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September 12, 2005

Letter of Comment No: <sup>9</sup>  
File Reference: FSPFAS13-A  
Date Received:

Technical Director  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

Re: Proposed FSP 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*

Dear Director,

The American Bankers Association (ABA) appreciates the opportunity to submit comments on the Financial Accounting Standards Board's (FASB) proposed FASB Staff Position 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* (Proposed FSP). The Proposed FSP would amend FASB Statement 13, *Accounting for Leases*, and would apply to all transactions classified as leveraged leases in accordance with Statement 13.

The ABA brings together all categories of banking institutions to best represent the interests of the rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes the ABA the largest banking trade association in the country.

Because of the complexity involved with the Proposed FSP, we believe it would be useful to industry if the FASB staff would provide an example, so that preparers have a better understanding of these requirements. A LILO example would be the most useful.

Our main concerns about the Proposed FSP are (1) the frequency of re-calculating cash flows, (2) the treatment of interests, penalties, and tax prepayments, and (3) the effective date and transition. These concerns are described below in further detail, and our responses to the questions set forth in the Proposed FSP are attached.

#### Re-Calculating Cash Flows

It is our understanding that the recent discussions relating to LILO (lease in, lease out) settlements with the taxing authority have resulted in the FASB's decision to

require, under certain circumstances, cash flow re-calculations during the term of a leveraged lease. During our discussions of the Proposed FSP, questions were raised about how often cash flows would be expected to be re-calculated. We believe it is important to clarify this point in the final document. If not, entities might be expected to calculate cash flows more frequently than is necessary, adding a significant and unintentional burden to the Proposed FSP without a corresponding benefit.

The requirement to re-calculate cash flows should be linked to actual events and should be based on an entity's judgment as to whether the change is significant. Otherwise, entities could be buried by the volume of cash flow analyses, especially since the recalculations are to be done on a lease-by-lease basis. For example if rates and/or apportionment change in a state, then the entity would determine whether the change is significant enough to require that cash flows be re-calculated. Anticipated tax rate changes would not result in the need to re-calculate.

We also believe that recalculation for an "expected settlement" should only be required if the entity expects a significant change in the amount or timing of cash flows. Some might view this terminology (in paragraph 9) as requiring the calculations earlier in the process, with which we disagree.

#### Interests, Penalties, and Tax Prepayments

There is not agreement among our members regarding whether interests and penalties should be included in the cash flow re-calculation. However, there is agreement that there are operational issues with determining the amount of interests and penalties to be included. For example, it is difficult to ascertain whether interest is on an individual tax position basis, or an allocated portion of actual interest. During our discussions about the Proposed FSP, questions were raised relating to whether to factor tax prepayments into the FAS 13 calculation adjustments and, if so, how this should be done. If, for example, the entity's prepayment for a tax year is attributable to multiple issues, how should allocations be made for the portion of the prepayment that is attributable to the leveraged lease? We believe the FSP should state that an entity can use a method that it believes is reasonable.

Additionally, questions have been raised about how to handle interests and penalties that have already been recorded so as to avoid duplication.

#### Effective Date and Transition

We do not support the effective date for the Proposed FSP. This proposal is so closely linked to the FASB's Proposed Interpretation, *Accounting for Uncertain Tax Positions—an interpretation of FASB Statement No. 109* (Proposed Interpretation), that two should be completed in tandem and should have the same effective dates. We believe it is essential that the decisions in the Proposed Interpretation be finalized prior to the effective date of the Proposed FSP. Furthermore, the Proposed FSP could have serious implications for financial statements, and additional time is needed to make the necessary adjustments.

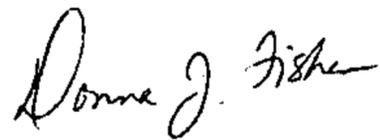
We disagree with the transition requirement that tax position assumptions meet the "probable" threshold. As discussed in our comment letter to the FASB on the

Proposed Interpretation, its de-recognition threshold proposal is “more likely than not”. We believe “more likely than not” is the appropriate threshold for both documents. We also have concerns that a “should” opinion could be viewed as being the same as “probable”, and as discussed in our letter on the Proposed Interpretation, we believe that they cannot be used interchangeably.

\* \* \* \* \*

We appreciate the opportunity to comment on this important FASB proposal. If you would like to discuss our view further, please feel free to contact me.

Sincerely,



Donna J. Fisher

**Attachment**  
**Questions Posed in Proposed FSP 13-a**  
**Accounting for a Change or Projected Change in the Timing of Cash Flows**  
**Relating to Income Taxes Generated by a Leveraged Lease**

**Issues**

*Issue 1:* The scope of the Proposed FSP would apply to all transactions classified as leveraged leases in accordance with Statement 13. Do you agree that the scope of this Proposed FSP should be limited to only leveraged lease transactions or should the scope be expanded to include all leases under Statement 13? Why or why not?

The Proposed FSP was prompted by the FASB's need to address accounting by a lessor when a change in timing of the realization of tax benefits occurs due to settlements or proposed settlements between the taxing authority and the lessor with respect to a leveraged lease transaction. We agree that, if the Proposed FSP does become effective, its scope should be limited to only leveraged lease transactions.

*Issue 2:* This Proposed FSP concludes that the timing of cash flows relating to income taxes generated by a leveraged lease is an important assumption that should be accounted for in accordance with the guidelines in paragraph 46 of Statement 13. Additionally, this Proposed FSP would require a leveraged lease to be reclassified if, at any time, a revision of an important assumption requires a calculation of a leveraged lease and changes the characteristics of the lease in a manner that would have resulted in the lease not qualifying as a leveraged lease had the revised assumption been included in the original or most recent leveraged lease computation. Do you agree? Why or why not?

We believe that this is a significant change in the accounting for leveraged leases. Although we understand the FASB's desire to make these changes, we believe that some further clarification is needed. See our comment letter section Frequency of Re-Calculating Cash Flows.

*Issue 3:* This Proposed FSP would require that the recalculation be based on actual cash flows that occurred up to and including the point of the actual settlement or expected settlement and the estimated cash flows thereafter. Additionally, this Proposed FSP would require that the recalculation include any interest and penalties assessed or expected to be assessed by the taxing authority. Do you agree? Why or why not?

We have concerns about requiring cash flow calculations at times when the entity believes re-calculating is unnecessary. See our comment letter section Frequency of Re-Calculating Cash Flows.