

MEMO# 21111

May 3, 2007

FASB Issues FSP on Meaning of Settlement in FIN 48

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TO: ACCOUNTING/TREASURERS MEMBERS No. 11-07
ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 7-07
TAX MEMBERS No. 18-07 RE: FASB ISSUES FSP ON MEANING OF SETTLEMENT IN FIN 48

The Financial Accounting Standards Board recently issued a FASB Staff Position (FSP) that provides guidance on how an enterprise should determine whether a tax position is effectively 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. Subsequent to adoption of FIN 48, the Board received inquiries on the meaning of ultimately settled and whether an uncertain tax position must be legally extinguished and its resolution certain before recognizing the associated tax benefit.

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:

1. The taxing authority has completed all of its required or expected examination

procedures including all appeals and administrative reviews that the taxing authority is required and expected to perform for the tax position;

2. The enterprise does not intend to appeal or litigate any aspect of the tax position included in the completed examination; and,
3. It is remote that the taxing authority would examine or reexamine any aspect of the tax position. In making this assessment management shall consider the taxing authority's policy on reopening closed examinations and the specific facts and circumstances of the tax position. Management shall presume that the taxing authority has full knowledge of all relevant information in making the assessment on whether the taxing authority would reopen a previously closed examination.

The FSP indicates that 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.

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Director - Operations/Compliance & Fund Accounting

endnotes

[1] See FSP FIN 48-1, Definition of Settlement in FASB Interpretation No. 48 (May 2, 2007). The FSP is available from the FASB website at http://www.fasb.org/fasb_staff_positions/.

[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>.