the amount of any payments of incremental income tax and interest that is probable will be made to the taxing authority to resolve any claim or controversy.

In the U.S. federal jurisdiction, the “Impairment Approach” would require recognition of tax benefits when the “Substantial Authority” threshold has been achieved. Tax benefits recognized would be reduced if information prior to the issuance of the financial statements indicates it is probable that a liability for additional taxes has been incurred at the date of the financial statements and the amount of the additional taxes can be reasonably estimated applying the provisions of FASB Statement No. 5, Accounting for Contingencies.”

Under the “Impairment Approach,” an enterprise would recognize tax benefits provided the tax position meets the substantial authority threshold and would separately evaluate whether it is probable a liability will be incurred to resolve any potential claim or dispute with tax authorities in accordance with the requirements of SFAS No. 5.

Alternatively, in the event the Board elects to retain the “Asset Approach” we strongly suggest the Board reconsider the proposed recognition threshold and further evaluate the alternative approach recommended by the dissenting Board members (as reflected in the Alternative Views included in Appendix B of the Exposure Draft). Under this approach, tax benefits arising from uncertain tax positions would be recognized where tax positions meet the threshold under applicable tax law to avoid statutory penalties for underpayment of taxes. Under U.S. federal tax laws, this threshold would be met when a tax position meets the “substantial authority” criteria. Tax benefits would be recognized consistent with the relevant provisions of the applicable tax statute. These benefits would be reduced by the best estimate of probable payments of incremental tax, including interest, necessary to resolve or settle any claims or disputed tax positions with the respective tax authorities based on the weight of available evidence.

**Derecognition**

Under the Proposed Interpretation, tax benefits would be derecognized when it is “more likely than not” the position will not be sustained. As previously mentioned, the use of dual, or different, thresholds for recognition (“probable”) and derecognition (“more likely than not”) is inherently problematic and would result in significant inconsistencies. For example, an enterprise may initially determine realization of tax benefits arising from a given uncertain tax position are probable. In subsequent years, the enterprise may conclude realization of these benefits remain “more likely than not” although such benefits are no longer “probable”. Under the Proposed Interpretation, benefits recognized in prior years would not be reversed but no benefits would be recognized in the current or future years. In this case, the accounting treatment for identical facts and circumstances would be diametrically
different. As a consequence, the proposed approach would result in inconsistency for any given enterprise from year to year and a lack of comparability across enterprises. We think these issues render the proposed approach wholly impractical and operationally unworkable.

Use of the “Impairment Approach” or the “Asset Approach” in combination with a single threshold, such as the “substantial authority” threshold, would eliminate these inconsistencies by incorporating a single threshold. A consistent threshold would be applied to any outstanding tax positions whether they arose in the current or previous years. Once established the liability for uncertain tax positions would be remeasured only when there are clear and substantive changes in the underlying facts and circumstances, including changes in management’s assessment of the likelihood or amount of any potential tax contingency. These changes may be based on emerging legal precedents, changes in the opinion of the company’s tax advisor, audit adjustments by tax authorities or other relevant information.

Measurement

We think the proposed measurement methodology is as problematic as the proposed recognition thresholds. The Proposed Interpretation would require evaluation of each tax position individually under the “unit of account” method. Where the benefits of any individual unit of account were determined to be less than “probable” no benefits would be recognized. However, in many situations, tax positions challenged or disputed by the relevant taxing authorities are settled in a collective manner. Resolutions are reached by grouping multiple issues as a package.

Tax benefits should be recognized where underlying tax positions meet the substantial authority threshold. Measurement of tax benefits should incorporate the probability the underlying tax positions will be sustained. Tax contingency accruals should be recorded to reduce tax benefits recognized or the amount “probable” of realization, based on the weight of available evidence. The likelihood of realization should be based on the relevant facts and circumstances, including clarity of tax law, assurance provided in an opinion letter furnished by the company’s tax counsel, similar positions taken in prior years’ tax returns which have either been accepted or have not been challenged in prior tax authority examinations or legal precedent based on similar positions taken by other taxpayers which have been favorably resolved through litigation with tax authorities, etc. We think this approach provides the most meaningful information for use in estimating required tax accruals.

For example, assume Company X has four different tax positions where the tax benefits are somewhat uncertain. Further assume each position has a probability of 75% and tax benefit value of $10 million. If Company X prevails in three of the four tax positions (consistent with the probability), the net benefit realized would be $30 million. Consequently, if Company X had recognized a tax benefit in the amount of $10 million for each of the four tax positions and established a $2.5 million tax contingency accrual or contra asset for each, the tax benefits realized by Company X
of $30 million would be exactly equal to the net tax benefit recognized (aggregate tax benefits of $40 million less related combined tax contingency accruals or contra assets of $10 million).

Under the Proposed Interpretation, we achieve a far different and materially less accurate result. For example, assume Company X has taken 2 tax positions in which tax benefits are somewhat uncertain. Further, assume these tax positions have a probability of 60% and value of $10 million. Under the Proposed Interpretation, Company X would be precluded from recognizing any benefit in the year the return is filed. If we assume the Company prevails in one of the 60% positions, Company X will subsequently reverse $10 million of previously accrued taxes (plus any previously accrued interest) upon subsequent audit by the respective tax authority or expiration of the statute of limitations. This would result in a significant overstatement of Company X’s tax accrual for an extended period of time. If Company X had applied the “Impairment Approach”, it would have previously recognized a benefit of $24 million and the subsequent adjustment would have been $4 million, a fraction of the adjustment under the Proposed Interpretation. The approach under the Proposed Interpretation seems to sacrifice accuracy in favor of a more precise (but less accurate) estimate of the ultimate tax liability.

