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April 30, 2010

Tammy A. Geier
Internal revenue Service
CC:PA:LDP:PR (Notice 2009-93)
Room 5203
P.O. Box 7604
Ben Franklin Station, NW
Washington, DC 20044

RE: *IRS Notice 2009-93: Truncating Social Security Numbers on Paper Payee Statements*

Dear Ms. Geier:

The American Bankers Association (ABA) is pleased to submit comments on Notice 2009-93 (Truncating Social Security Numbers (SSNs) on paper Payee Statements) (the "Notice") issued by the Internal Revenue Service (the "Service") on November 19, 2009. *The ABA represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its two million employees.*

In 2007, based on concerns over identity theft and privacy issues, the ABA wrote to the Service requesting that current rules be revised to permit a filer or other entity required to provide IRS forms or other statements to taxpayers to mask or truncate taxpayer identification numbers (TINs) (such as SSNs, employer identification numbers (EINs), individual taxpayer identification numbers (ITINs) or adoption taxpayer identification numbers (ATINs)) on such documents provided to the taxpayer. The ABA commends the Service's efforts to respond to our concerns by creating the pilot TIN truncating program announced in the Notice. Under the pilot program, a filer is permitted to truncate an individual's TIN (specifically, SSNs) on certain paper payee statements for calendar years 2009 and 2010. While we agree that the Notice represents an initial attempt by the Service to address the serious risks that are created by the display of SSNs or other personal information on statements or forms provided to taxpayers, we believe that the Service needs to do a lot more in this area. Thus, this letter provides comments in response to specific questions raised in the Notice and includes additional comments that we believe would be helpful to the Service as it contemplates issuing additional guidance on this topic.

Questions Raised in the Notice:

1. *Whether truncation of an individual's identifying number on paper payee statements should be required, rather than permitted.*

We request that the Service issue guidance providing that truncation be permitted, rather than required. We have made it clear to the Service that because financial institutions are required annually to mail billions of customer statements and forms that display sensitive taxpayer identification information, serious risks of identity theft are created with every mailing of such statements, especially when the outside envelope must display the legend "important tax return document enclosed". Thus, we continue to advocate that the Service permit filers to truncate sensitive taxpayer information on documents provided to customers in order to reduce or eliminate the risk of identity theft. The Service should make TIN truncation optional, rather than required, as there may be other ways for filers to address the issue of identity theft or privacy other than truncating the TIN on documents mailed to customers. While we support a provision that would allow truncation of TIN on

taxpayer documents, we do not support mandatory TIN truncation or penalty provisions for failure to truncate taxpayers' TINs on such documents.

In addition, the ABA requests that the Service provide a standard and uniform method of displaying taxpayer information on documents for entities/filers that elect to mask taxpayer identifying information on documents. In effect, we suggest that the method for truncation provided in the Notice - displaying only the last four digits – be adopted as the format for all information returns for which the filer has elected to apply TIN truncation.

2. Whether truncation should be permitted or required for identifying numbers appearing on paper payee statements not within the scope of this notice.

We request that the Service permit truncation for all paper payee statements, including those that are beyond the scope of the Notice. ABA represents numerous banks and trust companies that provide both trust and investment services. In addition to producing Form 1099s for investment management and custodial accounts, bank trust departments often produce as many trust Schedule K-1s and Grantor tax information letters to report income to trust or estate beneficiaries. These tax statements typically contain customer TINs, and thus, carry the same risks of identity theft and privacy issues as other IRS forms and statements. As a matter of fact, bank customers concerned over identity theft and privacy issues, now ask why the IRS allowed masking only on their 1099s but not on their

Moreover, a provision that would permit truncation on some types of statements and not others would be very costly and administratively burdensome for filers. This is because many filers currently use systems that can either truncate TINs or not – regardless of whether the document is a form 1099, trust K-1, Grantor tax information letter or other IRS information reporting form or statement. Thus, for a filer that elects to truncate TINs under the pilot program, such filer would need to develop a system that can truncate TINs on some documents and not on others. Therefore, we suggest that for a filer that elects to truncate, the Service should permit truncation across the board.

Furthermore, we request that the IRS permit filers to truncate all TIN types, not just SSNs. Permitting truncation of some types of TINs (e.g., SSNs) and not others (e.g., EINs) will create unnecessary administrative and systemic burdens for filers. Current IRS filing specifications for information returns require filers to format TINs on information returns as nine-digit, non-hyphenated numbers. As a result, filers generally enter TINs in their systems simply as a nine-digit identifying number without any hyphens with no reliable way to distinguish between the different TIN types in the system, i.e., whether a particular nine-digit number is an EIN or an SSN. As drafted, the pilot program requires filers to distinguish SSNs from other types of TINs. Filers are currently not required to distinguish between SSNs and other types of TINs on information returns filed with the IRS – a copy of which is provided to their customers. Thus, they are not compelled to use systems that are able to differentiate between different TIN types. While the concern about identity theft and privacy is considerably less with respect to the display of EINs, there is no compelling reason why the Service should prohibit EINs from being truncated. The need to distinguish SSNs for purposes of this rule is an unnecessary impediment for many firms, and will create an uneven playing field because entities whose systems can distinguish EINs from SSNs will be able to protect their customers' privacy by truncating their SSNs, whereas entities whose systems are not designed to distinguish between different TIN types will be

unable to truncate a taxpayer's nine-digit number and, therefore, will be unable to help protect their clients from potential identity theft.

