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

Dear Ms. Bielstein:

BDO Seidman, LLP is pleased to provide comments on the FASB’s proposed Interpretation, Accounting for Uncertain Tax Positions.

Overall Comments

Diversity in practice exists regarding the recognition of the benefits of uncertain tax positions. Therefore, we agree that the FASB should provide guidance on recognition of uncertain tax positions and generally agree with the FASB’s conclusion that the benefit of an uncertain tax position should be recorded if and when it meets a probable threshold. However, we do not believe that new or additional guidance on derecognition is necessary. Instead, we believe that once an uncertain tax position meets the probable threshold, the reporting entity should follow the existing impairment guidance in FASB Statement No. 5, Accounting for Contingencies.

We believe the proposed effective date is unrealistic if the Board retains the proposed transition of applying the Interpretation to all existing uncertain tax positions for years for which the statute of limitations has not expired. We propose either delaying the effective date or switching to prospective transition.

Comments on the Issues in Notice for Recipients

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 agree that the scope of the proposed Interpretation should be all tax positions accounted for in accordance with Statement 109, including tax positions pertaining to assets and liabilities acquired in business combinations. Our view about whether it should apply to tax positions in previously filed tax returns is linked to our view on effective date and transition and is discussed in Issue 11 below.

In the context of this Interpretation, we do not understand the comment in footnote 2 of paragraph 5 that a tax position could include failing to take an otherwise valid tax deduction. The Board should either explain or delete that comment.

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 generally agree, for the reasons stated in the proposed Interpretation, that an entity should presume that a taxing authority will evaluate each uncertain tax position.

However, if the probable threshold is not initially met, we disagree with the guidance limiting subsequent recognition to events (a), (b), and (c) in paragraph 8. Event (b) provides for recognition if the matter is ultimately resolved through negotiation or litigation with the tax authority, and event (c) provides for recognition upon expiration of the statute of limitations. We believe recognition also is appropriate when the tax authority completes its examination of a tax return, or the tax return for a subsequent year, without objecting to a position taken, even though the statute of limitations has not yet expired. In our experience, it is rare for a tax authority to re-open a year on which it completed an examination and the taxpayer obtained a closing agreement, even if the tax authority later becomes aware of an uncertain tax position that it failed to identify. Therefore, we believe that, in the absence of opposing evidence, an uncertain tax position becomes probable of realization when a taxpayer obtains a closing agreement upon completion of an examination of that year’s, or a subsequent year’s, tax return.

We believe that the Board should give additional consideration to nexus issues. If an entity believes that it is not subject to tax in a jurisdiction and does not file a return, generally the statute of limitations does not begin until a tax return is filed. If the entity believes that it is more likely than not, but not probable, that the entity would prevail with the position that it is not subject to tax, the proposed Interpretation potentially would result in recording tax liabilities year after year indefinitely. We believe it would be more operational to apply a loss contingency approach to the nexus issue. That is, current and deferred income tax liabilities would be recognized only for those tax jurisdictions for which it is probable that an entity is subject to tax. Uncertainties about nexus would be
disclosed or accrued in accordance with the guidance in Statement 5 on unasserted claims.

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 agree with a dual threshold approach. However, as described in our Overall Comments, we believe there should be a threshold for recognition provided in this Interpretation, and a threshold for impairment as currently provided by Statement 5. We agree with the probable threshold for the initial recognition of benefits from uncertain tax positions. However, we disagree with the proposed more-likely-than-not derecognition threshold.

We also agree that derecognition should not occur when a tax position changes from probable to no longer probable, for the reasons cited in paragraph B17 for using a dual rather than a single threshold. However, we advocate the probable loss impairment threshold of Statement 5 rather than the more-likely-than-not derecognition threshold of the proposed Interpretation. If the final Interpretation retains the more-likely-than-not derecognition threshold, we believe the final Interpretation should reconcile that threshold with paragraph 39 of Statement 5. Indeed, if the final Interpretation retains that derecognition threshold, we believe the Board needs to amend Statement 5 to remove income taxes from the scope of its accounting provisions, because we don’t believe a Statement 5 impairment assessment ever would be applicable.

*Unit of Account*

The unit of account concept is mentioned only once in the Interpretation section (paragraph 9), and is illustrated in a single example in the Illustrative Guidance section (Appendix A). The concept is unfamiliar, yet is important to the appropriate application of the Interpretation. Accordingly, we believe the Board should discuss it in more detail in the Interpretation, explain it more thoroughly in the Basis for Conclusions, and illustrate it with additional examples.

The discussion of unit of account in the R&D project example in paragraphs A2 through A11 treats each of the four R&D projects as units of account. In some situations, we believe a better approach might be to look at the types of costs rather than the R&D projects in their entirety. The tax position related to direct R&D costs for the four projects may not be uncertain, whereas the tax position related to allocations of executive compensation may be uncertain.
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?