Determining tax accruals based on the likelihood of a successful outcome more nearly approximates the tax which will ultimately be payable. This is accomplished by providing higher tax contingency accruals for uncertain tax positions where facts and circumstances indicate lower levels of assurance and providing lower accruals for tax positions with higher levels of assurance. We think this approach is more nearly consistent with the balance sheet approach under SFAS No. 109. Rather than focusing on whether the tax benefit of any given transaction is probable, we think the focus should be on whether the aggregate tax liabilities or assets represent the probable obligations payable or benefits realizable.

This approach would more nearly reflect the manner in which these issues are actually settled and therefore provide a more accurate measurement framework. In some cases, an enterprise’s position will be upheld, in other cases it will be lost, and in others, perhaps the majority of instances, tax benefits will be partially realized. Due to ambiguity inherent in tax rules and regulations around the world, the ultimate settlement is more often a product of negotiation than interpretation. In fact, in many foreign jurisdictions, tax settlements are frequently the net result of direct negotiations with the tax authorities.

**Changes in Judgment: Inter-Period Income Tax Allocation**

As stated in our previous letters, we do not agree changes in judgments concerning tax benefits should be accounted for on a discrete basis and not spread over the current year’s remaining interim periods as required under the integral method. The expressed rationale for this treatment assumes such changes should be accounted for in a manner analogous to the treatment of changes in tax rates and laws and valuation
allowances as set forth in paragraph 194 of FAS No. 109. However, FAS No. 109 does not require, nor does it permit further exclusions from application of the integral method. Therefore, we do not think this treatment should be expanded. Moreover, the integral method required under FAS No. 109 provides the most meaningful method of allocating the income tax provision to interim periods within a year and therefore should not be amended or replaced.

Each year a company makes many judgments about a wide range of assumptions affecting its total tax provision, including numerous estimates as to projected earnings and permanent differences. Changes in these judgments affect the tax provision for the entire year. In addition, throughout the course of a year, a company may execute tax planning strategies, consummate related transactions and take other actions which affect the company’s tax provision and the effective tax rate applicable to earnings of the current quarter as well as those of prior and subsequent quarters within any given tax year. Accordingly, we do not think changes in judgment regarding realizability of tax benefits should be excluded from the determination of the effective tax rate any more than these other changes in judgment.

The integral method was first adopted pursuant to APB Opinion No. 28, “Interim Financial Reporting.” APB Opinion No. 28 excluded only extraordinary items and unusual items (discontinued operations) which are reported separately net of tax from the determination of the estimated annual effective tax rate (paragraph 19):

... At the end of each period the company should make its best estimate of the effective tax rate expected to be applicable for the full fiscal year. The rate so determined should be used in providing for income taxes on a current year-to-date basis. The effective tax rate should reflect anticipated investment tax credits, foreign tax rates, percentage depletion, capital gains rates, and other available tax planning alternatives. However, in arriving at this effective tax rate no effect should be included for the tax related to significant unusual or extraordinary items that will be separately reported or reported net of their related tax effect in reports for the interim period or for the fiscal year.

FAS No. 109, likewise rejected the discrete approach to interim reporting as indicated in paragraphs 190 and 191 of this Statement:

The accounting requirements of Opinion 28 are based on a view that each interim period is primarily an integral part of the annual period. Tax expense for interim periods is measured using an estimated annual effective tax rate for the annual period. Opinion 28 explicitly rejects the discrete approach to interim reporting whereby the results of operations for each interim period would be determined as if the interim period were an annual period. The Board’s asset and liability approach to accounting for income taxes for annual periods, however, is a discrete approach that measures a deferred tax liability or asset at a particular time.
The Board decided not to reopen the subject of interim accounting as part of this project and did not reconsider the general approach in Opinion 28 to accounting for income taxes in interim periods. As a result, most of the requirements of Opinion 28 remain unchanged. The Board concluded, however, that some changes were necessary because of the basic principles encompassed in this Statement.

FAS No. 109 paragraph 194 requires certain limited modifications to APB Opinion No. 28 to recognize tax effects of (1) changes in tax laws or rates or (2) changes in valuation allowances in the interim period in which such changes occur rather than allocating such tax effects to subsequent interim periods.

Measurements of a deferred tax liability or asset for annual reporting are subject to change when enacted tax laws or rates change. Likewise, a valuation allowance is subject to change when a change in circumstances causes a change in the judgment about realizability of the related deferred tax asset in future years. For interim reporting, the Board believes that the effects of those changes should be recognized as of the enactment date for a change in tax law or rate or as of the date of a change in circumstances for a change in valuation allowance and should not be allocated to subsequent interim periods by an adjustment of the estimated annual effective tax rate for the remainder of the year. Thus, in effect, there is a catch-up adjustment for the cumulative effect as of the date of the change. The effect of the changes in tax laws or rates and changes in judgment about the need for a valuation allowance on income or losses for future interim periods, however, is reflected by an adjustment of the estimated annual effective tax rate for the remainder of the year.

