

Submitted Via Electronic Mail

June 24, 2015

Pamela Lew
Office of the Associate Chief Counsel (Financial Institutions and Products)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20024

Re: Reporting for Premium; Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options, Final and Temporary Rules, 80 Federal Register 13233 (March 13, 2015).

Dear Ms. Lew:

The American Bankers Association¹ (ABA) wishes to provide additional comments to the Internal Revenue Service (IRS) regarding the final, temporary, and proposed regulations on basis reporting of debt instruments and options (Releases) that were issued in March 2015. The Releases contain final regulations relating to information reporting for bond and acquisition premium, final and temporary regulations relating to certain information reporting for transactions involving debt instruments and options, the treatment of certain holder elections for reporting a taxpayer's adjusted basis in a debt instrument, and transfer reporting for section 1256 options and debt instruments.

Because many ABA member banks act as brokers subject to the Release, we offer the following comments. We also wish to thank the IRS for delaying certain reporting on transfer statements from June 30, 2015, until January 1, 2016.

Constant Yield Election for Market Discount

Under newly-issued Treasury Regulation § 1.6045-1T(n)(11)(i)(B), brokers must assume that a customer has made the election pursuant to Internal Revenue Code (IRC) § 1276(b)(2) to accrue market discount based on a constant yield unless notified in writing that the customer does not want this election taken into account. This new default rule, which supersedes the basis reporting regulations issued in 2013, applies to debt instruments acquired on or after January 1, 2015. However, for debt instruments acquired in 2014, the default rules in the 2013 regulations seemingly still apply and brokers must assume that a customer has *not* made the election. The disparity in the default rules may result in brokers using different methods of accruing market discount for different bonds held in the same customer's account, which will potentially confuse

¹ The American Bankers Association is the voice of the nation's \$15 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$11 trillion in deposits and extend more than \$8 trillion in loans.

the broker's customers. We therefore request that the IRS permit brokers to accrue retroactively market discount for debt instruments acquired prior to 2015 if the debt instrument holder has not recognized market discount in income prior to 2015.

In addition, to make the IRC § 1276(b)(2) election, the taxpayer must attach a statement to the taxpayer's return for the first year in which the taxpayer must accrue market discount.² Because unsophisticated taxpayers are unlikely to attach this statement, they may improperly report market discount by recognizing the amount reported on a Form 1099 using the constant yield accrual method without having made the appropriate election. We, therefore, request that the IRS allow debt instrument holders to make the election by recognizing market discount accrued under the constant yield method in the income tax return for the first tax year market discount on the debt instrument is recognized by the holder as income.³ This amendment would be consistent with the method of making the election to amortize bond premium for taxable debt instruments pursuant to Treasury Regulation § 1.171-4(a)(1) by recognizing amortized bond premium on the taxpayer's timely filed income tax return.

Reporting the prior year-end value on transfers of IRC Section 1256 options

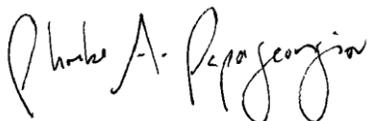
Treasury Regulation § 1.6045A-1T(e) requires transfer statement reporting for § 1256 options transferred on or after January 1, 2016, and the additional reporting of the original basis of the option and the fair market value of the option as of the end of the prior calendar year. The fair market value of a § 1256 option as of the end of the prior calendar year is not relevant to the receiving broker of a transfer that is a gift because the transferor would have realized mark-to-market gain or loss under the § 1256 rules at the time of gift. Additionally, § 1256 options are publicly traded, and the fair market value is available to the receiving broker.

Inasmuch as the receiving broker does not need the value, and space on the transfer statement is limited, we request that the IRS eliminate the requirement to report the fair market value of the option as of the end of the prior calendar year in Treasury Regulation § 1.6045A-1T(e)(2)(ii).

Conclusion

ABA appreciates this opportunity to offer additional comments on the Release. We urge the IRS to address these concerns as suggested to minimize burdens on taxpayers, as well as banks and other brokers. Should you have any questions or comments with respect to the issues raised in this letter, please do not hesitate to call the undersigned at (202) 663-5053.

Sincerely,



Phoebe A. Papageorgiou
Vice President & Senior Counsel

² See Rev. Proc. 92-67, 1992-2 CB 429.

³ The IRS may make this change by amending Rev. Proc. 92-67.