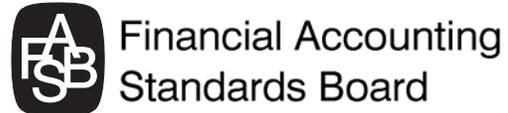


MINUTES



**To:** Board Members  
**From:** Glotzer (x212)  
**Subject:** Minutes of the July 8, 2009, Board Meeting: Proposed FASB Staff Position FIN 48-d  
**Date:** September 11, 2009  
**cc:** FASB: Golden, Stoklosa, Proestakes, Bielstein, Leisenring, Chookaszian, Posta, Lott, Hoey, Sutay, Klimek, McGarrity, C. Smith, Mechanick, Tomdio

*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.*

Topic: Proposed FASB Staff Position FIN 48-d

Basis for Discussion: Board Memorandum #4

Length of Discussion: 10:10-10:40 a.m.

Attendance:

Board members present:	Herz, Linsmeier, Seidman, Siegel, and Smith
Board members absent:	None
Staff in charge of topic:	Glotzer
Other staff at Board table:	Leisenring, Proestakes, Golden, and Ly
Outside participants:	None

## Summary of Decisions Reached:

Applicability of Interpretation 48 for private entities. The Board discussed the feedback received on proposed FSP FIN 48-d, *Application Guidance for Pass-through Entities and Tax-Exempt Not-for-Profit Entities and Disclosure Modifications for Nonpublic Entities*, and made the following decisions:

1. The Board affirmed that nonpublic entities and public tax-exempt not-for-profit entities are required to apply the standards on accounting for uncertain tax positions.
2. The Board affirmed its decision not to provide a definition of an income tax.
3. The Board decided not to address the interaction of the proposed guidance with EITF Issue No. 95-9, "Accounting for Tax Effects of Dividends in France in Accordance with FASB Statement No. 109."
4. The Board decided that nonpublic entities would not be required to disclose the following:
  - a. The total unrecognized tax benefits at the balance sheet dates when the disclosure requirements of paragraph 21(a) of Interpretation 48 are not presented
  - b. The fact that accounting for uncertainty in income taxes resulted in no material effect on the entity's financial statements.
5. The Board decided that nonpublic entities would still be required to disclose the following:
  - a. The total amount of interest and penalties recognized in the statement of operations
  - b. The nature of uncertainties and events that are reasonably possible of occurring in the next 12 months that would cause a significant change in the amounts of unrecognized tax benefits
  - c. A description of tax years that remain subject to examination by major jurisdiction.
6. The Board decided to modify paragraph 26(a) of the proposed FSP to clarify the meaning of the term *credit* to avoid misinterpretation of the guidance.
7. The Board decided to clarify that references in the standards to pass-through entities include entities taxed in a manner similar to pass-through entities, such as real estate investment trusts and registered investment companies.
8. The Board decided that the Accounting Standards Update will be effective for entities currently applying Interpretation 48 for periods ending after September 15, 2009. For entities currently deferring Interpretation 48, the Update will be effective upon adoption of Interpretation 48.

The Board directed the staff to proceed to a draft of an Accounting Standards Update for vote by written ballot.

Objective of Meeting:

The objective of this meeting was to discuss feedback received during the comment letter period for the proposed FSP FIN 48-d, *Application Guidance for Pass-through Entities and Tax-Exempt Not-for-Profit Entities and Disclosure Modifications for Nonpublic Entities*, and to ask the Board for permission to proceed to a draft of the final FASB Staff Position (FSP) for a vote by written ballot. That objective was met.

Matters Discussed and Decisions Reached:

**GENERAL INTRODUCTION**

1. The staff stated that a total of 14 comment letters were received and all respondents expressed general support for guidance in the proposed FSP. The staff stated that some respondents had comments that could be addressed during the drafting process of the final FSP and that the remaining issues have been brought to the Board's attention for their input.
2. **Board comments:** None.

**DEFINITION OF INCOME TAX**

3. The staff noted that several respondents suggested that the definition of an income tax should be addressed in order to properly apply Interpretation 48. The staff stated that this issue was already discussed in an April 2009 Board meeting in which the Board decided that this issue was outside the scope of this project.
4. **Staff recommendation:** The staff recommended that the Board not modify the proposed FSP to address the definition of an income tax because of the Board's conclusion at the April 2009 Board meeting.
5. **Board vote:** The Board unanimously agreed with the staff's recommendation.
6. **Board comments:** The Board did not have any significant comments on this issue.

