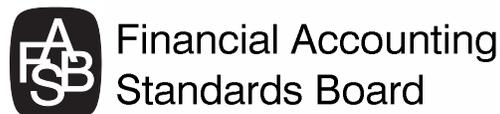


MINUTES



**To:** Board Members  
**From:** Rhine (Ext. 296)  
**Subject:** Minutes of the February 7, 2007 Board Meeting: Implementation Guidance on Interpretation 48 **Date:** February 14, 2007  
**cc:** FASB: Bielstein, Leisenring, Smith, Golden, Lott, Paul, Beswick, Rhine, Polley, Petrone, MacDonald, Gabriele, Sutay, Carney, Chookaszian, Glotzer, Allen, Attmore, Bean, 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 or Interpretation.*

Topics: Implementation Guidance on Interpretation 48

Basis for Discussion: Board Memorandum No. 1

Length of Discussion: 9:20 a.m. to 9:40 a.m.

Attendance:

Board members present: FASB: Herz, Batavick, Crooch, Linsmeier, Seidman, Trott, and Young  
IASB: Leisenring

Staff in charge of topic: Beswick

Other staff at Board table: Smith, Golden, Paul, Rhine

Summary of Decisions Reached:

The Board directed the staff to proceed to a draft of a proposed FSP to amend FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, for vote by written ballot. The amendment would state that a tax position is considered to

be effectively settled through examination when all of the following conditions have been satisfied:

1. The taxing authority has completed its examination
2. The enterprise does not intend to appeal or litigate any aspect of a particular tax position for the completed examination
3. Based on a taxing authority's widely understood policy the enterprise considers it highly unlikely the taxing authority would subsequently examine or reexamine a particular tax position once the examination process is completed.

A tax position does not need to be specifically reviewed or examined by the taxing authority to be considered effectively settled.

Objectives of Meeting:

The objective of the meeting was for the Board to consider implementation guidance for Interpretation 48.

The objective was met.

Matters Discussed and Decisions Reached:

1. Mr. Beswick stated that at its January 17, 2007 meeting, the Board decided not to delay the effective date of Interpretation 48. The Board requested that the staff research whether it is possible to provide implementation guidance relating to issues surrounding the definition of "ultimately settled" in paragraph 10(b) and, if so, to prepare a draft of that possible guidance for the Board's consideration.
2. Mr. Beswick noted that the staff received inquiries regarding the definition of ultimate settlement and its application to various fact patterns. The staff's previous answer to the inquiries was that the determination of ultimate settlement is based on facts and circumstances. The staff had previously observed that the closing of an audit by the taxing authority or a review by the appeals department of the taxing authority, while not by itself determinative, would be new information

that would permit an entity to reconsider the technical merits and whether the tax position meets the more-likely-than-not criteria in paragraph 10(a).

3. Mr. Beswick stated that in preparation for the January 17, 2007 Board meeting, it became apparent that auditors and preparers are having difficulty applying the staff's views to various fact patterns. In order to provide implementation guidance, the staff believes that Board members need to first resolve these differences on the application of paragraphs 10(b), and 12, and consider amending Interpretation 48 to address the concerns of constituents. Therefore, the staff would like to ask the Board how Paragraph 10(b) of Interpretation 48, which states, "The tax matter is ultimately settled through negotiation or litigation," should be interpreted when the taxing authority has examined a tax year and the more likely than not threshold was not previously met for a particular tax position. There are three alternatives the staff would like the Board to consider:

Alternative A—If the tax position can be reopened for any reason other than evidence of fraud or misrepresentation of material facts, then the tax position should not be considered settled

Alternative B—If the taxing authority examined the tax position during the current examination process and based on past dealings with the taxing authority it is highly unlikely that the taxing authority would reexamine a particular tax position, the tax position can be considered to be settled for that examination period.

Alternative C—If the taxing authority examined the tax year and did not examine the specific tax position, but based on past dealings with the taxing authority it is highly unlikely that the taxing authority would examine this particular tax position in the future, the tax position can be considered settled for that examination period.

4. Mr. Beswick stated that the staff recommends alternative C. The staff believes this alternative best reflects the economic reality of the relationship between the taxpayer and the taxing authority. In consideration of the preparers' perspective, the staff believes this alternative is also the most operational because this alternative represents how the preparers actually manage the relationship with the taxing authority.

