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

Dear Ms. Bielstein:

The Accounting Standards Executive Committee (AcSEC) of the American Institute of Certified Public Accountants is pleased to offer comments on the FASB's July 14, 2005, exposure draft (ED) of a proposed Interpretation, Accounting for Uncertain Tax Positions — an Interpretation of FASB Statement No. 109. We provide, in the following order, overall comments on the exposure draft, specific comments on the eleven issues in the Notice for Recipients of This Exposure Draft, and other comments.

Overall Comments

AcSEC is generally supportive of the proposed Interpretation because it believes there is a need to address diversity in practice that currently exists in relation to accounting for income taxes. AcSEC believes that addressing such diversity through disclosure alone would be inadequate for purposes of reducing noncomparability, and that a greater level of uniformity in the recognition and measurement of the effects of uncertain tax positions is needed. AcSEC understands the concerns of those who perceive that the proposed Interpretation would provide a "road map" for taxing authorities. AcSEC believes, however, that the benefits to users from the issuance of the proposed Interpretation outweigh such concerns.

As discussed in further detail in the responses to Issues 1 through 11 below, AcSEC has certain suggestions to improve the model developed by the FASB, address what we perceive as an impractical effective date, and provide additional clarity.

Comments on the Issues in Notice for Recipients of This 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?

AcSEC agrees 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. However, AcSEC believes including business combinations in the scope presents a unique transition issue, as further discussed in the response to Issue 11.

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?

AcSEC agrees, for the reasons articulated in the proposed Interpretation, that an entity should not consider detection risk for purposes of recognition and measurement related to a tax position.

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?

AcSEC believes the appropriate threshold for the initial recognition of benefits from uncertain tax positions is the probable threshold. AcSEC recognizes that the probable threshold for recognition of a tax position is not consistent with the more-likely-than-not threshold for impairment of deferred tax assets under paragraph 17(c) of Statement 109. However, AcSEC understands that the probable threshold in the proposed Interpretation relates to existence and initial recognition as compared to the more-likely-than-not threshold in Statement 109, which relates to realizability of deferred tax assets that have already met the probable threshold for recognition. AcSEC understands further that the more-likely-than-not threshold in Statement 109 was an integral part of the compromise leading to the issuance of Statement 109. Although AcSEC is not uncomfortable with the inconsistency, AcSEC recognizes that others may express different sentiments to the Board. Because AcSEC supports the probable threshold, AcSEC recommends that if the Board determines that the inconsistency requires resolution, a change in the Statement 109 valuation allowance threshold would be preferable to a change in the probable threshold of the proposed Interpretation.

AcSEC recommends that the proposed Interpretation provide additional guidance on its impact on an entity’s balance sheet. In particular, AcSEC recommends that additional
guidance be provided on whether and when to record a liability versus reduce a receivable or a deferred tax asset to reflect a difference between an as-filed position and a financial statement position considered probable of being sustained. To this end, the Board may wish to consider (1) including a final balance sheet in the example in paragraphs A22 and A23 and (2) providing one or more additional examples illustrating different balance sheet outcomes.

AcSEC agrees that a valuation account should not be used as a substitute for derecognition. AcSEC also agrees 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, AcSEC advocates a "probable loss" threshold rather than the more-likely-than-not derecognition threshold of the proposed Interpretation. A threshold that derecognizes an asset when it is probable that a loss will be sustained is consistent with the concept of a loss contingency for income taxes as discussed in paragraph 39 of Statement 5. If the final Interpretation requires the use of the more-likely-than-not derecognition threshold, AcSEC believes the final Interpretation should reconcile that threshold with paragraph 39 of Statement 5. If the Board retains the more-likely-than-not derecognition threshold, it may wish to consider modifying the example in paragraph 39 of Statement 5 to be one of sales taxes rather than income taxes. Absent such reconciliation or modification, AcSEC believes there will be confusion regarding the accounting for income taxes under Statement 5 versus under the proposed Interpretation.