**INTERACTION OF THE PROPOSED FSP WITH OTHER GUIDANCE**

7. The staff stated that a respondent suggested modifying the proposed FSP to provide guidance related to the interaction of the proposed FSP with other income tax guidance, such as Issue 95-9. The staff stated that it believed there is no conflict between the proposed FSP and Issue 95-9 because both indicate that a payment by an entity that the owners may apply toward their personal income tax should be recorded as a transition with owners.
8. **Staff recommendation:** The staff recommended that the Board not modify the proposed FSP to provide guidance related to the interaction of the proposed FSP with other income tax guidance.
9. **Board vote:** The Board unanimously agreed with the staff's recommendation.
10. **Board comments:** Ms. Seidman stated and Mr. Herz agreed that this issue should be placed in the basis for conclusions of the final FSP.

#### **DISCLOSURES IN PARAGRAPH 21(A) AND 21(D) OF INTERPRETATION 48**

11. The staff stated that several respondents suggested that if the disclosure requirements of paragraph 21(a) of Interpretation 48 were eliminated for nonpublic entities, the total unrecognized tax benefits as of the balance sheet dates would not be known. The staff indicated that the respondents also suggested that without knowing the total unrecognized tax benefits, the disclosures in paragraph 21(d) would not be relevant. The respondents recommended that the proposed FSP should require a disclosure of the total unrecognized tax benefits for all the balance sheet dates presented. The staff stated that feedback from users of private company financial statements suggested that the total amount of unrecognized tax benefits is not a useful number.
12. **Staff recommendation:** The staff stated that they were divided on the issue of whether to require a disclosure of the total unrecognized tax benefits if the disclosure requirements of paragraphs 21(a) were eliminated for nonpublic entities.
13. **Board vote:** The Board unanimously agreed to eliminate the disclosure requirements of paragraph 21(a) and retain the disclosure requirements of paragraph 21(d) of Interpretation 48 for nonpublic companies. They also unanimously agreed not to require a disclosure of the total unrecognized tax benefits.
14. **Board comments:** Mr. Linsmeier stated that if the disclosure requirements in paragraph 21(d) of Interpretation 48, which require the disclosure of changes in total

amounts of unrecognized tax benefits, are required then the disclosure of total unrecognized tax benefits in paragraph 21(a) should also be required. He stated that if the disclosure of the total amounts of unrecognized tax benefits in paragraph 21(a) is eliminated, then users will state that the disclosures required in paragraph 21(d), which relate to changes in the total amounts of unrecognized tax benefits, will not be possible. Mr. Linsmeier stated that either (a) the disclosure requirements in both paragraph 21(a) and paragraph 21(d) should be eliminated or (b) the disclosure requirements in both paragraphs should be retained.

15. Mr. Proestakes agreed with Mr. Linsmeier. He stated that it would be useful to know the total amounts of unrecognized tax benefits in combination with the disclosure of potential changes in paragraph 21(d) because that would allow users to ask management the appropriate questions.
16. Mr. Siegel stated that he supports keeping the disclosure requirements in paragraph 21(d) without having the disclosure of the total amounts of unrecognized tax benefits required in paragraph 21(a) because (a) users of private company financial statements have stated that they do not need the total unrecognized tax benefits for the year and (b) being informed of changes in the total unrecognized tax benefits for the year may assist users in asking management further questions.
17. Mr. Herz stated that disclosing total unrecognized tax benefits for the year may present a “road map” for tax authorities and disclosing the requirements in paragraph 21(d) may allow users to obtain further useful information from management. Mr. Herz stated that the disclosure requirements in paragraph 21(d) do not necessarily go in conjunction with the disclosure requirements in paragraph 21(a).
18. Ms. Seidman stated that users are not interested in the total unrecognized tax benefits for the year because they do not think it is a representation of probable future cash flows. She stated that users will use the disclosures in paragraph 21(d) as a tool to ask management further questions.

#### **DISCLOSURES IN PARAGRAPH 21(c) AND 21(e) OF INTERPRETATION 48**

19. The staff noted that one respondent suggested the removal of paragraph 21(e), which requires a description of tax years that remain subject to examination by major tax jurisdictions, because it is not meaningful information and would not be relevant

without the disclosure of total unrecognized tax benefits. Similar arguments were presented for the removal of paragraph 21(c), which requires the disclosure of the total amount of interest and penalties recognized in the statement of operations and the statement of financial position.

20. **Staff recommendation:** The staff stated that the information disclosed because of paragraphs 21(c) and 21(e) does not require that the total unrecognized tax benefits be disclosed to be useful. The staff recommended keeping the disclosure requirements of paragraph 21(c) and (e) for nonpublic entities.
21. **Board vote:** The Board unanimously agreed with the staff's recommendation.
22. **Board comments:** The Board did not have any significant comments on this issue.

