February 3, 2005

Director, TA&I—FSP  
Financial Accounting Standards Board  
401 Merritt 7, PO Box 5116  
Norwalk, CT 06856-5116

By email: director@fasb.org

Re: Proposed FSP FIN 46(R) - b

To Whom It May Concern:

The New York State Society of Certified Public Accountants, the oldest state accounting association, represents approximately 30,000 CPAs that will implement the provisions proposed in the captioned FASB staff position. NYSSCPA thanks FASB for the opportunity to comment on its exposure draft.

The NYSSCPA Financial Accounting Standards Committee deliberated the proposed staff position and prepared the attached comments. If you would like additional discussion with the committee, please contact Robert A. Dyson, chair of the Financial Accounting Standards Committee, at (212) 372-1320, or Robert Colson, NYSSCPA staff, at (212) 719-8350.

Sincerely,

John J. Kearney  
President

Attachment
NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS

COMMENTS ON PROPOSED FASB STAFF POSITION FIN 46 (R) - b

February 3, 2005

Principal Drafter

Robert A. Dyson
NYSSCPA 2004 - 2005 Board of Directors

John J. Kearney, **President**
William Aiken, Deborah L. Bailey-Browne, Raymond P. Jones

Stephen F. Langowski, **President-elect**
Spencer L. Barback, Don A. Kiamie

Raymond M. Nowicki, **Secretary**
Andrew Cohen, John L. Lauchert

Arthur Bloom, **Treasurer**
Michelle A. Cohen, David J. Moynihan

Peter L. Berlant, **Vice President**
Anthony G. Duffy, Richard E. Piluso

Katharine K. Doran, **Vice President**
Robert L. Ecker, C. Daniel Stubbs, Jr.

Andrew M. Eassa, **Vice President**
David Evangelista, Edward J. Torres

Louis Grumet, **ex officio**
Neville Grusd, Robert N. Waxman

NYSSCPA 2004 - 2005 Financial Accounting Standards Committee

Robert A. Dyson, Chair
Margaret A. Wood, Vice Chair
Patricia A. Crecco
J. Roger Donohue
Roseanne T. Farley
Robert Fener
Hashim Ghadiali
Fred R. Goldstein
Abraham E. Haspel

Edward P. Ichart, Linda Lam, Michael P. Reilly
Joseph E. Manfre, Joseph F. Schick
John J. McEnerney, Lewis Shayne
Stephan R. Mueller, Leonard J. Weinstock
Mark Mycio, Barry Wexler
Raymond A. Norton, Eddie C. Wong
John J. O’Leary, Jay B. Zellin

NYSSCPA 2004 - 2005 Accounting & Auditing Oversight Committee

Paul D. Warner, Chair
Gary E. Carpenter
Joseph W. Duggan
Robert A. Dyson
David J. Hasso
Elliot L. Hendler
Michele M. Levine

Thomas O. Linder, Steven Rubin
Eugene D. Mahaney, Ira M. Talbi
Robert S. Manzella, George I. Victor
Mark Mycio, Robert N. Waxman
Eric J. Rogers, Paul J. Wendell
Mitchell Rosendorf, Margaret A. Wood

NYSSCPA Staff

Robert H. Colson
February 3, 2005

The Committee applauds the Financial Accounting Standards Board staff’s effort to clarify a common transaction, particularly among small businesses. Very often, operating businesses lease land, buildings, and improvements used in their operations from a separate entity owned by either their owners or by one or more principal shareholders. Tax, estate, and legal liability issues often motivate the owners or shareholders to enter into these transactions. Because these transactions are so common, the Committee recommends that the Board issue clear guidance to avoid diversity in practice or inadvertent departure from the standard.

The Board should explain further the principles underlying the proposed FASB Staff Position. Specifically, the Board should provide a concise definition of the term “implicit variable interest.” The determination of an implicit variable interest, as described in footnote 3, is based on whether, in substance, the reporting entity will absorb the variability of a VIE. Such a determination is actually based on the entity’s best guess of future events, which is subject to change. This description implies that an implicit variable interest exists when it is probable (as opposed to the more definite will) that the reporting entity will absorb the variability of a VIE. The issue then becomes whether the term “probable” should be defined in accordance with SFAS 5, Accounting for Contingencies, or the less restrictive application in paragraph 9 of FIN 45, Guarantor’s Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtiedness of Others. A clearer definition of implicit variable interest would assist preparers and auditors in applying this guidance in circumstances similar to, but not exactly the same as, the example provided by the proposed FSP.

For example, business owners or principal shareholders often create a separate real estate entity to own property that the reporting operating business shares with unrelated parties. Sometimes the operating entity occupies half or less than half of the total floor space. The operating business and other tenants, through their rent payments, provide the funds for the real estate entity to pay for the mortgage, real estate taxes, and other expenses. If the real estate entity cannot find other tenants, or if these tenants do not pay their rent, the operating business often provides funds in the form of additional rents, loans, or capital contributions to permit the real estate entity to meet its expenses, even in the absence of a written guarantee, in order to avoid foreclosure by the lender of its principal place of business and possible disruption of its operations. This arrangement might be an implicit variable interest requiring consolidation. On the other hand, the reporting entity’s performance under this arrangement is contingent upon events that may never occur and whose probability of occurrence could change significantly from year to year. The FSP would provide clearer guidance if revised to define “implicit variable interest.”
interest” and provide an additional example illustrating this principle when an entity occupies half or less than half of the property.