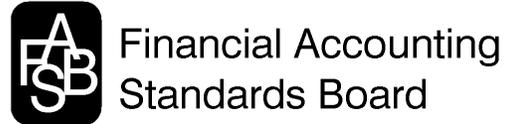


MINUTES



To: Board Members
From: Glotzer (x212) and Yust (x442)
Subject: Minutes of the October 1, 2008 Board Meeting: Applicability of Interpretation 48 to Private Companies **Date:** October 27, 2008
cc: Leisenring, Golden, Stoklosa, Proestakes, Malcolm, Inzano, Mechanick, C. Smith, Yust, Mussat, Gabriele, Posta, Chookaszian, Allen, Klimek, Sutay, FASB Intranet

The Board meeting minutes are provided for the information and convenience of constituents who want to follow the Board's deliberations. All of the conclusions reported are tentative and may be changed at future Board meetings. Decisions become final only after a formal written ballot to issue a final Statement, Interpretation, or FASB Staff Position.

Topic: Applicability of Interpretation 48 to Private Companies

Basis for Discussion: Board Memorandum No. 2 and Appendix

Length of Discussion: 9:00 a.m. to 10:00 a.m.

Attendance:

Board members present: Batavick (by phone), Herz, Linsmeier, Seidman, and Smith
Board members absent: None
Other participants: Leisenring (IASB)
Staff in charge of topic: Glotzer
Other staff at Board table: FASB: Golden, Proestakes, and Mussatt

Summary of Decisions Reached

At the October 1, 2008 meeting, the Board redeliberated the applicability of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, to private entities. The Board reached the following consensuses related to the proposed issuance of one or more FASB Staff Positions on Interpretation 48:

1. **Scope of Interpretation 48:** The Board agreed to retain the current scope of Interpretation 48 so it is still applicable to all entities, public and private, including pass-through entities and not-for-profit organizations.
2. **Guidance for Pass-Through Entities:** The Board agreed to develop application guidance on Interpretation 48 for pass-through entities.
3. **Deferral for Pass-Through Entities:** The Board agreed on a one-year deferral of Interpretation 48 for all private pass-through entities based on the entity's federal income tax status. The Board directed the staff to determine whether the proposed scope of the deferral is viable and will not create unintended consequences.
4. **Disclosure Requirements of Interpretation 48:** The Board agreed to exempt private entities from the disclosure requirements in paragraphs 21(a) and 21(b) of Interpretation 48. The Board agreed that private entities should not be exempt from the other disclosure requirements of Interpretation 48.
5. **Issuance of FASB Staff Positions:** The Board anticipates the issuance of three proposed FSPs related to Interpretation 48.
 - a. The staff will draft a proposed FSP to expose the Board's consensuses related to the deferral of Interpretation 48 for certain private entities (see item 3 above). The proposed FSP would include a request for comments on issues that private pass-through entities have encountered related to Interpretation 48.
 - b. The staff will draft a proposed FSP to expose the Board's consensuses related to the applicability to private entities of certain disclosures required by Interpretation 48 (see item 4 above).
 - c. The Board anticipates that a third proposed FSP will be drafted to provide guidance on the application of Interpretation 48 to pass-through entities.

This proposed FSP will incorporate comments received from the proposed FSP discussed in item 5(a) above.

The Board directed the staff to proceed with drafting the proposed FSPs.

Objectives of Meeting:

The objective of the meeting was to ask the Board to consider whether to provide an exemption, deferral, or any other modifications in FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, for private entities. The objective of the meeting was met.

Matters Discussed and Decisions Reached:

Issue 1: Scope of Interpretation 48

1. Mr. Glotzer stated that there are three alternatives relating to the scope of Interpretation 48 for the Board to consider: (1) exempt all private companies from Interpretation 48 in its entirety, (2) exempt pass-through entities from Interpretation 48 in its entirety, or (3) do not change the scope of Interpretation 48.
2. **Staff Recommendation:** The staff recommended not changing the scope of the Interpretation (alternative 3). The staff believed that all entities, public or private, can have uncertain tax positions, and those uncertain tax positions should be appropriately accounted for. The staff also believed that because of the nature of the relationship between the entity and its outside accountant, the incremental costs to comply with the Interpretation are generally not significant. Additionally, the staff believed that for larger private entities that prepare their own tax returns and financial statements, the incremental costs would not be disproportionately larger for such private companies than for public companies.
3. **Board Vote:** The Board voted to unanimously support the staff's recommendation to not modify the scope of Interpretation 48.