5. The Board directed the staff to proceed to a draft of a proposed FSP to amend Interpretation 48 for vote by written ballot. The amendment would state that a tax position is considered to be effectively settled through examination when all of the following conditions have been satisfied:

1. The taxing authority has completed its examination
2. The enterprise does not intend to appeal or litigate any aspect of a particular tax position for the completed examination
3. Based on a taxing authority's widely understood policy the enterprise considers it highly unlikely the taxing authority would subsequently examine or reexamine a particular tax position once the examination process is completed.

A tax position does not need to be specifically reviewed or examined by the taxing authority to be considered effectively settled. (Five Board members agreed, two did not [EWT, DMY])

6. Mr. Batavick stated that during the initial deliberations of Interpretation 48, he had not understood ultimate settlement to refer to a closing letter or the expiration of the statute of limitations. Rather, ultimate settlement is based on facts and circumstances. Because negotiation often plays an important part settling a tax position and it is rare for a taxing authority to revisit a position that has been settled, alternative C provides the best representation of the economics and is also the most operational.

7. Mr. Linsmeier noted that it is important that the proposed FSP be drafted to make clear that closure of a year does not by itself mean that an entity can recognize a tax position. Rather, the entity must consider administrative practices of the relevant taxing authority, and the relative certainty that the position will not be revisited. Mr. Beswick noted that two examples will be provided in the proposed FSP to contrast a taxing authority that will not reexamine a closed year with one that might.

8. Mr. Trott stated that he believes that requests for additional guidance stem from an unwillingness to exercise professional judgment. He noted that when a

taxing authority examines a position and does not propose an adjustment, an entity should reassess the technical merits of that position to determine if it meets the more-likely-than-not threshold in paragraph 10(a). Rather than making that judgment, entities have asked the Board to refine the term ultimate settlement. Mr. Trott stated that he therefore supports Alternative A.

9. With respect to alternative C, which would require that it is “highly unlikely that the taxing authority would examine this particular tax position in the future,” Mr. Crooch asked the staff how the term highly unlikely differs from the term probable. Mr. Beswick explained that the staff would like to suggest a level of certainty that is greater than probable. Mr. Golden added that the principle suggested is that a position may be recognized only if it has been effectively settled in both the minds of the tax payer and the taxing authority. Mr. Crooch agreed with the staff’s recommendation but emphasized that the proposed FSP should convey that a very significant level of certainty must be reached before a tax position could be considered ultimately settled.

10. Ms. Seidman stated that she prefers alternative C, not only for the reasons presented by the staff, but also because it best represents the economics. If a position has been examined by the taxing authority and it is highly unlikely that it will be reexamined, then the taxing authority has essentially decided not to pursue any claims it has against the entity. Because the entity will not incur a future cash outflow, it is better reporting to remove that liability. Like Ms. Seidman, Mr. Herz noted that alternative C is more representationally faithful of the likely cash flows.

11. Ms. Seidman also noted that if the Board were to decide that examination by a taxing authority demonstrates that the more-likely-than-not criteria has been met, the logical extension is that a similar position that has not yet been examined also comprises the necessary technical merits and should be recognized. Therefore, rather than redefine the recognition threshold, the Board should clarify when the requirements of paragraph 10(b) have been met. Mr.

Golden concurred and noted that the staff plans to communicate in the proposed FSP that guidance provided to determine if positions have been effectively settled should not be used to recognize positions that have not yet been examined and would otherwise not be recognized.

12. Mr. Young stated that while he disagreed with the decision in Interpretation 48 to ignore detection risk, he believes that the Board should be consistent with that decision and not allow for the recognition of positions that have not been examined. In other words, if detection risk is not included in recognition it should not be included in settlement either. Mr. Young therefore stated that he supports alternative B.

### **Timing and Effective Date**

13. The Board approved the staff's request to proceed to the preballot of a proposed FSP with a 30-day comment period. The FSP would be effective at the initial adoption of Interpretation 48. The Board selected a 30-day comment period with the intent of providing guidance as quickly as practicable to address constituent's requests.

### Follow-Up Items:

The staff will prepare a preballot draft of the proposed FSP.

### General Announcements:

None.