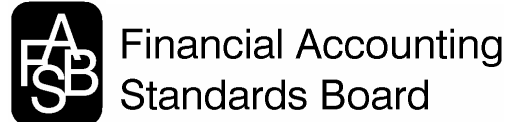


MINUTES



To: Board Members
From: Gagon (ext. 322)
Subject: Minutes of December 15, 2004 Board Meeting
Date: December 27, 2004
cc: Smith, Bielstein, Petrone, Leisenring, Project Team, Golden, Swift, Polley, Gabriele, Vincent, Getz, Intranet (e-mail)

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: Summary of comment letters on two recently proposed Statement 109 FSPs

Basis for Discussion: Board Memorandum dated December 7, 2004

Length of Discussion: 1:00 p.m. to 2:15 p.m.

Attendance:

Board members present:	Herz, Trott, Schipper, Batavick, Crooch, Seidman, and Schieneman
Board members absent:	None
Staff in charge of topic:	Geary
Other staff at Board table:	Smith, Cassel, and Gagon
Outside participants:	None

Summary of Decisions Reached:

The Board discussed the comments received on proposed FSPs FAS 109-a, “Application of FASB Statement No. 109, Accounting for Income Taxes, for the Tax Deduction Provided to U.S. Based Manufacturers by the American Jobs Creation Act of 2004,” and proposed FSP FAS 109-b, “Accounting and Disclosure Guidance for the Foreign Earnings Repatriation Provision within the American Jobs Creation Act of 2004” in light of comments raised by constituents. The Board made the following decisions on those proposed FSPs:

FSP FAS 109-1 (formerly proposed FSP FAS 109-a)

1. Affirmed its decision to treat the domestic production activities deduction as a special deduction.
2. Decided to reduce the number of examples from four to one in the final FSP.
3. Decided to revise the methodology in the examples to reflect the ordering of the net operating loss and the qualified production activities deduction under the tax law.
4. Decided not to include an example in the final FSP to reflect graduated tax rates under U.S. tax law.
5. Affirmed its previous conclusion on transition and the effective date for the final FSP that it should be effective upon issuance.

FSP FAS 109-2 (formerly proposed FSP FAS 109-b)

1. Affirmed its decision to allow enterprises additional time to assess the effect of repatriating foreign earnings under the American Jobs Creation Act of 2004 (the Act) for purposes of applying Statement 109.
2. Agreed to clarify in the final FSP that an enterprise is required to apply the provisions of Statement 109 in the period, or periods, it decides on its plan(s) for reinvestment or repatriation of its unremitted foreign earnings.
3. For an enterprise that is unable to reasonably estimate, at the time of issuance of its financial statements, the related range of income tax effects for the potential range of foreign earnings that it may repatriate, the Board decided to include language in the final FSP to require an enterprise to disclose a statement to that effect.
4. Affirmed its decision to require an enterprise to recognize income tax expense (benefit) if an enterprise decides to repatriate a portion of unremitted earnings under the repatriation provision while it is continuing to evaluate the effects of the repatriation provision for the remaining portion of the unremitted foreign earnings.
5. Affirmed its previous conclusion on transition and the effective date for the final FSP that it should be effective upon issuance.

The Board directed the FASB staff to post FSPs FAS 109-1 and FAS 109-2 to the website as final.

Objective of Meeting:

The objective of the meeting was to discuss comments received from constituents in comment letters on the Statement 109 proposed FSPs and for the Board to either affirm or modify its decisions made in the proposed FSPs. The objective of the meeting was met.

Matters Discussed and Decisions Reached:

1. The Board discussed comments received from constituents about the two proposed FSPs on Statement 109. For the decisions reached at this meeting, please refer to the "*Summary of Decisions Reached*" portion of these minutes.
2. The majority of the discussion at the meeting focused on whether the Board wanted to be more explicit regarding guidance on when an enterprise should account for the effect of the repatriation provision. The following paragraphs summarize major points raised by Board and staff members concerning this issue.
3. Mr. Smith stated that as a practical expedient, he recommended that the Board provide a little more specific information as to what *determination* means and that he would not be opposed to saying that at the time the CEO of a company approves the plan is when the entity should account for the provisions of the Act.
4. Ms. Seidman stated that she agrees with Mr. Smith because she feels the combination of the unique attributes of the Act, the short window of time in which it can be elected, and the likelihood of ambiguity if the Board doesn't specify what it means by *determination* could substantially reduce the benefits of the Board issuing an FSP to address this issue. She stated that she would like this FSP to be very clear as to how much time an entity has or when the clock stops ticking from an accounting standpoint when an entity would be required to account for the effects of the Act.
5. Mr. Trott stated that he does not agree that the Board needs to more clearly define *determination*. He cited other instances in FASB literature where the Board has not specified what *determination* means and he feels that in this case, the Board does not need to be more prescriptive or provide a bright line on when to account for the Act.

6. Mr. Batavick suggested as an alternative to the word *determination*, that the word *decide* be used in the FSP to indicate when an entity would be required to account for the repatriation provisions of the Act. He stated that it should really be the decision to repatriate under the Act that should require recognition, not just the determination of whether the Act would be beneficial to the entity.
7. Ms. Schipper stated that she understands that the downside to the practical approach suggested by Mr. Smith is that it may provide entities with the opportunity to shift income. She stated that there are tradeoffs that must be considered by the Board between providing an accommodation to entities to possibly shift income versus using the word *determine*, which is in the literature, that would require a judgment decision based on the facts and circumstances of the particular situation. Using the word *determine* will likely precipitate inquiries of the FASB staff as to what *determination* means. She stated that different people will weigh those costs and benefits differently.
8. Mr. Schieneman pointed out that whatever the Board's decision is on this issue, it will not be a very important decision for investors or analysts because this is truly a one-time expense that will be disregarded by the user community. He stated that he feels the important information will be in the footnotes where entities will disclose the impacts of the Act on their operations. He stated that he is in favor of the bright line.
9. Mr. Herz stated that if approved by the top officer of an entity was all that was needed for the bright line, he would agree with using a bright line in this situation. However, he stated that his trepidation in this case is that boards of directors are more involved with the operations and plans of entities these days. Therefore, to say that the top officer of an entity has to approve the plan before an entity accounts for the provisions of the Act may not be the right bright line.
10. Again, Mr. Batavick asked what would be wrong with substituting the word *decides* for the word *determine*. Commenting on Mr. Batavick's suggestion, Ms. Seidman asked if the Board could use language similar to that used in FASB Statement No. 146, *Accounting for Costs Associated with Exit or Disposal Activities*, which states that "management, having the authority to approve the action," makes the determination.

11. Mr. Crooch stated that he thought that the Board had in mind that the amount that an entity decides to repatriate under this window was in essence a “free pass” and that that free pass was available during this fourteen-month period. He stated that a company is going to go through a process of determining if it is going to take advantage of this Act and for how much. He stated that he would agree with Mr. Batavick’s notion of *decide* for this Act only, and only for a short window of time.
12. All of the Board members with the exception of Mr. Trott agreed that *determination* in the proposed FSPs should be replaced with language that would indicate that an entity is required to apply the provisions of Statement 109 in the period, or periods, it *decides* on its plan(s) for reinvestment or repatriation of its unremitted foreign earnings. Mr. Trott objected to allowing an accommodation because he believes it is trumping the guidance in APB Opinion No. 23, *Accounting for Income Taxes—Special Areas*.

Follow-up Items:

None

General Announcements:

None