

Consumer Business Compass

Spring 2007

The Newsletter of the BDO Seidman
Retail and Consumer Product Practice

The Big Picture

Walking A FIN Line

Financial Interpretation No. 48 and Other Tax Uncertainties For Retailers

By Catherine M. Fox-Simpson

*This article was originally published in the March 5, 2007 edition of
The Deal, all copyrights apply.*



Earlier this year, the Financial Accounting Standards Board decided unanimously against postponing new rules coming into force this year that require companies to take a more stringent approach to reporting uncertain tax positions on their financial statements. The rule, known as FIN 48, or Financial Interpretation No. 48, is effective for accounting years beginning after December 15, 2006. The rule applies only to income tax positions; non-income tax issues, such as unclaimed property or sales and use tax, are not covered.

FIN 48 is designed to provide additional transparency in the reporting of uncertain tax positions by requiring companies to examine and document their tax positions, analyze the position based on its technical merits and evaluate whether those that aren't certain are likely to withstand a challenge by the Internal Revenue Service.

Under FIN 48, specific financial statement disclosures are now required for any uncertain tax positions. No tax benefit may be booked for positions that are deemed to have a less than 50 percent chance of being sustained by the taxing authority, and only a portion of the tax benefit may be booked for positions that are deemed to have a better than 50 percent chance of being upheld.

continues on page 2



Did You Know...

The **Conference Board Consumer Confidence Index** fell to 107.2 in March, the lowest level since November of 2006 when the reading was 105.3. According to the group's Consumer Research Center, the recent turmoil in financial markets coupled with the run-up in gasoline prices may have contributed to consumers' heightened sense of uncertainty and concern...

continues on page 3



BDO Seidman, LLP
Accountants and Consultants

The Big Picture

Walking a FIN Line (continued from page 1)



Moreover, previously taken tax benefits that don't stand up to the new standard will result in adjustments to companies' tax reserves as they start applying the new standard in their first-quarter results.

While all businesses must now grapple with complex documentation requirements and difficult judgment calls associated with FIN 48, retailers need to pay special attention to state and local tax, international tax, and accounting methods.

For many retailers, state and local tax jurisdictions provide numerous challenges, where uncertain tax positions abound. Retailers should consider the various aspects of the business model, including operations from traditional brick and mortar stores to on-line and catalog divisions. As a result, tax positions such as allocation of revenue, filing requirements, etc. should be considered.

For example, many retailers' Internet sales or catalog sales may create nexus – the level of connectivity to a state that triggers a filing requirement – in states for which they are not now filing income tax returns. Therefore, a liability exposure may exist, depending on to what state the Internet or catalog sale is allocated. Retailers may allocate this sale differently, often without investigating state law requirements. Obviously, this creates a tax position for analysis under FIN 48. A decision not to file in a particular jurisdiction is a tax position that should be analyzed.

Accounting methods such as inventory capitalization and revenue recognition will also be an area of focus. Accounting methods are subject to numerous judgments that are not always highly certain and taxing authorities could challenge them. Retailers should also take a look at their tax

positions relating to deferred revenue and differing methodologies regarding vendor rebates and slotting fees.

The international tax arena provides numerous risk areas for uncertain tax positions. Not only should retailers focus their accounting process to identify uncertain tax positions from a U.S. tax perspective, but also for the uncertainties that crop up within local jurisdictions.

Income tax allocations within taxing jurisdictions may be subject to judgment by the company as well as facts and circumstances that change routinely.

From a reporting perspective, FIN 48 will provide significant changes to the accounting landscape related to income taxes. For example, less flexibility now exists for management to determine reserves for tax

exposures. The increased transparency resulting from this new accounting pronouncement may also trigger inquiries by analysts as well as taxing authorities.

The financial community should begin to consider the impact that this accounting change will have on current financial results as well as forecasts. In addition, the financial community should consider the relevance of the pending disclosures as well as considerations of the tax risk companies have taken.

A company's tax risk may be too aggressive for investors, and these new disclosures will provide the financial community with this level of knowledge.

Catherine M. Fox-Simpson, CPA, is a tax partner in the retail and consumer product practice at BDO Seidman, LLP.