**Paragraph 9(c)**

With respect to demonstrating a probable level of confidence as discussed in paragraph 9, AcSEC believes that the consideration presented in item (c), as written, may be inconsistent with the concept of excluding detection risk in determining whether a tax position is probable of being sustained. The fact that taxing authorities have not disallowed or challenged an "obviously presented" position in a prior year return may indicate that the taxing authorities either inadvertently overlooked evaluating the position or may have chosen not to evaluate or challenge the position because of a desire to focus on other, perhaps more significant areas within the tax return. Such lack of evaluation or challenge by the taxing authorities appears inconsistent with the presumption in the Interpretation that a tax position will be evaluated by taxing authorities. Additionally, in a situation in which a return has been audited and a specific uncertain tax position was not identified for examination during the audit, AcSEC is not clear on the impact that the statute of limitations being open would have on whether the "probable" threshold is met. AcSEC believes rewording paragraph 9(c) and expanding the discussion in the Basis for Conclusions, perhaps in conjunction with one or more illustrations, would benefit readers in terms of better understanding of the Board's objective of including the consideration in that paragraph.

It is also not clear whether the term "obviously presented" is intended to have the same meaning as the term "adequately disclosed" that is commonly used by U.S. tax practitioners.
Nexus Issues
Paragraph 9(c) raises particular difficulties with respect to nexus issues. Consider two nexus scenarios, one in which a state taxing authority has never objected during examinations to an entity's position that it lacks nexus, and another in which an entity has never filed a return in a state and that state has never examined the entity's nexus situation. Should the two scenarios be evaluated differently in terms of the consideration in paragraph 9(c)? Under the second scenario, if an entity with a 70-75% probability threshold determined a probability of 65% that the entity did not have nexus in a particular state, would the entity be required to record a liability and then maintain it on its balance sheet for an indeterminate period of time (as the statute of limitations does not begin until a tax return is filed)? AcSEC recommends that the final Interpretation include an explicit discussion of how to address nexus issues.

AcSEC also suggests that the Board consider ways to resolve the nexus perpetual accrual issue. For example, the asset recognition approach to recognition of uncertain tax positions taken in the proposed Interpretation (that is, the use of a probable, affirmative initial recognition threshold) can be explained in terms of how it relates to an enterprise that clearly is subject to income tax in a jurisdiction. To the extent that such an enterprise, through the use of tax filing positions, reduces the amount payable to the taxing authority, the enterprise is conceptually in the position of justifying the recognition of an asset and a gain (that is, the reduction in its tax expense). This thought process is based on the assumption that there is no uncertainty about the enterprise being subject to the taxing authority. The nexus issue is caused by uncertainty about whether an enterprise is, in fact, subject to a particular tax jurisdiction. Arguably, the Board could conclude to apply a loss contingency approach to the nexus issue. That is, current and deferred income tax expense would be recognized only for those tax jurisdictions for which it is probable that the enterprise is subject to the tax jurisdiction. Under this approach, disclosures would be required based on the Statement 5 disclosure requirements for unasserted claims. Although this approach does have conceptual issues, they should be balanced with the benefits of resolving the perpetual accrual issue.

Unit of Account
AcSEC struggled with the operationality of the unit of account concept in the proposed Interpretation. AcSEC notes that 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). AcSEC believes that the concept as presented in the proposed Interpretation has the potential to result in inappropriate diversity in application, and that the concept is sufficiently unfamiliar and important that the final Interpretation should discuss it in more detail when it is first introduced, explain its use in the Basis for Conclusions, and illustrate it with additional examples.

As an illustration of AcSEC's concerns, AcSEC believes the unit of account presented in the R&D project example in Appendix A (paragraphs A2 through A11) may be better expressed in terms of cost centers or types of costs rather than by R&D projects in their entirety. Enterprise A may perceive that the tax position related to direct R&D costs for its four projects is not uncertain, but that the tax position related to executive salary costs
allocated to projects is uncertain. Enterprise A may believe its unit of account should be
determined in terms of what segment of a deduction it believes is separately
challengeable by taxing authorities, which in R&D arrangements is likely to be costs as
opposed to the project.