These limited modifications to APB Opinion No. 28, however, were the only exceptions to the continued application of the integral method under FAS No. 109. Accordingly we do not agree with the proposed use of the discrete method for recognition of changes in judgments regarding the realizability of tax benefits.

We understand there have been recent discussions among the FASB, SEC and others regarding accounting for inter-period income tax allocation for interim reporting. We also understand the SEC has begun to challenge companies where tax adjustments of prior period tax liabilities have been incorporated in the determination of the effective tax rate for the current fiscal year rather than recognizing the full impact of such changes immediately in the current quarter.

Contrary to the positions expressed by these groups and statements in the Board’s Proposed Interpretation, the integral method of inter-period income tax allocation is the long-established, prevalent method of accounting for income taxes in interim statements. Furthermore, we think the integral method of accounting for inter-period
income tax allocation continues to be the most appropriate and meaningful method of determining the tax provision in interim financial statements for a number of reasons.

- The inherent inability to determine the actual tax liability for interim periods undermines the conceptual validity of the discrete approach. The discrete approach is fundamentally impracticable. For example, this would effectively require the calculation of the net tax liability for all global tax jurisdictions on a quarterly basis, an undertaking which would be totally impracticable for most large multinational corporations. For example, in fiscal 2004 alone, CSC filed over 12,500 tax returns in 140 countries. The vast majority of these were filed on an annual basis.

- Accounting for certain elements on a discrete basis and others on an integral basis is not meaningful. Piecemeal application of the discrete approach to only certain of the elements involved in the tax provision fails to provide a sufficiently comprehensive framework for meaningful representation of a company’s tax expense and liabilities at any interim period within the year.

- The integral method is more nearly consistent with the prospective method of accounting for changes in estimates. Even changes to estimates of prior year tax provisions are, in fact, part of the current year’s provision, unless a change represents correction of an error sufficiently material to require treatment as a prior period adjustment. Income taxes for substantially all jurisdictions are based on annual tax periods. The tax provision for each year must take into account the uncertain and changing nature and status of events and transactions which will give rise to tax liabilities and benefits throughout the year.

As indicated above a company may execute tax planning strategies, consummate related transactions and take other actions throughout the course of a year which raise or lower tax rates, not only for the current quarter, but also all prior and subsequent quarters in a given tax year. In many ways, accounting for corporate tax provisions is similar to accounting for incentive compensation. Incentive compensation is accrued based on the total projected bonus award by applying a composite percentage factor to the earnings or other relevant objectives recognized each quarter. Similarly, in accounting for corporate taxes, a composite or effective tax rate is developed based on the total projected taxes for the year, taking into account all relevant facts and circumstances and any necessary assumptions. This effective tax rate is then applied to quarterly earnings to determine the tax provision for each quarter.

In summary, the integral method best enables the company to incorporate the full range of issues which ultimately affect the company’s tax provision for the entire taxable period. As a result, the integral method provides more meaningful, predictive information as to the operating results and outlook of for-profit companies.
Disclosures

We think the disclosure requirements under the Proposed Interpretation are overly broad, unnecessarily detailed and fundamentally inconsistent with investor interests. The combination of the dual recognition thresholds, presumed review of all tax positions and requirement to disclose any potential tax exposures would seriously undermine enterprise management of corporate tax obligations on behalf of stockholders. More specifically, the Proposed Interpretation would require disclosure of any situation where previously recognized tax benefits are no longer “probable” but remain “more likely than not”. Such disclosures would provide a veritable road map for tax authorities seeking to increase their revenue base. Moreover, the proposed disclosure requirements would result in extensive and voluminous disclosures which would confuse rather than inform investors. In fact, it seems the principal users and beneficiaries of this information would be the respective tax authorities.

Transition

We recognize the Board has extended the proposed effective date of the Proposed Interpretation from years ending after March 15, 2005 to years ending after December 15, 2005. However, given the complexity, wide range of issues and pervasive impact, any substantial change in recognition and measurement or disclosure requirements in this area would require a longer transition period. We think a period of not less than 1 year from the issuance of any Proposed Interpretation would be the minimum period necessary for implementation.

Thank you for your consideration of our views. We would be glad to meet with you or your staff to discuss this matter further at your convenience. Please contact Dennis Dooley at (248) 372-3306 or me at (310) 615-1728.

Sincerely,

Leon J. Level
Chief Financial Officer

Attachment

cc: Mr. Robert H. Herz, Chairman and Members of the Financial Accounting Standards Board

2100 East Grand Avenue
El Segundo, California 90245
Phone: 310.615.1728 Fax: 310.322.9767
Proposed Interpretation: Accounting for Uncertain Tax Positions Responses to Specific Issues Raised in the Exposure Draft

Scope

Issue 1: This proposed Interpretation would broadly apply to all tax positions accounted for in accordance with Statement 109, including tax positions that pertain to assets and liabilities acquired in business combinations. It would apply to tax positions taken in tax returns previously filed as well as positions anticipated to be taken in future tax returns. Do you agree with the scope of the proposed Interpretation? If not, why not?

