

TAX COMPLIANCE & PLANNING TRENDS

FIN 48 Deadline Postponed for Private Companies

On November 7, 2007, the Financial Accounting Standards Board (FASB) voted to delay the effective date of FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes (FIN 48), for private companies. Those that haven't already implemented the new rules can now postpone compliance until periods beginning after December 15, 2007. For most private companies, this reprieve means that FIN 48 will affect only their calendar-year 2008 and later financial statements.

FIN 48 requires companies that prepare their financial statements according to Generally Accepted Accounting Principles (GAAP) to review all of their federal and state tax positions — including decisions not to file in a particular state — and to determine whether the positions would “more likely than not” withstand a challenge by the Internal Revenue Service or a state tax authority.

If a position fails the more-likely-than-not test, the corresponding tax benefit isn't recognized in the company's financial statements. For positions that meet the test, FIN 48 outlines a complex process for determining the portion of the benefit that should be recognized. In either case, the company must establish reserves for the portion of the tax benefit that isn't recognized and make financial statement disclosures about uncertain tax positions.

When making its decision, FASB took into account widespread concern that there was a general lack of awareness of the new requirements. In particular, many pass-through entities — such as partnerships, S corporations and limited liability companies (LLCs) — were unaware that FIN 48 even applied to them. FASB didn't feel it was necessary to develop separate guidance on the application of FIN 48 to pass-through entities but did say it would take steps to inform these companies that the new rules do indeed apply to them.

FASB is expected to issue the deadline deferral in the form of a proposed amendment to FIN 48, such as a FASB Staff Position, which would have a 30-day comment period once it's released. However, it appears unlikely that the comment period would result in significant changes to the deadline deferral.

Although FASB's decision is good news for private companies, it doesn't mean they can put off thinking about FIN 48 for a year. These companies should start examining their situations soon to evaluate the potential impact of FIN 48 on their financial statements and to ensure that procedures are in place to gather the information FIN 48 will require.