Additionally, AcSEC is unclear how the unit of account concept would interact with the
best estimate concept discussed in paragraph 12. Assume that the four R&D projects
were instead one project viewed as a single unit of account. If the difference between the
best estimate amount and the amount expected to be claimed on the tax return 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 and increase “granularity” by, for example, looking at cost centers?
AcSEC believes that such reassessment is reasonable and appropriate and recommends
that it be addressed in the Interpretation, at a minimum in conjunction with paragraph 12.
Illustrative examples here would also be helpful.

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?

AcSEC agrees 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.

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 response to Issue 3.

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?

AcSEC is unclear in the determination of “best estimate” under paragraph 11 whether a best estimate could be an amount that is less than probable of occurring. The first sentence of paragraph 11 states that for a tax position that meets the probable recognition threshold, the benefit should be measured as the “best estimate of the amount that is probable of being sustained” (emphasis added). Yet the second sentence in the paragraph states that, consistent with FASB Concepts Statement No. 7, Using Cash Flow Information and Present Value in Accounting Measurements, the best estimate is “the single most-likely amount in a range of possible estimated amounts” (emphasis added). In addition, paragraph B28 notes, “The best estimate is not a probability-weighted or expected-value approach; rather, a best estimate represents the single most likely amount in a range of possible estimated amounts.”

AcSEC struggled to reconcile the probable and possible concepts in paragraph 11 and B28 and believes the following example illustrates its confusion with the best estimate approach.

Assume it is probable that a charitable deduction will be sustained, but that an 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 uses a 70-75% threshold for “probable.” Whereas $40 is the most likely outcome, and thereby apparently the “best estimate,” AcSEC questions whether it is appropriate to record a tax benefit of $40 when that benefit has only a 30% chance of being sustained. It can be argued that $10 is the best estimate because the entity is most confident (100%) that at least $10 will be sustained versus the other possible amounts. It can also be argued that $15 is the best estimate because it has the higher probability of the two amounts, $10 and $15, that are probable of occurring. AcSEC elected not to debate the relative merits of the three “best estimates” it believes readers could reasonably interpret based on paragraph 11 as currently worded, but instead recommends the Board ensure paragraphs 11 and B28 are clear and unambiguous as to which alternative the Board believes is appropriate. AcSEC further recommends the inclusion of illustrative examples such as the above. The Board may wish to consider including in the Basis for Conclusions a discussion of the three alternatives and why the Board chose the alternative that the final Interpretation requires. Such discussion could also include
reasons for additional plausible but rejected alternatives (for example, a probability-weighted average of possible estimates, or the estimate of the amount an entity believes that a taxing authority would “settle on” during an audit).

**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?

AcSEC does not object to the Board’s conclusions on classification. The Board may wish to consider adding a discussion in the Basis for Conclusions as to whether these conclusions 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?

AcSEC agrees with paragraph 16 of the proposed Interpretation with respect to a tax position taken in a prior annual period. However, AcSEC believes that paragraph 16 may be conceptually inconsistent with paragraphs 19 and 20 of APB Opinion No. 28, *Interim Financial Reporting*, with respect to changes in judgment regarding tax positions related to the current year. Paragraph 16 of the proposed Interpretation states, “The financial statement impact of a change in judgment that results in subsequent recognition, derecognition, or change in the best estimate of a tax position taken in a prior interim or annual period (including any related interest and penalties) shall be recognized entirely in the interim period in which the change in judgment occurs” (emphasis added). Paragraph 19 of Opinion 28 requires enterprises to, at the end of each interim period, make their best estimate of the effective tax rate expected to be applicable for the year and to then use that tax rate in providing for income taxes on a current year-to-date basis. That paragraph requires also that “the effective rate should reflect anticipated investment tax credits, foreign tax rates, percentage depletion, capital gains rate, and other available tax planning alternatives.” Accordingly, AcSEC recommends that changes in judgment regarding tax positions related to the current year be included in the computation of the annual expected tax rate rather than being recognized entirely in the interim period in which the change in judgment occurs.
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?