We think existing guidance under FAS No. 109 is sufficient. If, however, the Board feels further guidance is necessary to narrow diversity in practice we recommend adoption of the “Impairment Approach” discussed further in our response to Issue No. 3 in combination with the measurement methodology discussed in our response to Issue No. 6.

Initial Recognition

Issue 2: The Board concluded that the recognition threshold should presume a taxing authority will, during an audit, evaluate a tax position taken or expected to be taken when assessing recognition of an uncertain tax position. (Refer to paragraphs B12–B15 in the basis for conclusions.) Do you agree? If not, why not?

We think the presumption tax authorities will challenge every tax position of every tax paying entity in any given jurisdiction is wholly unrealistic and is inconsistent with the prevailing practices of most taxing authorities and the experience of corporate tax payers within these jurisdictions.

Issue 3: The Board decided on a dual threshold approach that would require one threshold for recognition and another threshold for derecognition. The Board concluded that a tax position must meet a probable (as that term is used in Statement 5) threshold for a benefit to be recognized in the financial statements. (Refer to paragraphs B16–B21 in the basis for conclusions.) Do you agree with the dual threshold approach? Do you agree with the selection of probable as the recognition threshold? If not, what alternative approach or threshold should the Board consider?

We do not agree with the use of probable as the recognition threshold nor the dual threshold approach (as discussed more fully in our response to Issue 5 below). The proposed approach and “probable” recognition threshold would result in material overstatement of corporate tax liabilities and substantially greater inaccurate volatility in reported corporate tax provisions. Moreover, the
proposed approach is generally inconsistent with the balance sheet approach implicit in SFAS No. 109. The overstatement in corporate tax accruals would result in systematic reversals of excess accruals upon completion of tax audits or expiration of the applicable statute of limitations. The dual thresholds for recognition and derecognition are inherently problematic and would result in inconsistencies and a lack of comparability in reported financial results across enterprises.

The proposed approach fails the common sense standard. The best estimate of an enterprise’s taxes is fundamentally dependent on the judgment of corporate management. Arcane rules can not supplant reasoned judgment of ultimate tax obligations across jurisdictions and time. The complex rules driven nature of the proposed approach is wholly inconsistent with the movement toward a principles-based approach to standard-setting which has been undertaken by the Board and supported by the Securities and Exchange Commission.

In its deliberations regarding accounting for uncertain tax positions, the Board considered two alternative approaches: the “Asset Approach” and the “Impairment Approach.” As most corporations already will have deducted any known available tax benefits in arriving at net taxes paid for any given year, disallowance of tax benefits by a tax authority will ordinarily take the form of unasserted claims or potential contingent liabilities, rather than assets which may not be realizable. As a consequence, the principles and methods of accounting for unasserted claims and contingencies under Statement of Financial Accounting Standards No. 5, “Accounting for Contingencies” seem to provide the closest analogous accounting framework and most pragmatic approach for addressing uncertain tax benefits. The “Impairment Approach,” the alternative approach developed by the FASB staff, is more nearly consistent with the precepts of SFAS No. 5 than the “Asset Approach” and, therefore, would seem to result in the most appropriate financial accounting for uncertain tax benefits.

The Board’s meeting materials summarize the “Impairment Approach” as follows:

“[Under the Impairment Approach]...the benefit from a tax position would be recognized when (a) it is probable that the tax position will meet the minimum requirements under the relevant tax law to avoid statutory penalties for underpayment of a tax liability to a taxing authority and (b) it is not probable that the tax payer will have to make additional payments to taxing authorities to settle underpayment controversies. The benefit would be measured using the relevant tax code as reduced by the best estimate of the amount of any payments of incremental income tax and interest that is probable will be made to the taxing authority to resolve any claim or controversy.
In the U.S. federal jurisdiction, the "Impairment Approach" would require recognition of tax benefits when the "Substantial Authority" threshold has been achieved. Tax benefits recognized would be reduced if information prior to the issuance of the financial statements indicates it is probable that a liability for additional taxes has been incurred at the date of the financial statements and the amount of the additional taxes can be reasonably estimated applying the provisions of FASB Statement No. 5, Accounting for Contingencies."

Under the "Impairment Approach," an enterprise would recognize tax benefits provided the tax position meets the substantial authority threshold and would separately evaluate whether it is probable a liability will be incurred to resolve any potential claim or dispute with tax authorities in accordance with the requirements of SFAS No. 5.

Alternatively, in the event the Board elects to retain the "Asset Approach," we strongly suggest the Board reconsider the proposed recognition threshold and further evaluate the alternative approach recommended by the dissenting Board members (as reflected in the Alternative Views included in Appendix B of the Exposure Draft). Under this approach, tax benefits arising from uncertain tax positions would be recognized where tax positions meet the threshold under applicable tax law to avoid statutory penalties for underpayment of taxes. Under U.S. federal tax laws, this threshold would be met when a tax position meets the "substantial authority" criteria. Tax benefits would be recognized consistent with the relevant provisions of the applicable tax statute. These benefits would be reduced by the best estimate of probable payments of incremental tax, including interest, necessary to resolve or settle any claims or disputed tax positions with the respective tax authorities based on the weight of available evidence.

