

**Notice for Recipients  
of this Proposed FASB Staff Position**

This proposed FASB Staff Position (FSP) would amend FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, to defer the effective date of that Interpretation to fiscal years beginning after December 15, 2008, for nonpublic enterprises as defined by paragraph 289 of FASB Statement No. 109, *Accounting for Income Taxes*, including nonpublic not-for-profit organizations. Nonpublic enterprises that have already adopted the provisions of Interpretation 48 in a full set of annual financial statements are not eligible for the deferral.

The Board invites individuals and organizations to send written comments on all matters in this proposed FSP. Comments are requested from those who agree with the provisions of this proposed FSP as well as from those who do not. Comments are most helpful if they identify the issues to which they relate and clearly explain the issue or question. Those who disagree with provisions of this proposed FSP are asked to describe their suggested alternatives, supported by specific reasoning.

The Board is providing this deferral to give it time to develop guidance about the application of Interpretation 48 to pass-through entities. The Board requests that constituents provide specific examples of problems that pass-through entities and not-for-profit organizations will encounter when applying the Interpretation. This information will be used by the Board to provide guidance for those entities so they will be able to apply that Interpretation when it becomes effective.

Responses must be received in writing by December 03, 2008. Interested parties should submit their comments by email to [director@fasb.org](mailto:director@fasb.org), File Reference: Proposed FSP FIN 48-c. Those without email may send their comments to “Technical Director, FASB, 401 Merritt 7, PO Box 5116, Norwalk, CT 06856-5116, File Reference: Proposed FSP FIN 48-c.” Responses should not be sent by fax.

All comments received by the FASB are considered public information. Those comments will be posted to the FASB website and included as part of the project record with other project materials.

## **PROPOSED FASB STAFF POSITION**

### **No. FIN 48-c**

**Title:** Effective Date of FASB Interpretation No. 48 for Certain Nonpublic Enterprises

**Comment Deadline:** December 03, 2008

### **Objective**

1. This FASB Staff Position (FSP) defers the effective date of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, for certain nonpublic enterprises as defined in paragraph 289, as amended, of FASB Statement No. 109, *Accounting for Income Taxes*, including nonpublic not-for-profit organizations.<sup>1</sup> However, nonpublic consolidated entities of public enterprises that apply U.S. generally accepted accounting principles (GAAP) are not eligible for the deferral. Nonpublic enterprises that have applied the recognition, measurement, and disclosure provisions of Interpretation 48 in a full set of annual financial statements issued prior to the issuance of this FSP also are not eligible for the deferral. The deferred effective date is intended to give the Board additional time to develop guidance on the application of Interpretation 48 by pass-through entities and not-for profit organizations. The deferred effective date also will give the Board time to amend the disclosure requirements of Interpretation 48 for nonpublic enterprises.

<p>All paragraphs in this FSP have equal authority. Paragraphs in bold set out the main principles.</p>
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### **Background**

2. Interpretation 48 was issued in July 2006 and was effective for fiscal years beginning after December 15, 2006. Early adoption was permitted as of the beginning of an enterprise's fiscal year, provided the enterprise had not issued financial statements,

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<sup>1</sup>All nonpublic enterprises including nonpublic not-for-profit organizations are hereafter collectively referred to as nonpublic enterprises, as defined in paragraph 289 of Statement 109, as amended.

including financial statements for any interim period, for that fiscal year. Paragraph 1 of Interpretation 48 states:

This Interpretation clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with FASB Statement No. 109, *Accounting for Income Taxes*. Statement 109 does not prescribe a recognition threshold or measurement attribute for the financial statement recognition and measurement of a tax position taken in a tax return. Consistent with Statement 109, the term *enterprise* is used throughout this Interpretation because accounting for income taxes is primarily an issue for business enterprises. ***However, the requirements of this Interpretation apply to not-for-profit organizations. This Interpretation also applies to pass-through entities and entities whose tax liability is subject to 100 percent credit for dividends paid (for example, real estate investment trusts and registered investment companies) that are potentially subject to income taxes.*** [Emphasis added.]