AcSEC is split on the Board’s conclusions on recognition of interest and penalties. Some AcSEC members agree with the proposed Interpretation’s provisions in paragraph 17 on accrual of interest and penalties. Other AcSEC members believe interest and penalties should be accrued only on amounts that are determined to be probable of being paid. AcSEC observes that the provisions of the proposed Interpretation could result in an entity accruing interest and penalties in situations in which it does not believe they will ever be paid or qualify as a liability. Assume, for example, that an entity using a 70-75% probability threshold for recognition records a liability for a tax position taken that the entity estimates has only a 60% probability of being sustained. In this situation, the proposed Interpretation requires that this entity record accrued interest payable that the entity believes it has only a 40% chance of ever being obligated to pay. Such a result appears inconsistent with Statement 5’s prohibition against recognizing a loss that is less than probable of occurring. AcSEC members disagreeing with paragraph 17 believe further that the accrual of interest is fundamentally different than deferred recognition of a benefit (the asset recognition model in this proposed Interpretation).

Those AcSEC members who agree with paragraph 17 believe that the costs of applying Statement 5 concepts to accrued interest and penalties—namely, an increase in the complexity of the accounting (for example, bifurcating a tax liability into a portion probable of being paid and a portion not probable of being paid)—are outweighed by the benefits of the relative simplicity of the application of paragraph 17.

AcSEC believes that for purposes of comparability, the final Interpretation should address the classification of interest and penalty costs on the income statement—specifically, whether each should be classified as interest expense or tax expense. If the Board chooses not to address which classifications are appropriate, AcSEC supports requiring disclosure of an entity’s classification policy because AcSEC believes users would find the information valuable and useful (for example, in computing debt coverage ratios).

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?

AcSEC agrees that the disclosures pursuant to the proposed Interpretation should be those required under Statement 5. Some AcSEC members believe that the Interpretation should stand on its own and the Statement 5 disclosure requirements should be included in the Interpretation without reference to Statement 5. AcSEC recommends that the Interpretation provide illustrative examples of disclosures in order to facilitate readers' understanding of scenarios such as:

1. Loss contingencies – An entity with a 70-75% probable threshold accrued a tax receivable because it was 75% probable of being sustained, and the probability subsequently is reassessed at 60%. Is the entity required to disclose, under Statement 5, a “reasonably possible” loss contingency whenever a recognized benefit falls below the probable-of-being-sustained threshold?

2. Gain contingencies – The same entity takes two deductions on the tax return that the entity believes have a 51% probability and a 69% probability, respectively, of being sustained, and under the Interpretation the entity accrues a liability related to each deduction. Should the entity disclose a gain contingency, under Statement 5, for all of its more-likely-than-not tax positions, for only those more-likely-than-not tax positions (e.g., 69%) that are close to the probable threshold, or for none of its more-likely-than-not tax positions?

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?

Although AcSEC is supportive of the FASB’s standard setting action on uncertain tax positions, AcSEC believes the proposed effective date is not practical. Because entities will need to consider tax positions in all domestic and international jurisdictions based on
the applicable statutes of limitations, the risks associated with filing positions at a level (generally, probable of being sustained versus probable of loss) different than likely maintained in their records today, AcSEC believes the effective date should be delayed to mid or late 2006. Moreover, in view of the difficulty AcSEC perceives there would be in applying the proposed Interpretation mid-year, AcSEC believes the final Interpretation should be effective as of the beginning of fiscal years that start after the effective date.

With respect to transition, AcSEC disagrees with paragraph 20 in one respect. AcSEC believes 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.