Subsequent Recognition

Issue 4: The Board concluded that a tax position that did not previously meet the probable recognition threshold should be recognized in any later period in which the enterprise subsequently concludes that the probable recognition threshold has been met. (Refer to paragraph B22 in the basis for conclusions.) Do you agree? If not, why not?

As previously indicated, we do not agree with the use of probable as the threshold for recognition of tax benefits arising from uncertain tax positions. We do, however, agree with subsequent recognition of tax benefits in any later period in which an enterprise determines that a tax position meets the applicable threshold.
Derecognition

Issue 5: The Board concluded that a previously recognized tax position that no longer meets the probable recognition threshold should be derecognized by recording an income tax liability or reducing a deferred tax asset in the period in which the enterprise concludes that it is more likely than not that the position will not be sustained on audit. A valuation allowance as described in Statement 109 or a valuation account as described in FASB Concepts Statement No. 6, Elements of Financial Statements, should not be used as a substitute for derecognition of the benefit of a tax position. (Refer to paragraphs B23–B25 in the basis for conclusions.) Do you agree with the Board’s conclusions on derecognition of previously recognized tax positions? If not, why not?

As previously mentioned, we do not agree with the “probable” recognition threshold, nor the use of dual recognition, or different, thresholds for recognition (“probable”) and derecognition (“more likely than not”). The use of dual thresholds is inherently problematic and would result in significant inconsistencies. For example, an enterprise may initially determine realization of tax benefits arising from a given uncertain tax position are probable. In subsequent years, the enterprise may conclude realization of these benefits remain “more likely than not” although such benefits are no longer “probable”. Under the Proposed Interpretation, benefits recognized in prior years would not be reversed but no benefits would be recognized in the current or future years. In this case, the accounting treatment for identical facts and circumstances would be diametrically different. As a consequence, the proposed approach would result in inconsistency for any given enterprise from year to year and a lack of comparability across enterprises. We think these issues render the proposed approach wholly impractical and operationally unworkable.

Use of the “Impairment Approach” or the “Asset Approach” in combination with a single threshold, such as the “substantial authority” threshold, would eliminate these inconsistencies by incorporating a single threshold. A consistent threshold would be applied to any outstanding tax positions whether they arose in the current or previous years. Once established the liability for uncertain tax positions would be remeasured only when there are clear and substantive changes in the underlying facts and circumstances, including changes in management’s assessment of the likelihood or amount of any potential tax contingency. These changes may be based on emerging legal precedents, changes in the opinion of the company’s tax advisor, audit adjustments by tax authorities or other relevant information.

Measurement

Issue 6: The Board concluded that once the probable recognition threshold is met, the best estimate of the amount that would be sustained on audit should be recognized.
The Board concluded that any subsequent changes in that recognized amount should be made using a best estimate methodology and recognized in the period of the change. (Refer to paragraphs B9–B11 and B26–B29 in the basis for conclusions.) Do you agree with the Board’s conclusions on measurement? If not, why not?

We think the proposed measurement methodology is as problematic as the proposed recognition thresholds. The Proposed Interpretation would require evaluation of each tax position individually under the “unit of account” method. Where the benefits of any individual unit of account were determined to be less than “probable,” no benefits would be recognized. However, in many situations, tax positions challenged or disputed by the relevant taxing authorities are settled in a collective manner. Resolutions are reached by grouping multiple issues as a package.

Tax benefits should be recognized where underlying tax positions meet the substantial authority threshold. Measurement of tax benefits should incorporate the probability the underlying tax positions will be sustained. Tax contingency accruals should be recorded to reduce tax benefits recognized or the amount “probable” of realization, based on the weight of available evidence. The likelihood of realization should be based on the relevant facts and circumstances, including clarity of tax law, assurance provided in an opinion letter furnished by the company’s tax counsel, similar positions taken in prior years’ tax returns which have either been accepted or have not been challenged in prior tax authority examinations or legal precedent based on similar positions taken by other taxpayers which have been favorably resolved through litigation with tax authorities, etc. We think this approach provides the most meaningful information for use in estimating required tax accruals.

For example, assume Company X has four different tax positions where the tax benefits are somewhat uncertain. Further assume each position has a probability of 75% and tax benefit value of $10 million. If Company X prevails in three of the four tax positions (consistent with the probability), the net benefit realized would be $30 million. Consequently, if Company X had recognized a tax benefit in the amount of $10 million for each of the four tax positions and established a $2.5 million tax contingency accrual or contra asset for each, the tax benefits realized by Company X of $30 million would be exactly equal to the net tax benefit recognized (aggregate tax benefits of $40 million less related combined tax contingency accruals or contra assets of $10 million).

Under the Proposed Interpretation, we achieve a far different and materially less accurate result. For example, assume Company X has taken 2 tax positions in which tax benefits are somewhat uncertain. Further, assume these tax positions have a probability of 60% and value of $10 million. Under the Proposed Interpretation, Company X would be precluded from recognizing any benefit in the year the return is filed. If we assume the Company prevails in one of the 60% positions, Company X will subsequently reverse $10 million of previously
accrued taxes (plus any previously accrued interest) upon subsequent audit by
the respective tax authority or expiration of the statute of limitations. This
would result in a significant overstatement of Company X’s tax accrual for an
extended period of time. If Company X had applied the “Impairment
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subsequent adjustment would have been $4 million, a fraction of the adjustment
under the Proposed Interpretation. The approach under the Proposed
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accurate) estimate of the ultimate tax liability.