Interpretation 48, however, does not provide examples of how it applies to not-for-profit organizations or pass-through entities, such as S-corporations or partnerships.

3. Many not-for-profit organizations and pass-through entities have not previously paid income taxes and, therefore, have not applied the provisions of Statement 109. As a result, the Private Company Financial Reporting Committee (PCFRC) observed that there was a general lack of preparedness by those types of entities in applying the requirements of both Statement 109 and Interpretation 48 by the original effective date.

4. To address those concerns, the Board issued FSP FIN 48-2, *Effective Date of FASB Interpretation No. 48 for Certain Nonpublic Enterprises*, in February 2008, to defer the Interpretation for nonpublic enterprises as defined in Statement 109, as amended, until annual financial statements for fiscal years beginning after December 15, 2007, unless the nonpublic enterprise is a consolidated entity of a public enterprise that applies U.S. GAAP. In deliberating that FSP, the Board considered limiting the scope of that FSP to only pass-through entities and not-for-profit organizations; however, to avoid complexity, the Board decided that the FSP would apply to all nonpublic enterprises, unless the nonpublic enterprise is a consolidated entity of a public enterprise that applies

U.S. GAAP. The Board concluded that the deferral would give nonpublic enterprises the time necessary to implement Interpretation 48.

5. Subsequent to the issuance of FSP FIN 48-2, the PCFRC and other constituents have observed that there are questions on how to apply Interpretation 48 to pass-through entities. They also questioned whether the Interpretation's requirements were cost-effective. As a result, the PCFRC requested that nonpublic enterprises be exempt from Interpretation 48.

6. The Board decided not to exempt nonpublic enterprises from Interpretation 48 and indicated that nonpublic enterprises with uncertain tax positions should be subject to the Interpretation. However, the Board decided that an additional deferral was necessary to give the Board time to develop guidance for pass-through entities and not-for-profit organizations on the application of Interpretation 48 to those types of nonpublic enterprises. The Board originally considered limiting the scope of the additional deferral to only pass-through entities because the Board concluded that nonpublic enterprises that were tax-paying entities had been given sufficient time to understand and apply the Interpretation. The Board did not believe that all nonpublic enterprises should receive an additional deferral. However, the Board struggled in developing an operational scope definition because nonpublic enterprises can have different variations of taxable and pass-through entities and jurisdictions. As a result, the Board reluctantly concluded that a partial deferral for certain nonpublic enterprises would create undue complexity that exceeded the benefit of a partial deferral.

7. Because the Board decided not to exempt nonpublic enterprises from Interpretation 48 in its entirety, the PCFRC and some nonpublic company financial statement users asked the Board to reconsider the disclosure requirements of that Interpretation for nonpublic enterprises. The Board, after hearing directly from users, decided to modify the disclosure requirements for nonpublic enterprises.

8. During the deferral period, the Board plans (a) to issue a separate FSP to provide guidance for pass-through-entities and not-for-profit organizations on how to apply the

provisions of Interpretation 48 and (b) to amend the disclosure requirements of that Interpretation for nonpublic enterprises.

## **FASB Staff Position**

### **Scope**

9. **This FSP applies to nonpublic enterprises subject to the provisions of Interpretation 48 unless that nonpublic enterprise:**

- a. **Is a consolidated entity of a public enterprise that applies U.S. GAAP, or**
- b. **Has issued a full set of U.S. GAAP annual financial statements before the issuance of this FSP using the recognition, measurement, and disclosure requirements of Interpretation 48.**

### **Amendments to Existing Pronouncements**

10. **This FSP defers the effective date of Interpretation 48 for nonpublic enterprises included within this FSP's scope to the annual financial statements for fiscal years beginning after December 15, 2008. Once effective, Interpretation 48 should be applied, including its application to acquired income tax positions in FASB Statement No. 141 (revised 2007), *Business Combinations*, as of the beginning of the enterprise's fiscal year.**