AcSEC also questions why an entity that has the historical judgmental evaluations of its tax positions (for example, an entity that has been applying a model similar to the one in the proposed Interpretation) could not adopt the proposed Interpretation through restatement or by the computation of a “true” cumulative effect of a change in accounting in the current period. Under APB Opinion No. 20, Accounting Changes, a cumulative effect adjustment is the difference between the amount of retained earnings reported prior to the change and the amount of retained earnings that would have been reported if the new accounting principle had been applied retroactively for all prior periods. The cumulative effect described in paragraph 20 of the proposed Interpretation is the difference between the tax asset or liability before adoption and the amount of the tax asset or liability based on an analysis of what is not considered probable at the date of adoption. Under the model in the proposed Interpretation, if an entity had a tax position that was originally considered probable but later dropped below probable, but not less than more-likely-than-not, the entity would not necessarily be required to write off the benefits. But at transition, the entity is required to determine what is probable at that date versus what is not probable at that date and adjust its tax asset or liability for the difference. As a result, a company may be required to record a reduction to its tax asset or an increase in its tax liability at transition that would not have been recorded under the “normal” provisions of the proposed Interpretation. So the cumulative effect described in the proposed Interpretation is not the same as a cumulative effect as described in Opinion 20. AcSEC understands that the proposed transition approach is a practical approach and believes it should be permitted; however, if an entity had been applying this same model all along (that is, a model similar to the one in the proposed Interpretation) and had support for its conclusions at the time, AcSEC is unclear why the entity would be required to record an adjustment simply because of the proposed Interpretation’s transition provisions. Also, if an entity can apply retroactively the provisions of the proposed Interpretation, or determine a true cumulative effect adjustment, AcSEC believes the entity should be permitted to do so.
If the Board accepts AcSEC's recommendation to delay the effective date of the proposed Interpretation, AcSEC realizes that Opinion 20 will have been superseded by FASB Statement No. 154, *Accounting Changes and Error Corrections*, before the effective date of the final Interpretation and that Statement 154 requires cumulative effects of changes in accounting be reflected directly to beginning retained earnings. However, as the amount recognized at transition under this proposed Interpretation is not a "true" cumulative effect of a change in accounting as explained above, AcSEC believes that the effect of adopting the proposed Interpretation, even after the effective date of Statement 154, should be reflected through the income statement rather than as a direct adjustment of retained earnings.

**Other Comments**

1. It is not clear to AcSEC that "should prevail" is a well-defined term in either GAAP or recognized tax literature such as the Internal Revenue Code. AcSEC recommends either defining the term, perhaps in a footnote or glossary, or explaining in the Basis for Conclusions the term and its use in the Interpretation.

2. Paragraph 9 examples – The Board may wish to consider including examples of one or more of the four thresholds in the Internal Revenue Service literature (more likely than not, substantial authority, realistic possibility, reasonable basis). If a position was considered to meet one or more of those thresholds, that fact may be able to be used, in conjunction with other information, to support an accounting conclusion.

3. AcSEC recommends that there be a reference to interim periods in paragraph 10 in order to be consistent with the reference to interim periods in paragraph 8. More importantly, AcSEC recommends that the guidance on treatment of changes in judgment be consistent among paragraphs 8, 10, and 16. See our comments on Issue 8 above for AcSEC's recommendation that changes in judgment regarding tax positions related to the current year be included in the computation of the annual expected tax rate rather than being recognized entirely in the interim period in which the change in judgment occurs.

4. Paragraph A16, footnote 9 – AcSEC is unclear why the "no analogy" comment is necessary. There may be other areas of the code that are based on an arm's-length pricing principle, and it is unclear why the example in paragraph A16 could not be applied to those areas.

5. Paragraph A18 – AcSEC recommends that references to auditing, as in the use of the word "auditable," not be introduced into this Interpretation. Such use in paragraph A18 begs the question of why the term is not used elsewhere in the accounting literature (as well as the question of whether the audit being referred to via the term is one relating to the financial statements or the tax return). It is unclear how to distinguish assumptions that are reasonable, supportable, and auditable from assumptions that are merely reasonable and supportable (note that paragraph A21 uses the words "reasonable and supportable" but not the word
“auditable”), and AcSEC does not believe this Interpretation is the optimal venue for such distinctions to be made. For example, how “auditable” is the fair value of a privately issued equity security?

