

MEMO# 20916

March 2, 2007

Proposed FASB Staff Position on Meaning of Settlement In FIN 48

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TO: ACCOUNTING/TREASURERS COMMITTEE No. 5-07
ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 4-07
TAX COMMITTEE No. 6-07 RE: PROPOSED FASB STAFF POSITION ON MEANING OF
SETTLEMENT IN FIN 48

The Financial Accounting Standards Board recently issued a proposed staff position (FSP) that provides guidance on whether a tax position is settled for the purpose of recognizing previously unrecognized tax benefits. [\[1\]](#) Under FIN 48, the tax benefit of an uncertain tax position that is not more likely than not to be sustained based on its technical merits cannot be recognized until it is either ultimately settled with the taxing authority or the statute of limitations for examination has passed. [\[2\]](#) The FSP replaces the term ultimately settled in FIN 48 with the concept of effectively settled.

The term ultimately settled in FIN No. 48 had been interpreted to mean that a tax position should be considered settled only if the taxing authority could not subsequently examine the position, except in situations involving fraud or misrepresentation. However, some have noted that while a taxing authority may have the right to subsequently examine a tax position, in practice, tax authorities rarely reopen tax years once an exam has been completed. In such circumstances, the positions for the examined tax year are effectively settled.

For purposes of recognizing previously unrecognized tax benefits relating to uncertain tax positions that do not meet the more likely than not recognition threshold, the FSP indicates

that settlement has effectively occurred if the taxing authority has completed all of its required or expected examination procedures, the enterprise does not intend to appeal or litigate any aspect of the tax position, and it is considered highly unlikely that the taxing authority would reexamine the tax position.

Criteria for Effective Settlement

Under the FSP, a tax position is considered effectively settled through examination when all of the following criteria are satisfied:

A tax position would not have to be specifically reviewed or examined by the taxing authority to be considered effectively settled through examination. When a tax position is effectively settled, any previously unrecognized tax benefit for that position should be recognized.

The FSP should be applied upon initial adoption of FIN 48. Comments on the FSP are due to the FASB by March 28, 2007.

Gregory M. Smith
Director - Operations/Compliance & Fund Accounting

endnotes

[1] Definition of Settlement in FASB Interpretation No. 48 (February 27, 2007). The proposed FSP is available from the FASB website at http://www.fasb.org/fasb_staff_positions/prop_fsp_fin48-a.pdf.

[2] See [Memorandum](#) to Accounting/Treasurers Members No. 14-06, Tax Members No. 24-06, Adviser Distributor Tax Issues Task Force No. 8-06 [20183] dated July 14, 2006. The Interpretation is available from the FASB website at <http://www.fasb.org/st/#int48>.