11. Interpretation 48 is amended as follows: [Added text is underlined and deleted text is ~~struck out~~.]

- a. Paragraph 22A, as added, is amended as follows:

For nonpublic enterprises (as defined in paragraph 289, as amended, of Statement 109), except for nonpublic consolidated entities of public enterprises that apply U.S. GAAP, this Interpretation shall be effective for annual financial statements for fiscal years beginning after December 15, 2008 ~~2007~~ (applied as of the beginning of the enterprise's fiscal year) unless the nonpublic enterprises issued a full set of annual financial statements using the recognition, measurement, and disclosure provisions of this Interpretation before the issuance of FSP FIN ~~48-X48-2~~, *Effective Date of Interpretation No. 48 for Certain Nonpublic Enterprises*. Nonpublic enterprises that issued a full set of annual financial statements using the recognition, measurement, and disclosure provisions of this Interpretation prior to the issuance of FSP FIN 48-

X48-2 must continue to apply the provisions of this Interpretation. Earlier adoption is permitted as of the beginning of an enterprise's fiscal year.

12. FASB Statement No. 141 (revised 2007), *Business Combinations*, is amended as follows:

a. Paragraph 27:

The acquirer shall account for the potential tax effects of temporary differences, carryforwards, and any income tax uncertainties of an acquiree that exist at the acquisition date or that arise as a result of the acquisition in accordance with Statement 109, as amended, and related interpretative guidance, including FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, once the Interpretation becomes effective.<sup>a</sup>

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<sup>a</sup>The effective date of Interpretation 48 is deferred for nonpublic entities included within the scope of FSP FIN 48-X, *Effective Date of Interpretation No. 48 for Certain Nonpublic Enterprises*, to annual financial statements for fiscal years beginning after December 15, 2008. For additional guidance on the application of Interpretation 48 to acquired income tax uncertainties, see paragraph 77.

b. Paragraph 77:

For business combinations in which the acquisition date was before the effective date of this Statement, the acquirer shall apply the requirements of Statement 109, as amended by this Statement, prospectively. That is, the acquirer shall not adjust the accounting for prior business combinations for previously recognized changes in acquired tax uncertainties or previously recognized changes in the valuation allowance for acquired deferred tax assets. However, after the effective date of this Statement:

- a. The acquirer shall recognize, as an adjustment to income tax expense (or a direct adjustment to contributed capital in accordance with paragraph 26 of Statement 109), changes in the valuation allowance for acquired deferred tax assets.
- b. If the acquirer is not a nonpublic entity within the scope of FSP FIN 48-X, *Effective Date of FASB Interpretation No. 48 for Certain Nonpublic Enterprises*, the acquirer shall recognize changes in the acquired income tax positions in accordance with Interpretation 48, as amended by this Statement.

- c. If the acquirer is a nonpublic entity within the scope of FSP FIN 48-X, the acquirer shall continue to recognize changes in the acquired income tax positions in accordance with literature that was authoritative immediately before the effective date of this Statement, such as EITF Issue No. 93-7, “Uncertainties Related to Income Taxes in a Purchase Business Combination,” and Question 17 of the FASB Special Report, *A Guide to Implementation of Statement 109 on Accounting for Income Taxes*, until the acquirer is required to apply Interpretation 48. After the acquirer is required to apply Interpretation 48, the acquirer shall recognize changes in the acquired income tax positions in accordance with that Interpretation, as amended by this Statement.

### **Effective Date and Transition**

13. This FSP shall be effective upon issuance.

### **Alternative View**

14. One Board member does not agree with the scope of the proposed FSP because he believes the deferral should be limited to pass-through entities only. He believes that because nonpublic enterprises that are tax-paying entities already have received up to a two-year deferral to understand and apply this Interpretation, there is no reason to provide them with an additional deferral.