6. Paragraph A20, last sentence, and paragraph A21, first sentence – Should the word “recognize” be replaced by the word “measure”?

7. With respect to the last sentence in paragraph B19, AcSEC recommends that two clarifications be made. If a legal advisor provides a more-likely-than-not opinion on the sustainability of a tax position, that opinion does not necessarily imply that, for financial statement purposes, the position is not probable of being sustained. Conversely, if a legal advisor provides a should-prevail opinion, that does not necessarily imply that, for financial statement purposes, the position is probable of being sustained. The legal advisor’s opinion serves as an input into the entity’s decision about the sustainability of a given tax position but is not necessarily determinative.

8. Paragraph B29, first sentence – Reference to paragraph 27 is apparently to paragraph B27, but it is unclear if that is the intended reference because there is no tax benefit “described” in paragraph B27.

9. Paragraph B29, second sentence – It is unclear why the particular disputable issue of valuation assumptions is being singled out in this paragraph as not necessarily calling into question the conclusion that the probable recognition threshold has been met. It is also unclear whether this is an example, or a conclusion in and of itself. If it is an example, it would be helpful if the text clarified as such. If it is not an example, it seems more like a conclusion in and of itself rather than a basis for a conclusion.

10. The heading “Disclosure” before paragraph B40 should be plural, to match the heading before paragraph 18.

11. Paragraphs B44, B45 – AcSEC discussed how the Interpretation may result in entities perceiving that they will need to obtain more should-prevail opinions, thereby driving up the entities’ costs. In view of this and other costs of implementation, AcSEC recommends that the section on costs versus benefits be expanded to discuss the Board’s considerations of the amount and type of documentary support it expected with respect to routine deductions, as well as how the demands of regulators and other relevant parties (for example, peer reviewers) for documentation were considered.

12. Paragraphs B44, B45 – AcSEC recommends that the section on costs versus benefits be expanded to discuss how costs and benefits were weighed specifically with respect to private entities (including not-for-profit entities with respect to unrelated business tax) and smaller public entities. Such entities, for which comparability may be less of an issue than for larger public entities, may lack
adequate staff or financial resources to readily apply the provisions of this Interpretation and may therefore place greater reliance on and incur greater fees from their outside accountant for assistance in the implementation and ongoing compliance.

13. Paragraph B47 – Should the parenthetical “(including interest)” instead be “(including interest and penalties)”? Also, in that paragraph, it may be helpful to readers to indicate, perhaps via footnote, what is meant by “listed” transactions.

14. General – There are a number of references in the proposed Interpretation to various pronouncements that do not reference specific paragraphs in those pronouncements. It would be helpful to readers if specific paragraph references were provided. Paragraphs in which AcSEC believes specific paragraph references to pronouncements may be helpful include but are not limited to 15, B31, and B33. Additionally, when referencing the more-likely-than-not criterion of Statement 109, it may be helpful to readers to include an appropriate paragraph reference.

15. Because of the changes in practice that would potentially result from issuance of a final Interpretation, we recommend that prior to issuance the Board obtain input, if it has not already done so, from representatives of the PCAOB, Auditing Standards Board, and perhaps applicable teams of the AICPA. The objective would be to gain a better understanding of the implications of the Interpretation from their perspectives—for example, with respect to what would constitute adequate evidence or documentation that a tax position was probable or more likely than not. We believe that obtaining such input in advance of issuance, and possibly modifying the final Interpretation to reflect such input, will facilitate implementation of the Interpretation by financial statement preparers, assist preparers in establishing adequate internal controls over these new accounting judgments, and enable the Board to more fully assess the costs and benefits associated with the Interpretation.

We appreciate the opportunity to comment on the exposure draft. Representatives of AcSEC would be pleased to discuss our comments with the Board members or staff.

Sincerely,

Ben Neuhausen, Chair
Accounting Standards Executive Committee

Rich Jones, Chair
Uncertain Tax Positions Task Force