4. **Board Comments:** Mr. Smith questioned how alternative 2 would work if an entity was a pass-through entity for federal tax purposes but was not a pass-through entity for state tax purposes. Additionally, Ms. Seidman questioned whether it would be necessary to complete some guidance related to pass-through entities if the Board decided to support alternative 2. Mr. Glotzer stated that it would be necessary to provide some guidance as to what constitutes a pass-through entity if they were given a scope exemption. He stated that if an entity was not a pass-through entity for state tax purposes, the entity would have to apply the Interpretation for state tax purposes under alternative 2.
5. Mr. Leisenring stated that as long as an entity had any jurisdiction in which it was a tax paying entity and was required to apply the Interpretation, an entity would be subject to the same cost-benefit under alternative 2 as if it had to apply the Interpretation for every tax jurisdiction.

Issue 2: Guidance for Pass-through Entities

6. Mr. Glotzer noted that private company constituents have stated that they are looking for guidance to address basic issues such as when and how the Interpretation applies to pass-through entities if the Board does not entirely exempt these entities from the scope. For example, they questioned whether a pass-through entity should record a liability for an uncertain tax position in a state in which the entity has nexus because any assessment of taxes would be against the owners, not the entity. If a liability was recorded, they asked whether the offsetting debit would be a charge directly to equity or an income tax that would appear on the income statement.
7. Mr. Glotzer stated that the Board previously decided not to issue such guidance because they believed the deferral would provide the AICPA or other CPE providers time to issue the guidance in their materials. However, the staff is not aware of detailed guidance for pass-through entities and has been informed that such guidance would generally have to come from the FASB before third parties would include it in their guidance.

8. **Staff Recommendation:** The staff recommended that the Board develop guidance for pass-through entities because there is confusion about how to apply the Interpretation that may result in diversity in practice.
9. **Board Vote:** The Board unanimously voted to accept the staff's recommendation to provide guidance for the applicability of the Interpretation to pass-through entities. Mr. Smith and Mr. Linsmeier stated that they did not believe such guidance would be very complicated, but they would support the staff recommendation to provide guidance for pass-through entities.
10. **Board Comments:** Mr. Linsmeier questioned whether there would be controversy about how to apply the Interpretation to pass-through entities. Mr. Glotzer stated that he was not aware of any current controversy, but he stated that comments received on the proposed FSP would likely reveal any controversy that existed in practice. He stated that rather than controversy, many constituents simply did not know how to apply the Interpretation to their entities. Mr. Golden stated that the questions were indicative of a larger question: how do you educate the profession?
11. Ms. Seidman stated that she believed that there were some legitimate questions about how to apply the Interpretation for pass-through entities. She also stated that in the future, the Board needed to provide such implementation guidance, rather than relying on third parties to do so.

Issue 2A: Deferral for Pass-through Entities Until the Guidance is Issued

12. **Staff Recommendation:** Mr. Glotzer stated that a related issue is whether the Board should defer the effective date of the Interpretation for pass-through entities. He recommended that the Board defer the Interpretation for pass-through entities because the staff is concerned that pass-through entities may misapply the Interpretation without the related guidance, only to discover that their understanding was incorrect when the guidance is issued at a later date. With a deferral, he noted that the guidance would be in place and could be communicated before pass-through entities would be required to apply the Interpretation.

13. **Board Vote:** Messrs. Herz, Linsmeier, and Smith voted to support a deferral for entities that are pass-through entities for federal income taxes until the guidance for pass-through entities can be developed. Mr. Batavick and Ms. Seidman voted to support a full deferral for all private entities until the guidance is developed. However, Mr. Herz requested that the staff reach out to constituents to see if there were any fatal flaws with the proposed alternative. He stated that if fatal flaws existed, he might be willing to support a full deferral for all private entities.
14. **Board Comments:** Mr. Linsmeier questioned when pass-through entities would be required to apply the Interpretation without a deferral. Mr. Glotzer answered that pass-through entities would be required to apply it to their first set of annual financial statements beginning December 31, 2008, for calendar-year end companies.
15. Mr. Linsmeier and Mr. Smith stated that they were reluctant to grant a deferral to pass-through entities when the Board had already previously granted a deferral to give such entities sufficient time to learn that the Interpretation was applicable to them so that the entities could apply the Interpretation. Additionally, Mr. Linsmeier stated that he believed that if all private companies had made a forthright effort to apply the Interpretation, these issues could have come to the Board and been addressed previously.
16. Mr. Smith stated that the deferral should be determined by the pass-through status only. An entity that is a federal S corporation but a state C corporation would still be required to apply the Interpretation at the state tax level. However, Mr. Golden stated that it may be difficult for a federal S corporation to figure out if it has pass-through status in every state in which it has nexus in order to figure out its eligibility for the deferral.
17. Ms. Seidman noted that issuing the guidance in the fourth quarter would make it difficult for many pass-through entities to learn the guidance prior to issuing their year-end financial statements because of the education cycle for private entities. Accordingly, she supported the need for a deferral for pass-through entities.