We agree that a tax position not previously meeting the probable recognition threshold should be recognized in a later period in which the entity subsequently concludes that that threshold has been met.

Please see our comments on Issue 2 regarding completion of an examination by taxing authorities as evidence that uncertain tax positions for that year and prior years meet the probable 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?

See our overall comments and our response to Issue 3. We believe the Board should eliminate the derecognition test and instead refer to the impairment guidance in Statement 5.

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 agree that a best estimate approach should be used to measure the benefit of uncertain tax positions, and that a fair value or expected value approach would be inconsistent with the undiscounted measurement of deferred tax assets and liabilities. Even though
practice varies with respect to recognition thresholds, we believe that the best estimate approach is widely used in practice today for measurement of uncertain tax positions.

We are confused, however, about the interaction between the probable threshold for recognition and the determination of best estimate under paragraph 11. The example developed by the AICPA’s Accounting Standards Executive Committee (AcSEC) illustrates our confusion with the best estimate approach.

Assume it is probable that an entity’s charitable deduction will be sustained, and that the entity estimates the following probabilities corresponding to the valuation of the deduction:

<table>
<thead>
<tr>
<th>Amount ($)</th>
<th>Probability</th>
<th>Cumulative Probability</th>
</tr>
</thead>
<tbody>
<tr>
<td>40 (as filed)</td>
<td>30%</td>
<td>30%</td>
</tr>
<tr>
<td>20</td>
<td>15%</td>
<td>45%</td>
</tr>
<tr>
<td>17</td>
<td>20%</td>
<td>65%</td>
</tr>
<tr>
<td>15</td>
<td>20%</td>
<td>85%</td>
</tr>
<tr>
<td>10</td>
<td>15%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Assume the entity defines probable as a 70% likelihood. Whereas $40 is the most likely outcome, it is not a probable outcome. Of the amounts that are at least 70% likely of being sustained ($10 and $15), $15 is the more likely outcome. We question whether it is appropriate to record a tax benefit of a $40 deduction when that benefit has only a 30% chance of being sustained. We recommend that the Board clarify the Interpretation as to which alternative the Board believes is appropriate. We further recommend the inclusion of illustrative examples such as the above.

We also are confused about how the unit of account concept would interact with the best estimate measurement. Returning to the illustration about the R&D projects, if the difference between the best estimate amount and the amount expected to be claimed on the tax return for the third and fourth projects was sufficiently large, rather than indicating that the probable recognition threshold has not been met, wouldn’t the difference instead indicate that Enterprise A should reassess its unit of account by looking at cost centers, for example, rather than projects? We believe that such reassessment is reasonable and appropriate and recommend that it be addressed in the Interpretation. Illustrative examples here also would be helpful.

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 with the Board’s conclusions on classification. We think the Board should
discuss in the Basis for Conclusions the extent to which the conclusions about
current/noncurrent classification are appropriate for other liabilities with similar
characteristics.

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
the Board’s conclusions about a change in judgment? If not, why not?

We agree with paragraph 16 of the proposed Interpretation with respect to a tax position
taken in a prior annual period. However, we believe that a change in judgment regarding
a tax position related to the current year should be reflected in the estimated effective
income tax rate. We believe our recommendation is more consistent with paragraphs 19
and 20 of APB Opinion No. 28, Interim Financial Reporting.

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?

On balance, we support the Board’s conclusions about recording interest for the entire
recorded liability, even though a portion of the liability may not be probable of payment,
because of the relative simplicity of the approach compared to the alternative. If interest
were accrued only for amounts that were considered probable of being paid, entities
would need to divide their accrued liabilities for uncertain tax positions into those that are
probable of being paid, on which interest would be accrued, and those that are not probable of being paid, on which interest would not be accrued.

We agree with the Board’s decision not to address the classification of interest and penalties. Because Statement 109 did not address classification, it would require an amendment of Statement 109 to provide guidance on that topic. However, we believe that the final Interpretation should include a reminder that the classification may be a significant accounting policy to be disclosed in accordance with APB Opinion No. 22, Disclosure of Accounting Policies.

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 agree with retaining the disclosure requirements of Statement 5. We do not believe that new or additional disclosures are necessary. In addition, we do not believe that illustrative disclosure examples are needed.

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?

We believe that the proposed effective date is unrealistic. Under the proposed transition method, entities will need to evaluate all uncertain tax positions in all domestic and international jurisdictions for all tax years for which the statute of limitations has not expired. For most entities, those evaluations will differ from the evaluations and judgments that they have made in the past. Additionally, entities are likely to revise their
documentation for positions meeting the recognition threshold. Pursuant to Section 404 of the Sarbanes-Oxley Act, registrants will need to develop, institute, and document new controls and procedures to properly evaluate, and re-evaluate, uncertain tax positions on an ongoing basis. We believe, accordingly, that the effective date should be delayed to the beginning of fiscal years beginning after June 15, 2006.

