



**WINDES & MCCLAUGHRY
ACCOUNTANCY CORPORATION**

Certified Public Accountants & Consultants

EXCEEDING EXPECTATIONS SINCE 1926

TAX ALERTS:

Tax Accounting- Uncertain Tax Positions

FASB Issues Guidance for Non-Public Entities in the Application of FIN 48

Non-public entities will finally have to adopt the provisions of FASB Interpretation No. 48 (FIN 48*) in their financial statements for years which began after **December 15, 2008**. FIN 48 calls for the recognition and measurement of all tax positions taken or expected to be taken by all U.S. companies. The purpose of FIN 48 is to address the varied accounting practices that have arisen from subjective interpretation of the tax law by establishing a consistent guideline for the evaluation, recognition, and measurement of the tax benefit in relation to the tax positions. All non-public companies who have yet to adopt FIN 48 and who have not yet started the implementation process, should begin undertaking the steps necessary to positively identify whether any uncertain tax positions exist which will need to be booked this year. In addition, any tax reserves which were previously booked under the pre-FIN 48 standards will need to be reevaluated under FIN 48 principles.

In advance of this implementation deadline, the FASB recently issued Accounting Standards Update (ASU) No. 2009-06, Implementation Guidance on Accounting for Uncertainty in Income Taxes and Disclosure Amendments for Non-public Entities. This ASU provides additional guidance on how FIN 48 applies to pass-through and tax-exempt entities and also eliminates certain disclosure requirements for all non-public entities. This guidance was in response to the many questions the Board received on the application of FIN 48 and reflects the common themes found in these questions. The guidance basically answered the following three questions:

Is the income tax paid by the entity attributable to the entity or its owners?

Often a tax jurisdiction will require a partnership to withhold taxes on behalf of certain partners. The jurisdiction then allows the partner to claim those tax payments as a pre-payment of their individual tax liabilities. The ASU clarifies that this type of tax assessment will not be considered to be an income tax of the pass-through entity subject to the provisions of FIN 48. On the other hand, some jurisdictions impose a tax on pass-through entities which is not related to the owner. This type of tax would be considered an income tax of the entity subject to FIN 48.

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What constitutes a tax position for a pass-through entity or a tax-exempt entity?

The ASU provides several examples to clarify what is a tax position for a pass-through or tax-exempt entity. For example, an S Corporation can have a tax on built-in gains, which can be broken down into uncertain tax positions as to the whether the sale is subject to the built-in gains tax, what is the amount of the built-in gain, what is the correct tax basis of the sold asset, etc. Tax-exempt entities can have uncertain tax positions related to unrelated business income and even their tax-exempt status can be an uncertain tax position.

How should accounting for uncertainty in income taxes be applied when a group of related entities comprise both taxable and nontaxable entities?

The ASU provides guidance for a situation where a partnership owns a taxable corporation and the two entities issue a combined or consolidated financial statement. The ASU also modifies the disclosure requirements under FIN 48. Public companies are required to disclose in their tax footnote a tabular roll forward of their uncertain tax positions from beginning to end of the year. This table must separately show increases and decreases in uncertain tax positions during the year. In addition, public companies must disclose the amount of the total uncertain tax positions which, if recognized, would affect the effective tax rate. The ASU eliminates these disclosures for non-public companies because it received feedback from users of private company financial statements that these particular disclosures do not provide useful information. All the remaining disclosures required by FIN 48 will still be required by all companies.

*FIN 48 has been codified in ASC 740-10.

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