However, she stated that private company users were generally supportive, but not enthusiastic, about the Interpretation. She did not think it was urgent for all private companies to apply the Interpretation at this time. For simplicity, she would support a deferral for all private entities until the guidance for pass-through entities is developed and the disclosures are modified. She also stated that unless the Board was able to develop a crystal-clear scope of which entities the deferral would apply to, the Board could add to the confusion for pass-through entities by only partially deferring the Interpretation for private entities. Similarly, Mr. Batavick believed that a partial deferral would add too much complexity.

18. Mr. Herz stated that he believed that the most difficult question was the interaction of a federal pass-through status and potential nexus with varying states. Accordingly, he proposed an alternative deferral in lieu of granting the deferral for all private entities. He proposed deferring the Interpretation for an entity that was a pass-through entity at the federal income tax level. For example, if an entity was a federal pass-through entity and had a C corporation subsidiary, the subsidiary would still have to apply the Interpretation for its standalone financial statements. However, the S corporation would not apply the Interpretation to its consolidated financial statements.

Issue 3: Amendments to Disclosure Requirements for All Private Entities

19. Mr. Glotzer stated that based on discussions with private company financial statement users, all users agreed that disclosure relief was necessary for private companies. However, the staff believed that certain disclosures should not be difficult or costly for private company preparers to provide or are necessary for private company users.
20. **Staff Recommendation:** Based on conversations with private company users, the staff does not believe that the information about unrecognized tax benefits in paragraphs 21(a) and 21(b) are cost effective or decision useful. Accordingly, the staff recommended that these disclosures be deleted for private companies. However, the staff recommended that the remainder of the disclosures be retained.

21. **Board Vote:** The Board voted to unanimously support the staff's recommendations for the disclosure modifications for private entities.
22. **Board Comments:** Ms. Seidman clarified that the disclosures would not apply to pass-through entities during the deferral period.

Issue 3A: Deferral for All Private Entities if Disclosure Requirements are Modified

23. Many private company constituents request an additional deferral for all private companies. The staff stated that a related question was whether the Board should grant an additional deferral to all private entities to provide the Board with adequate time to amend the disclosure requirements.
24. **Staff Recommendation:** The staff does not recommend the deferral for all private companies since the staff believes that amendments to the disclosures can be provided in a timely fashion.
25. **Board Vote:** The Board voted to unanimously support the staff's recommendations for the disclosure modifications for private entities.
26. **Board Comments:** Mr. Golden stated that a deferral would not be necessary because the staff was proposing to make the Interpretation easier to apply, rather than more difficult. Mr. Linsmeier agreed and stated that the Board needed to finalize the disclosure amendments before private companies had to provide the full disclosure requirements in their annual financial statements.

Issue 4: Comment Period and Project Plan

27. **Staff Recommendation:** Since the Board decided to issue a deferral for pass-through entities only, the staff requested direction on how to proceed for the project and what comment periods the Board believed were appropriate. Mr. Glotzer stated that it may be appropriate to have a longer comment period for the pass-through implementation guidance to address any other problems pass-through entities could encounter when applying the Interpretation. On the other hand, Mr. Glotzer stated

that the staff recommended a shorter comment period for the deferral and the disclosure amendments.

28. **Board Vote:** The Board unanimously voted to issue three FSPs related to the project: (a) an FSP proposing a deferral and requesting information about issues related to pass-through entities with a 30-day comment period, (b) an FSP that amends the disclosure requirements, and (c) a subsequent FSP that would provide the implementation guidance for pass-through entities.
29. **Board Comments:** Mr. Linsmeier agreed that a separate FSP should address implementation issues for pass-through entities to provide additional time for comments to be provided. He also noted that the final guidance for pass-through entities would need to be effective in time to be included in the private company education cycle materials.
30. Mr. Herz proposed issuing three FSPs: (a) an FSP proposing a deferral and requesting information about issues related to pass-through entities with a 30-day comment period, (b) an FSP that amends the disclosure requirements, and (3) a subsequent FSP that would provide the implementation guidance for pass-through entities.

Follow-up Items:

None.

General Announcements:

None.