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nearly approximates the tax which will ultimately be payable. This is
accomplished by providing higher tax contingency accruals for uncertain tax
positions where facts and circumstances indicate lower levels of assurance and
providing lower accruals for tax positions with higher levels of assurance. We
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under SFAS No. 109. Rather than focusing on whether the tax benefit of any
given transaction is probable, we think the focus should be on whether the
aggregate tax liabilities or assets represent the probable obligations payable or
benefits realizable.

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lost, and in others, perhaps the majority of instances, tax benefits will be
partially realized. Due to ambiguity inherent in tax rules and regulations
around the world, the ultimate settlement is more often a product of negotiation
than interpretation. In fact, in many foreign jurisdictions, tax settlements are
frequently the net result of direct negotiations with the tax authorities.

Classification

Issue 7: The Board concluded that the liability arising from the difference between
the tax position and the amount recognized and measured pursuant to this proposed
Interpretation should be classified as a current liability for amounts that are
anticipated to be paid within one year or the operating cycle, if longer. Unless that
liability arises from a taxable temporary difference as defined in Statement 109, it
should not be classified as a deferred tax liability. (Refer to paragraphs B30–B35 in
the basis for conclusions.) Do you agree with the Board’s conclusions on
classification? If not, why not?

We agree classification should be based on the expected timing of related cash
flows.
Change in Judgment

Issue 8: The Board concluded that, consistent with the guidance in paragraph 194 of Statement 109, a change in the recognition, derecognition, or measurement of a tax position should be recognized entirely in the interim period in which the change in judgment occurs. (Refer to paragraph B36 in the basis for conclusions.) Do you agree with the Board’s conclusions about a change in judgment? If not, why not?

We do not agree changes in judgments concerning tax benefits should be accounted for on a discrete basis and not spread over the current year’s remaining interim periods as required under the integral method. The expressed rationale for this treatment assumes such changes should be accounted for in a manner analogous to the treatment of changes in tax rates and laws and valuation allowances as set forth in paragraph 194 of FAS No. 109. However, FAS No. 109 does not require, nor does it permit further exclusions from application of the integral method. Therefore, we do not think this treatment should be expanded. Moreover, the integral method required under FAS No. 109 provides the most meaningful method of allocating the income tax provision to interim periods within a year and therefore should not be amended or replaced.

Each year a company makes many judgments about a wide range of assumptions affecting its total tax provision, including numerous estimates as to projected earnings and permanent differences. Changes in these judgments affect the tax provision for the entire year. In addition, throughout the course of a year, a company may execute tax planning strategies, consummate related transactions and take other actions which affect the company’s tax provision and the effective tax rate applicable to earnings of the current quarter as well as those of prior and subsequent quarters within any given tax year. Accordingly, we do not think changes in judgment regarding realizability of tax benefits should be excluded from the determination of the effective tax rate any more than these other changes in judgment.

The integral method was first adopted pursuant to APB Opinion No. 28, “Interim Financial Reporting.” APB Opinion No. 28 excluded only extraordinary items and unusual items (discontinued operations) which are reported separately net of tax from the determination of the estimated annual effective tax rate (paragraph 19):

...At the end of each period the company should make its best estimate of the effective tax rate expected to be applicable for the full fiscal year. The rate so determined should be used in providing for income taxes on a current year-to-date basis. The effective tax rate should reflect anticipated investment tax credits, foreign tax rates, percentage depletion, capital gains rates, and other available tax planning alternatives. However, in arriving at this effective tax rate no effect
should be included for the tax related to significant unusual or extraordinary items that will be separately reported or reported net of their related tax effect in reports for the interim period or for the fiscal year.

FAS No. 109, likewise rejected the discrete approach to interim reporting as indicated in paragraphs 190 and 191 of this Statement:

The accounting requirements of Opinion 28 are based on a view that each interim period is primarily an integral part of the annual period. Tax expense for interim periods is measured using an estimated annual effective tax rate for the annual period. Opinion 28 explicitly rejects the discrete approach to interim reporting whereby the results of operations for each interim period would be determined as if the interim period were an annual period. The Board’s asset and liability approach to accounting for income taxes for annual periods, however, is a discrete approach that measures a deferred tax liability or asset at a particular time.

The Board decided not to reopen the subject of interim accounting as part of this project and did not reconsider the general approach in Opinion 28 to accounting for income taxes in interim periods. As a result, most of the requirements of Opinion 28 remain unchanged. The Board concluded, however, that some changes were necessary because of the basic principles encompassed in this Statement.

FAS No. 109 paragraph 194 requires certain limited modifications to APB Opinion No. 28 to recognize tax effects of (1) changes in tax laws or rates or (2) changes in valuation allowances in the interim period in which such changes occur rather than allocating such tax effects to subsequent interim periods.

