

ALERT

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FASB REVISES ITS PROPOSED ACCOUNTING FOR UNCERTAIN TAX POSITIONS THRESHOLD

At its November 22, 2005 meeting, the Financial Accounting Standards Board (FASB/Board) concluded that uncertain tax positions that would “more likely than not be sustained upon audit or final resolution through litigation or settlement with taxing authorities” should be recognized in the calculation of an entity’s tax expense/liability. The Board’s original July 2005 proposal had a higher standard — would have required that only tax positions that were “probable” of being sustained could be recognized in measuring an entity’s tax expense/liability. Generally, the “more likely than not” threshold would represent a 51% probability of being sustained, rather than an approximate 75% probability inherent in the “probable” threshold. The Board also tentatively concluded that companies should use their best estimate rather than an expected value approach in measuring the financial impact of uncertain tax positions.

Based on these Board conclusions, a company’s tax expense/liability will more closely represent its actual tax position than under the original proposal. This accounting standard is, of course, most relevant to REITs that have major taxable operations. We expect that the effective date of the proposal will be delayed until after 2005.

NAREIT’s views on the proposal were that uncertain tax positions should be a factor in calculating income tax liabilities and expenses if sustaining them on examination is “more likely than not” – the FASB’s revised conclusion. While NAREIT did not issue a comment letter on this FASB proposal, NAREIT staff provided its views to the Tax Council, a national organization representing large public U.S. companies. These views were represented in the Tax Council’s comment letter, as well as in a comment letter filed by Financial Executives International.

A discussion of the original FASB proposal is available by clicking [HERE](#). Minutes of the Board’s November 22, 2005 meeting are not yet available. The comment letter issued by the Tax Council is available by clicking [HERE](#).

Any questions regarding this matter should be directed to [George Yungmann](#) at 202-739-9432 or [Gaurav Agarwal](#) at or 202-739-9442.

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