#### **DISCLOSURE IF NO LIABILITIES RECOGNIZED**

23. The staff noted that one respondent asked if a disclosure would be required if management determined that there are no unrecognized tax benefits to record.
24. **Staff recommendation:** The staff stated that requiring such a disclosure would set a precedent with other standards for which there was no material impact on the financial statements and recommended this type of disclosure not be required.
25. **Board vote:** The Board unanimously agreed with the staff's recommendation.
26. **Board comments:** The Board did not have any significant comments on this issue.

#### **EDITORIAL CHANGES**

27. The staff stated that one respondent expressed concern that there would be unintended consequences if the examples in paragraph 26(a) of the proposed FSP referenced *tax credits* because the term *credit* has a broader meaning than the way it was used in the example.
28. **Staff recommendation:** The staff recommended that the term *credit* should be phrased in such a way as to not alter the intent or meaning of the proposed FSP because it may avoid unintended misinterpretations by users.
29. **Board vote:** The Board unanimously agreed to parenthetically reference alternate meanings of the term *credit* when it is used in the proposed FSP.
30. **Board comments:** The Board did not have any significant comments on this issue.

## **PUBLIC TAX-EXEMPT NOT-FOR-PROFIT ENTITIES**

31. The staff stated that several respondents suggested that the scope of Interpretation 48 exclude public tax-exempt not-for-profit entities because many of these entities are small and do not have the resources to properly apply Interpretation 48. The respondents referred to not-for-profit entities that were considered public entities because they were obligors for conduit debt securities.
32. **Staff recommendation:** The staff recommended not modifying the scope of the proposed FSP to exclude public tax-exempt not-for-profit entities because it believes that this is an issue of defining a public entity and is beyond the scope of this project.
33. **Board vote:** The Board unanimously agreed with the staff's recommendation.
34. **Board comments:** The Board did not have any significant comments on this issue.

## **PRIVATE COMPANY EXEMPTION**

35. The staff noted that one comment letter stated that a "Statement 5 approach" to evaluating uncertain tax positions is a better alternative than the approach described in the proposed FSP, which is burdensome and costly for nonpublic companies to apply. The staff stated that pass-through entities and tax-exempt entities were included within the scope of Interpretation 48 because an entity's decision to identify itself as a pass-through entity or tax-exempt entity is the most significant tax position this type of entity takes. As a result, to exclude these entities would remove their obligation to consider their tax status.
36. **Staff recommendation:** The staff recommended not excluding pass-through entities and tax-exempt entities from the scope of Interpretation 48.
37. **Board vote:** The Board unanimously agreed with the staff's recommendation.
38. **Board comments:** The Board did not have any significant comments on this issue.

## **EXPANSION OF SCOPE**

39. The staff stated that one comment letter suggested modifying the scope of the proposed FSP to indicate that it would also apply to entities that are taxed in manner similar to pass-through entities, such as REITs and RICs.

40. **Staff recommendation:** The staff recommended adding language in the proposed FSP to state that entities that are taxed in a manner similar to pass-through entities are included within the scope of the proposed FSP.
41. **Board vote:** The Board unanimously agreed with the staff's recommendation.
42. **Board comments:** Mr. Linsmeier stated that he does not believe that the proposed FSP should specifically state that entities that are taxed in a manner similar to pass-through entities are included within the scope of the guidance because Interpretation 48 applies to all entities, including entities that are taxed in a manner similar to pass-through entities.
43. Mr. Glotzer stated that the respondent wants to clarify that the guidance that is particular to pass-through entities is applicable to pass-through entities and entities that are taxed in a manner similar to pass-through entities, which does not change the scope of the Interpretation 48. Mr. Proestakes agreed and stated that the reason why the staff would like to include this language in the proposed FSP is because there are examples included within the proposed FSP that are particular to pass-through entities and that further clarification may be needed to state that pass-through entities include entities that are taxed in a manner similar to pass-through entities.

#### **EFFECTIVE DATE**

44. The staff stated that a comment letter recommended that the proposed FSP be effective for periods ending after September 15, 2009, because there are entities that are currently applying Interpretation 48 that require additional time to learn about the guidance in the proposed FSP to apply it properly. The staff stated that it believes that this proposed FSP does not change practice.
45. **Board vote:** The Board unanimously agreed that the proposed FSP should be effective for entities currently applying Interpretation 48 for periods ending after September 15, 2009. For entities deferring Interpretation 48, the proposed FSP should be effective upon adoption of that standard.
46. **Board comments:** Ms. Seidman said that it may be vague to state that the proposed FSP is effective upon issuance. Mr. Golden agreed and stated that it is not practically different to state that this proposed FSP will be effective for periods ending after

September 15, 2009, versus stating that the proposed FSP will be effective upon issuance. He stated that using an exact date would provide more clarity for users.