Measurements of a deferred tax liability or asset for annual reporting are subject to change when enacted tax laws or rates change. Likewise, a valuation allowance is subject to change when a change in circumstances causes a change in the judgment about realizability of the related deferred tax asset in future years. For interim reporting, the Board believes that the effects of those changes should be recognized as of the enactment date for a change in tax law or rate or as of the date of a change in circumstances for a change in valuation allowance and should not be allocated to subsequent interim periods by an adjustment of the estimated annual effective tax rate for the remainder of the year. Thus, in effect, there is a catch-up adjustment for the cumulative effect as of the date of the change. The effect of the changes in tax laws or rates and changes in judgment about the need for a valuation allowance on income or losses for future interim periods, however, is reflected by an
adjustment of the estimated annual effective tax rate for the remainder of the year.

These limited modifications to APB Opinion No. 28, however, were the only exceptions to the continued application of the integral method under FAS No. 109. Accordingly we do not agree with the proposed use of the discrete method for recognition of changes in judgments regarding the realizability of tax benefits.

We understand there have been recent discussions among the FASB, SEC and others regarding accounting for inter-period income tax allocation for interim reporting. We also understand the SEC has begun to challenge companies where tax adjustments of prior period tax liabilities have been incorporated in the determination of the effective tax rate for the current fiscal year rather than recognizing the full impact of such changes immediately in the current quarter.

Contrary to the positions expressed by these groups and statements in the Board’s Proposed Interpretation, the integral method of inter-period income tax allocation is the long-established, prevalent method of accounting for income taxes in interim statements. Furthermore, we think the integral method of accounting for inter-period income tax allocation continues to be the most appropriate and meaningful method of determining the tax provision in interim financial statements for a number of reasons.

- The inherent inability to determine the actual tax liability for interim periods undermines the conceptual validity of the discrete approach. The discrete approach is fundamentally impracticable. For example, this would effectively require the calculation of the net tax liability for all global tax jurisdictions on a quarterly basis, an undertaking which would be totally impracticable for most large multinational corporations. For example, in fiscal 2004 alone, CSC filed over 12,500 tax returns in 140 countries. The vast majority of these were filed on an annual basis.

- Accounting for certain elements on a discrete basis and others on an integral basis is not meaningful. Piecemeal application of the discrete approach to only certain of the elements involved in the tax provision fails to provide a sufficiently comprehensive framework for meaningful representation of a company’s tax expense and liabilities at any interim period within the year.

- The integral method is more nearly consistent with the prospective method of accounting for changes in estimates. Even changes to estimates of prior year tax provisions are, in fact, part of the current year’s provision, unless a change represents correction of an error sufficiently material to require treatment as a prior period adjustment. Income taxes for substantially all jurisdictions are based on annual tax periods. The
tax provision for each year must take into account the uncertain and changing nature and status of events and transactions which will give rise to tax liabilities and benefits throughout the year.

As indicated above a company may execute tax planning strategies, consummate related transactions and take other actions throughout the course of a year which raise or lower tax rates, not only for the current quarter, but also all prior and subsequent quarters in a given tax year. In many ways, accounting for corporate tax provisions is similar to accounting for incentive compensation. Incentive compensation is accrued based on the total projected bonus award by applying a composite percentage factor to the earnings or other relevant objectives recognized each quarter. Similarly, in accounting for corporate taxes, a composite or effective tax rate is developed based on the total projected taxes for the year, taking into account all relevant facts and circumstances and any necessary assumptions. This effective tax rate is then applied to quarterly earnings to determine the tax provision for each quarter.

In summary, the integral method best enables the company to incorporate the full range of issues which ultimately affect the company’s tax provision for the entire taxable period. As a result, the integral method provides more meaningful, predictive information as to the operating results and outlook of for-profit companies.

Interest and Penalties

Issue 9: The Board concluded that if the relevant tax law requires payment of interest on underpayment of income taxes, accrual of interest should be based on the difference between the tax benefit recognized in the financial statements and the tax position in the period the interest is deemed to have been incurred. Similarly, if a statutory penalty would apply to a particular tax position, a liability for that penalty should be recognized in the period the penalty is deemed to have been incurred. Because classification of interest and penalties in the income statement was not considered when Statement 109 was issued, the Board concluded it would not consider that issue in this proposed Interpretation. (Refer to paragraphs B37–B39 in the basis for conclusions.) Do you agree with the Board’s conclusions about recognition, measurement, and classification of interest and penalties? If not, why not?

We agree with Board’s conclusions concerning recognition, measurement and classification of interest and penalties but suspect in most cases penalties will not be applicable since a tax position subject to imposition of penalties would generally not meet the recognition threshold.
Disclosures

Issue 10: The Board concluded that loss contingencies relating to previously recognized tax positions should be disclosed in accordance with the provisions of paragraphs 9-11 of Statement 5. The Board also concluded that liabilities recognized in the financial statements pursuant to this proposed Interpretation for tax positions that do not meet the probable recognition threshold are similar to contingent gains. Therefore, those liabilities should be disclosed in accordance with the provisions of paragraph 17 of Statement 5. (Refer to paragraph B40 in the basis for conclusions.)

Do you agree with the disclosure requirements? If not, why not?

We think the disclosure requirements under the Proposed Interpretation are overly broad, unnecessarily detailed and fundamentally inconsistent with investor interests. The combination of the dual recognition thresholds, presumed review of all tax positions and requirement to disclose any potential tax exposures would seriously undermine enterprise management of corporate tax obligations on behalf of stockholders. More specifically, the Proposed Interpretation would require disclosure of any situation where previously recognized tax benefits are no longer “probable” but remain “more likely than not”. Such disclosures would provide a veritable road map for tax authorities seeking to increase their revenue base. Moreover, the proposed disclosure requirements would result in extensive and voluminous disclosures which would confuse rather than inform investors. In fact, it seems the principal users and beneficiaries of this information would be the respective tax authorities.

