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**Crowe Chizek and Company LLC**  
Member Horwath International

330 East Jefferson Boulevard  
Post Office Box 7  
South Bend, Indiana 46624-0007  
Tel 574.232.3992  
Fax 574.236.8692  
www.crowechizek.com

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401 Merritt 7  
PO Box 5116  
Norwalk, Connecticut 06856-5116

We are pleased to provide the following comments on a proposed Interpretation "Accounting for Uncertain Tax Positions."

Issue 3 and 5. Dual Threshold.

We prefer using one consistent threshold rather than two and we prefer this Interpretation be consistent with Statement No. 109.

After this Interpretation has been in effect for several years, there will be inconsistent treatment of otherwise-identical tax positions depending on whether the "probable" test was initially met. Paragraph 6 indicates the benefit of a tax position is recognized when it is "probable" of being sustained on a tax audit. However, paragraph 10 indicates a recognized benefit is derecognized when it is "more likely than not" that it would not be sustained on a tax audit. Consider two identical tax positions, one arising in year 1 and the next in year 2. In year 1, the tax position was considered probable and so a benefit was recorded. Events in year 2 have reduced the likelihood, so now the same tax position that arises in year 2 is only considered more likely than not and the tax position that arose in year 1 is similarly downgraded from probable to more likely than not. This results in inconsistent treatment, as at the end of year 2, the tax position arising in year 1 remains recorded at some amount, while the same tax position arising in year 2 cannot be recorded at any amount.

This Interpretation's prohibition against recording a gross benefit for a tax position that is less than probable is inconsistent with Statement No. 109's requirement to use a "more likely than not" concept to record a net operating loss at a gross amount reduced by a valuation allowance to the extent considered necessary. Statement No. 109 requires disclosing a gross asset and the valuation allowance for all temporary differences and carryforwards regardless of probability of realization, whereas this Interpretation requires reporting no asset and no valuation allowance if the tax position is less than probable. The realization of a tax benefit for a net operating loss

at a given company may be viewed as less than probable, but as long as realization is more likely than not, such a benefit may be recorded according to Statement No. 109. This Interpretation states the tax benefit for a tax position at the same company and at the same level of probability as the net operating loss (only more likely than not) is neither recorded as an asset net of a valuation allowance nor disclosed as a gross asset and a valuation allowance. Further, the amount of the net operating loss may itself include tax positions taken in filing the tax returns showing the amount of the net operating loss.

Additionally, using a recognition threshold of "probable" for each individual tax position will lead to a worst-case position. In practice there will likely be numerous tax positions to evaluate at each company. Assume for discussion that "probable" is set at 80% likelihood. Any tax position initially with an 80% or greater likelihood would show a benefit as long as the tax position stays at 50% likelihood or greater (below 50% is the "more likely than not" level that the position would not be sustained on audit). Any tax position not above 80%, even if 60% likely, would be ignored. Thus, two tax positions each of \$100, with one at 45% probability and the second at 60%, would be recognized at \$0, whereas the best estimate for the benefit of the \$200 in the two tax positions is \$105. We suggest the best unit of measurement is all tax positions taken or expected to be taken on the return, with each individually assessed as its individual probability and with all individual assessments added to arrive at the total best estimate, instead of the approach in the Interpretation of only recording a benefit for individual assessments that are each considered probable.

For the reasons given above, we suggest that this proposed Interpretation will be difficult to work with, will provide inconsistent and non-comparable reporting, and will present an inaccurate view of what is most likely to happen.

#### Issue 4. Whose Judgment.

Paragraph 12 requires determining whether the probable recognition threshold has been met as "a matter of professional judgment". We believe "professional judgment" is an auditor-centric term. This Interpretation must be applied by preparers of financial statements who may not be deemed to be members of a profession, and thus the language should be revised.