Other Items Consumer Product Businesses Should Consider Related to FIN 48:

- Consumer product companies should not underestimate the level of effort needed for implementation of FIN 48 and consider whether the necessary resources exist to not only implement, but also to comply with this accounting pronouncement.
- Communication should begin immediately among finance, tax, and legal departments as well as senior management to determine the right mix of people to devote to this effort. In addition, businesses should consider their risk tolerance and ensure this communication is properly communicated within senior management.
- Tax related internal controls should be evaluated to determine if any modifications are needed. Furthermore, companies should consider how FIN 48 will impact key financial measures and communicate accordingly to third parties.
- Consumer businesses should begin communications with external auditors as well as tax advisors to establish expectations for implementation matters, such as determining materiality, units of account, etc. This process should begin immediately to ensure timely compliance.

Any retail or consumer product businesses seeking assistance on FIN 48 or other tax matters can contact Catherine M. Fox-Simpson at cfox@bdo.com.

Mark Your Calendars...

The following is a list of upcoming conferences and seminars of interest for retail and consumer product executives:

April 2007

- | | |
|--------------------|-------------------------------------------------------------------------------------------------------------------------|
| April 12-13 | NRF Internal Audit and Compliance Council Meeting
The TJX Companies, Inc.
Framingham, MA |
| April 14-17 | NARMS 2007 Annual Meeting, Conference & Exhibition
J.W. Marriott Starr Pass Resort
Tuscon, AZ |
| April 25-27 | ICSC European Conference
Hilton Warsaw
Warsaw, Poland |
| April 25-27 | NRF CFO Summit 2007
Ritz Carlton Laguna Nigél
Dana Point, CA |
| April 27 | ICSC Executive Learning Series
ICSC Lifelong Learning Center,
1221 Avenue of the Americas
New York City |

May 2007

- | | |
|-------------------|-----------------------------------------------------------------------------------------------|
| May 2-4 | NRF CMO Summit
Pointe South Mountain Resort & Spa
Phoenix, AZ |
| May 3 | Global Retailing 2007
The QEII Conference Centre
London, UK |
| May 20-23 | ICSC Spring Convention
Las Vegas Convention Center
Las Vegas, NV |
| May 20 -22 | FMI 2007 Financial Executive Conference
Hyatt Regency Savannah
Savannah, GA |
| May 22-24 | GMA/FPA 2007 Spring Issues Conference
The Westin Arlington Gateway
Arlington, VA |

June 2007

- | | |
|-------------------|----------------------------------------------------------------------------------------------------------------------|
| June 4 | Internet Retailer 2007 Conference & Exhibition
San Jose McEnery Convention Center
San Jose, CA |
| June 11-13 | NRF Loss Prevention Conference & EXPO
San Diego Convention Center
San Diego, CA |
| June 15-17 | ICSC Executive Learning Series
ICSC Lifelong Learning Center, 1221 Avenue of the Americas
New York City |

Did You Know...

(continued from page 1)

Consumers are expected to spend upward of \$14 billion on purchases related to the Easter holiday season according to the **National Retail Federation**. This estimate represents an 11% increase over the amount consumers spent in 2006...

According to a recent study by **BIGresearch** conducted for the **Retail Advertising and Marketing Association**, 92.5 percent of adults say they regularly or occasionally research products online before shopping in a store. Products most often researched online prior to purchase are electronics (50.8%), apparel (32.9%) and appliances (27%)...

BDO Seidman Retail & Consumer Product Practice

BDO Seidman, LLP has been a valued business advisor to retail and consumer product companies for almost 100 years. The firm works with a wide variety of retail clients, ranging from multinational Fortune 500 corporations to more entrepreneurial businesses, on myriad accounting, tax and other financial issues.

For more information on BDO Seidman's service offerings to this industry vertical, please contact one of the regional service leaders below:

Al Ferrara, New York

aferrara@bdo.com / 212-885-8000

Steve Ferrara, Chicago

sferrara@bdo.com / 312-856-9100

Ted Vaughan, Dallas

tvaughan@bdo.com / 214-969-7007

Douglas Hart, San Francisco

dhart@bdo.com / 415-397-7900

Material discussed is meant to provide general information and should not be acted upon without first obtaining professional advice appropriately tailored to your individual circumstances.

To ensure compliance with Treasury Department regulations, we wish to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax or (ii) promoting, marketing or recommending to another party any tax-related tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.