If the Service permits truncation of SSNs only and not EINs, many filers would have to incur significant costs to acquire systems that can distinguish between the different types of identifying numbers (assuming that such systems even exist; the IRS has not issued any published guidance on how to recognize an EIN) in order to accomplish truncation as well as establish and validate millions of TIN type codes for existing accounts.

If the Service decides not to permit truncation for EINs, in order to ensure that all entities are able to take advantage of the SSN truncation rule, we suggest that the Service provide a formula that will help filers determine whether a particular nine-digit number is an EIN (e.g., a rule that would provide that all numbers beginning with certain specified two-digit prefixes are EINs). That way, filers will be better able to distinguish EINs from SSNs for purposes of the truncation rule. By way of example, a formula is already provided in IRS Publication 1915 for distinguishing ITINs from SSNs; perhaps a similar formula can be added to Publication 1635 for distinguishing EINs from SSNs.

3. Whether truncation should be permitted or required for payee statements furnished electronically.

We request that the same TIN truncation requirements apply to all statements and documents provided to customers, whether on paper or electronically. In addition to the fact that it would create an undue burden for many filers to program their systems to truncate TINs on paper statements but not on electronic statements, statements furnished electronically carry the same risk of identity theft as those provided through the mail. Some examples are:

- A customer prints the electronic statement and disposes of it without shredding it.
- A customer uses a public computer to view an electronic statement and does not log off properly. A subsequent user of the same computer could easily access the customer's information and obtain any fully displayed personal information.
- Someone looking over a taxpayer's shoulder while the taxpayer accesses a document with displayed SSN might be able copy the SSN and other information off the screen.

If truncation is not permitted for electronic statements, clients who are concerned about identity theft and privacy will have a bias towards paper statements, and this will impede the Service's efforts to encourage filers to furnish statements electronically.

4. Whether a filer should be required to include the complete identifying number on the payee statement if requested by the payee.

As noted in #1 above, filers should not be required to truncate TINs (including SSNs), but rather, be permitted. If requested by the payee or customer, the filer should have the option of either truncating or granting the customer's request to include the full identifying number on the payee statement. To allow payees to

individually mandate the display of their full SSNs would create an enormous burden on filers as they would have to program their systems to be able to handle such requests on a case by case basis.

We understand that some customers may use their payee statements to verify or confirm that the filer has the customer's correct TIN, and receiving statements that do not display the complete SSN could result in such customers trying to figure out other ways of obtaining such confirmation, which could create some confusion and customer relations issues. However, the costs and administrative burdens involved in programming systems that will truncate in some cases and not in others (for the same TIN type) far outweighs any costs or burdens that may be created by trying to find other ways to verify or confirm customers' SSNs. Moreover, the instances of customers using these statements to verify the accuracy of their SSNs are very small – the majority of customers prefer that the filer truncate their SSNs due to identity theft reasons and use other methods to confirm or verify their TINs. Therefore, if the IRS's guidance permits rather than requires truncation, filers would have the option of truncating for payees that are concerned with identity theft and privacy issues and the option (if available) of displaying full numbers for payees that make such a request.

5. Whether truncation creates difficulties for filers and/or payees.

One difficulty that will be created by truncation is that the filer and the payee may miss the chance to spot any inaccuracies in the payee's identifying number when statements are provided to the payee. This could potentially lead to an increase in penalties to the filer for filing incorrect information returns under Internal Revenue Code Sections 6721 and 6722. To solve this problem, payees concerned about this issue may request that the filer display their full TIN on the statement (if the filer offers this option) as a way for such payees to confirm that the TIN is accurate. Also, filers that do not offer the option of truncating at the request of the customer might be able to create or develop other ways of ensuring that they have payees' correct TINs without having to display such numbers on statements provided to payees. Nevertheless, we believe that the risks and costs of identity theft from displaying taxpayers' full nine-digit numbers would outweigh any costs that may be associated with creating other means of verifying the accuracy of taxpayer identifying numbers.

Additional Comments:

Extend the Pilot Program

We urge the Service to extend the current pilot program announced in the Notice for an additional period that ends on the date the permanent program begins. The pilot program was announced in late November 2009 and made applicable to a limited type of forms and statements filed for 2009 and 2010 calendar years only. The timing made it impossible for many filers to participate in the program for the 2009 filing season due to the lack of lead time needed for implementation. We understand that the pilot program is intended to provide the Service with some experience in this area prior to the implementation of a permanent program. However, the fact that many filers were unable to fully participate in the program due to the timing and the fact that the program excluded certain other types of forms and statements underscores the Service's goal of gathering much-needed experience. Thus, it would make sense for the pilot program to be extended so that more filers

are able to participate for multiple years, thereby making it possible for the Service to gather the experience required to implement an effective permanent program.

Further, we suggest that the Service consider including other types of TINs (such as EINs and ITINs), other types of IRS forms and customer statements (including trust K-1s and Grantor tax information letters), and electronic payee statements in both the current pilot program and the extended pilot program in order to test the TIN truncation guidelines in those areas prior to the implementation of a permanent program.

Sincerely,

A handwritten signature in black ink that reads "Fran Mordi". The signature is written in a cursive, slightly slanted style.

Francisca N. Mordi