#### Issue 6. Best Estimate or Average of Various Estimates.

We note that paragraph 11 indicates that the amount of a tax benefit recognized is "the best estimate of the amount..." and is "the single most-likely amount in a range of possible estimated amounts". We note other recent FASB Statements require use of a weighted-average of possible outcomes instead of a single most-likely amount. For example, paragraphs A15 and A27 of Statement No. 123R indicate that the option valuation models used for stock options are based on a weighted-average of various possible assumptions and therefore outcomes. Paragraph 15 of Statement No. 114 calls for considering the likelihoods of the possible outcomes, rather than using a single best estimate. The single most-likely amount may not agree to a weighted average of possible outcomes for a tax position that considers full disallowance, various partial disallowances, and no disallowance. Why is there an apparent inconsistency among the Statements and this Interpretation as to whether a single most-likely amount or a weighted average of possible amounts is to be used?

Issue 6. Evidence Required.

The types of evidence provided in paragraph 9, while not all-inclusive, essentially boil down to one item for many companies, including many smaller companies--obtaining a "should prevail" opinion from a qualified expert. As to the other examples of evidence that are cited, tax law is often ambiguous, a tax examination on similar positions may have not been conducted especially at many smaller companies that are not regularly audited, and favorable litigation precedent may not exist especially since many tax matters are lengthy. We suggest this Interpretation provide other examples of suitable support.

We also note that the last sentence of paragraph 9 appears circular. It states that a significant difference between what the company records and its tax position in the tax return "is opposing evidence". However, a significant difference between what is recorded and what is in the tax return indicates that a judgment already has been made that the evidence does not support recording a full benefit and thus a difference is created. The results of making such a judgment that creates a difference between what is recorded and what is on the tax return does not provide the evidence about what the judgment should be as to what to record. Perhaps the Interpretation should focus on the underlying factors that lead to the judgment being made, rather than to the judgment itself.

Issue 9. When Interest is Incurred.

It's not clear when interest is to be accrued. The language in paragraph 17 and B39 states interest is recorded when it is "deemed to have been incurred". It is unclear whether this is the time period between when the return is originally filed and when an underpayment is determined, or whether this is when the underpayment is determined. If the former, this means that the company is accruing interest regardless of the likelihood of its tax returns ever being audited and such interest actually being assessed. Further, the interest accrued is not a best-estimate of the interest to be assessed but is closer to a worst-case, as only probable tax positions are considered in determining the difference between the financial statements and the amount reported on the return. This gives no consideration that "more than likely" and "not more than likely" tax positions have a probability of succeeding in reducing tax. It's Statement No. 5 but accruing the highest-end of the range of loss, not the lowest-end.

Issue 10. Future Tax Positions.

At the time year-end financial statements are issued, it may be a full six months or more until the federal and state income tax returns for that period are completed and filed. Thus, it may be difficult to fully provide the disclosure called for by paragraph 18 about expected tax positions to be taken on the income tax return, as the positions on the income tax returns are not necessarily known at the issue date of the financial statements. We suggest paragraph 18 be revised to provide users with separate disclosures of already-filed tax positions and anticipated tax positions.

Issue 11. Restatement Not Permitted.

We note that the Board issued Statement No. 154 several months ago. In Statement No. 154, the Board required that a change in accounting principle should be reported by retrospective application unless it is impracticable to determine the period-specific effects, or unless a new standard prescribes a method other than retrospective application. This proposed Interpretation prohibits what it calls retroactive application due to concerns about the verifiability of retroactive application. If the Board continues to believe Statement No. 154 is the right answer for changes in accounting principles when the effects of a change are determinable and is robust enough in its guidance as to what to do if period-specific effects are not determinable, it should revise this Interpretation to follow what the Board recently stated in Statement No. 154 was the preferable way to report.

Issue 11. Effective Date.

The proposed Interpretation likely represents a dramatic change in how companies are to determine and report income tax expense, and we believe it will take a substantial amount of time to implement. Implementation will, in many cases, require obtaining the expert tax opinions or other increased support required by paragraph 9, and will require reevaluating all tax positions under the new requirement that a tax audit is to be assumed. We question whether all companies can understand, adopt, and implement such changes in, for most of them, the next 3 1/2 months. Also, adoption of the Interpretation will likely affect the design and operation of internal controls over financial reporting in this area, and companies are likely to need time to design, make, operate, and test the changes in their controls and procedures. We suggest the effective date should be the end of the first fiscal year ending after December 15, 2006.

If you have any questions, please contact Jim Brown.

Very truly yours,

*Crowe Chizek and Company LLC*