



STATE STREET.

Letter of Comment No: 52
File Reference: 1215-001
Date Received: 9/12/05

September 12, 2005

Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO BOX 5116
Norwalk, CT 06856-5116

Re: File Reference No. 1215-001, Proposed Interpretation, Accounting for Uncertain Tax Positions; an interpretation of FASB Statement No. 109

Dear Technical Director:

State Street Corporation appreciates the opportunity to submit this comment letter in response to the Proposed Interpretation of FASB No. 109, *Accounting for Uncertain Tax Positions*.

State Street Corporation is a financial holding company organized under the laws of the Commonwealth of Massachusetts. State Street, through its subsidiaries, provides a full range of products and services for sophisticated investors worldwide. With \$9.50 trillion of assets under custody and \$1.35 trillion of assets under management as of December 31, 2004, State Street is a leading specialist in meeting the needs of investors worldwide.

We appreciate the FASB's effort to increase comparability in financial reporting of income taxes; however, this document proposes a significant change to existing practice, and we do not believe it should be implemented in its current form. We hope that the Board will carefully consider the comments it receives before issuing a final pronouncement.

Asset Recognition versus Loss Contingency Approach

The FASB has proposed a two-step approach to the recognition of uncertain tax benefits under which a probability threshold is applied to the recognition of an asset. Alternatively, we believe that a contingent liability approach should be utilized, where the probability threshold is applied to a loss contingency. We believe that the loss of a reported tax position should be evaluated as an unasserted claim or contingent liability and therefore the standards of SFAS No. 5, *Accounting for Contingencies* ("SFAS No. 5"), should apply. Ordinarily, a tax position is a tax benefit.¹ In a self-assessment tax system, the filing of a

¹ Footnote 2 to the Proposed Interpretation: "A tax position ordinarily would relate to a tax benefit."

valid tax return establishes the enterprise's tax position. The tax position put forth by the enterprise can be challenged by the tax authority; accordingly, we believe that the most apt characterization of tax risk is that of an unasserted claim or a contingent liability that should be evaluated in the same manner as other loss contingencies under SFAS No. 5. SFAS No. 5 would require that the loss of the tax position be accrued when the loss is probable and can be reasonably estimated. A position would be evaluated against these criteria when there is evidence of potential loss: a challenge by the tax authority or the position's becoming a listed transaction.

Recognition Threshold

If there is to be a recognition threshold for uncertain tax positions, we believe "probable" is not the appropriate hurdle. The very nature of uncertain tax positions, where the tax law is unclear, is such that these positions often will not support a 70-75% confidence level. That does not mean that the position is valueless, or that a reasonable estimate of the realizable value of the position is not possible. Tax positions are frequently settled at a percentage below 70 – 75%. For this reason, we are concerned that maintaining a "probable" threshold for recognizing uncertain tax positions could result in overstated tax liabilities.

A more appropriate standard for recognition is the "substantial authority" standard articulated in IRS Regulations.² Application of this existing defined standard would forestall recognition of highly aggressive or frivolous positions and allow the enterprise's financial reporting to reflect reasonable assessments of its tax exposures.

Dual Threshold

We do not support the dual threshold approach proposed for the recognition and derecognition of uncertain tax positions. This approach could lead to lower comparability in the financial statements for an entity from one period to another and lower comparability across entities. For example, if a recognized uncertain tax position changes from probable to more likely than not of being sustained, an entity would not derecognize the benefit. However, it could not recognize that same benefit resulting from an identical future transaction because that uncertain tax position no longer meets the probable confidence level.

We believe that the threshold imposed by the FASB for the recognition of uncertain tax positions should be the same threshold utilized for the derecognition of uncertain tax positions and, as stated above, we believe that "substantial authority" is a more appropriate threshold than "probable."

Effective Date and Transition

We urge the FASB to defer the effective date of this proposal along with the effective date of the FASB Staff Position No. FAS 13-a, *Accounting for a Change or Projected Change in the Timing of Cash Flows Relating to Income Taxes Generated by a Leveraged Lease Transaction*. Paragraph 12 of the FSP indicates that "tax positions shall be reflected in the lessor's calculation based on guidance in a proposed

² Treasury Regulations 1.6662-4(d)

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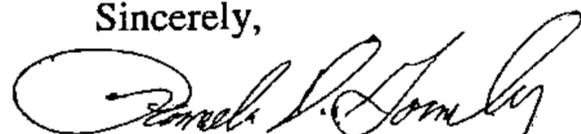
FASB interpretation on accounting for uncertain tax positions.” We believe that these two proposals are connected and therefore, their effective dates should be considered together.

We feel that the proposals as written, due to their complexity, would require a significant amount of evaluation and analysis by State Street in order to determine the impact and necessary adjustments needed in the financial statements. As a result, we believe more time is needed to implement these proposals.

Paragraph 20 of the Interpretation indicates that “only tax positions that meet the probable recognition threshold at the effective date may be recognized or continue to be recognized upon initial adoption of this Interpretation.” If the dual threshold approach is maintained in the final guidance, tax positions that are no longer probable, and become more likely than not of being sustained, would have to be derecognized upon adoption. This result is inconsistent with the prospective accounting under this Interpretation, which only allows derecognition if it becomes more likely than not that the tax position will not be sustained. We urge the FASB to reconsider this conflicting result.

We would like to thank the FASB for the opportunity to be part of the process in developing the Proposed Interpretation. Please contact me at 617-664-7902 if you would like to discuss our comments further.

Sincerely,



Pamela D. Gormley
Executive Vice President and Corporate Controller