If the FASB believes that implementation as of December 2005 is important, then the transition should be prospective, that is, the final Interpretation should apply to uncertain tax positions arising in the year of adoption and future years. FASB Statements dealing with transactions, for example, asset securitizations or real estate sale-leasebacks, often are effective prospectively for new transactions. This transition method creates a period during which old and new transactions are accounted for differently, but the old transactions have finite lives and the period of noncomparable treatment is limited. The existing inventories of uncertain tax positions similarly have finite lives; most will be resolved within the next few years through examinations of tax returns or expiration of the statute of limitations.

We believe that foreign private issuers who reconcile to US GAAP may need additional time to implement the interpretation. Please see item number 4 in Other Comment below.

With respect to transition, we disagree with paragraph 20 in one respect. We believe that, in accordance with EITF Issue No. 93-7, "Uncertainties Related to Income Taxes in a Purchase Business Combination," and FASB Staff Q&A 17 on Statement 109, additional contingencies recorded in conjunction with adoption of the proposed Interpretation should not be recorded as part of a cumulative effect adjustment if they relate to a previous business combination. Instead, the cumulative effect should follow the requirements of EITF 93-7 and FASB Staff Q&A 17 on Statement 109 and be recorded to an account—typically goodwill—relating to the business combination.

Other Comments

1. Issuance of a final Interpretation will cause significant changes in accounting practice, documentation, and internal controls. We recommend that prior to issuance the Board obtain input, if it has not already done so, from representatives of the PCAOB, the Auditing Standards Board, and perhaps other applicable AICPA teams. The objective would be to gain a better understanding of the implications of the Interpretation from their perspectives—for example, what would constitute adequate evidence or documentation that a tax position is probable. We believe that obtaining such input in advance of issuance, and modifying the final Interpretation to reflect such input, will facilitate a smooth implementation of the Interpretation by financial statement preparers.
2. We are uncertain whether “should prevail” is a well-defined term among tax practitioners. To ensure consistent application, we recommend that the Board consult with tax practitioners to develop a definition of the term. More broadly, we think it would be helpful to the Board’s constituents if the final Interpretation also discussed the four thresholds in the Internal Revenue Service literature (more likely than not, substantial authority, realistic possibility, reasonable basis) and how those thresholds relate to the Interpretation’s recognition and derecognition thresholds. Similarly, we recommend that the Board explain the relationship of the term “obviously presented” in paragraph 9.c. to the similar term commonly used by U.S. tax practitioners, “adequately disclosed.”

3. We believe the Board should expand the benefits and costs discussion. Practice is diverse, and users of financial statements will benefit from a more consistent application of Statement 109 and greater comparability among enterprises. However, the costs will be substantial:

- New procedures, controls, and documentation. With respect to documentation, entities may feel that they need to obtain more “should-prevail” opinions, thereby driving up costs.
- Potential additional tax payments, if tax authorities are able to use the GAAP financial statements and supporting documentation to more effectively identify uncertain tax positions.

We also recommend that the discussion of benefits and costs be expanded to discuss the Board’s analysis with respect to private entities (including not-for-profit entities with respect to unrelated business tax). Such entities, for which comparability is less of an issue than for public entities, may lack adequate staff to apply the provisions of this Interpretation and may incur relatively more significant costs hiring outside experts for assistance. In addition, to the extent the principals of private entities are already knowledgeable about the entity’s uncertain tax positions, so that they gain no insights from the new accounting requirements, the benefits are smaller.

4. We believe foreign private issuers who reconcile to US GAAP and who recently adopted IFRS need more time to implement the proposal. In some countries, for example, the United Kingdom, tax law and financial reporting are more closely aligned than in the United States. The treatment of an item for financial reporting purposes is used for income tax purposes unless tax law provides for a different treatment. The first-time adoption of IFRS in those countries creates significant uncertainties about the income tax treatment where IFRS differs from the local GAAP that was historically accepted for income tax purposes. It is unclear whether the tax authorities will follow the IFRS treatment, because that is the treatment for financial reporting purposes and tax law provides no other treatment, or whether the historic local GAAP treatment continues to apply for
income tax purposes. Adoption of IFRS is too recent for these countries to have any framework for making informed probability assessments. As a result, we believe the Board should provide a delayed effective date for foreign private issuers who (1) reconcile to US GAAP and (2) recently adopted IFRS.

We would be pleased to discuss our comments with the Board or FASB staff. Please direct questions to Ben Neuhausen, National Director of Accounting, at 312-616-4661.

Very truly yours,

s/ BDO Seidman, LLP