Effective Date and Transition

Issue 11: The Board concluded that this proposed Interpretation should be effective as of the end of the first fiscal year ending after December 15, 2005. Only tax positions that meet the probable recognition threshold at that date may be recognized. The cumulative effect of initially applying this proposed Interpretation would be recognized as a change in accounting principle as of the end of the period in which this proposed Interpretation is adopted. Restatement of previously issued interim or annual financial statements and pro forma disclosures for prior periods is not permitted. Earlier application is encouraged. (Refer to paragraphs B41–B43 in the basis for conclusions.)

Do you agree with the Board’s conclusions on effective date? If not, how much time would you anticipate will be necessary to apply the provisions of this proposed Interpretation? Do you agree with the Board’s conclusions on transition? If not, why not?

Given the complexity, wide range of issues and pervasive impact, any substantial change in recognition and measurement or disclosure requirements in this area would require a longer transition period. We think a period of not less than 1 year from the issuance of any Proposed Interpretation would be the minimum period necessary for implementation.
We also agree with the implementation approach whereby the cumulative effect of initially applying the Proposed Interpretation would be recognized as a change in accounting principle as of the end of the period in which the Interpretation is first adopted. However, the application of the dual thresholds is again problematic since the accounting at the time of adoption would differ from that in subsequent years for positions initially evaluated as “probable” but later determined to be “more likely than not”. At the time of adoption any previously recognized tax benefits which are no longer “probable” would be derecognized even if they remain “more likely than not”. Whereas, in subsequent periods tax positions initially evaluated as “probable” would not be derecognized until realization of the tax benefits are no longer “more likely than not”. Use of a single threshold would eliminate this inconsistency.
Leon J. Level
Vice President and Chief Financial Officer

September 1, 2005

VIA U.S. MAIL AND EMAIL

The Honorable Christopher Cox, Chairman
U.S. Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549-0609

Dear Chairman Cox:

Congratulations on your Senate confirmation and installation as SEC Chairman. We are sure you will make a substantial contribution to this hallmark institution and our capital markets and economy generally.

In the past year you have been willing to listen to our concerns regarding implementation of Section 404 of Sarbanes-Oxley and we value your receptiveness to varying points of view, constructive feedback and recommendations. I wanted to bring to your attention another situation I believe to be of equal importance.

As you are aware, the Financial Accounting Standards Board (the Board) has issued an Exposure Draft of a Proposed Interpretation to Statement of Financial Accounting Standards No. 109, “Accounting for Income Taxes” (SFAS No. 109) regarding the accounting for uncertain tax positions. We understand this action was taken at the behest of the SEC to address diversity in practice surrounding accounting for tax benefits arising from uncertain tax positions.

We are gravely concerned with the overall approach and methodology. The combination of the proposed approach, recognition and derecognition thresholds and measurement methodology for recognition of tax benefits unquestionably would systematically and materially overstate corporate tax obligations to the disadvantage of current investors. In addition, the proposed approach would be overly complex and difficult to apply in practice. With your previous experience in private practice, I am sure you can appreciate the practical difficulties and operational issues implicit in this approach.

The proposed “probable” recognition threshold also would result in substantially greater volatility in reported corporate tax rates. Moreover, the proposed approach is generally inconsistent with the balance sheet approach implicit in SFAS No. 109. The proposed threshold would result in systematic overstatement of tax accruals for current periods and corresponding reversals of excess accruals in subsequent years.
upon completion of tax audits or expiration of the applicable statute of limitations. The dual thresholds for recognition and derecognition are inherently problematic and would result in inconsistencies and a lack of comparability in reported financial results across enterprises and time periods. In fact, the significance of these concerns is further supported in the views expressed by the dissenting Board members, as reflected in the Alternative Views included in Appendix B of the Exposure Draft.

Finally, the proposed approach fails the common sense standard. The best estimate of an enterprise's taxes is fundamentally dependent on the judgment of corporate management under the oversight of audit committees and independent auditors. Arcane rules can not supplant reasoned judgment. The complex rules-driven approach under the Proposed Interpretation is wholly inconsistent with the movement toward a principles-based approach to standard-setting which has been undertaken by the Board and supported by the Securities and Exchange Commission.

We have enclosed our comment letter to the Board regarding the Proposed Interpretation for your further reference. We understand the Board has scheduled a roundtable discussion of the Proposed Interpretation for October 10th. We are hopeful this type of public forum will enable a full review of issues and concerns of all interested parties.

Thank you for your consideration of our views. We would be pleased to discuss at your convenience our concerns and recommendations and any questions you may have. Again, congratulations on your appointment. We wish you success in your tenure with the Commission. If we can be of any assistance please feel free to call.

Best personal regards,

Leon J. Level

LJL/vb

Enclosure:

Comment Letter to the FASB on the Proposed Interpretation, "Accounting for Uncertain Tax Positions"

cc: Mr. Robert H. Herz, Chairman and Members of the Financial Accounting Standards Board