American Bankers Association
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Submitted Via Electronic Mail

September 18, 2013

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

Re: Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options; Reporting for Premium; Final and Temporary Regulations; 78 Federal Register 23116 (April 18, 2013).

Dear Ms. Lew:

The American Bankers Association[1] (ABA) wishes to provide additional comments to the Internal Revenue Service (IRS) regarding the final and temporary regulations on basis reporting of debt instruments and options (Rule) that were issued in April 2013. Under the Rule, "brokers," as defined under the Internal Revenue Code (Code), must report additional information in IRS Form 1099-B about the sale of their customers' securities transactions. The new information required includes the adjusted cost basis of customer "covered securities" sold and whether any resulting gain or loss is short or long term.

As we have noted in past letters, many ABA member banking institutions, savings associations, and trust companies (collectively, banks) provide trust, investment management, and custody services for their clients for which they may be deemed a "broker" subject to the new reporting. For the last few years, these banks and trust companies have diligently complied with the new cost basis reporting for equity securities and mutual funds and are preparing to do the same for debt instruments and options starting on January 1, 2014. Nonetheless, we wish to offer additional comments on the Rule to make it more effective and less burdensome to the IRS, brokers, and taxpayers.

The Rule's Presumption of the Amortization of Taxable Bonds

For purposes of calculating the adjusted basis, the Rule requires brokers to make the critical presumption that the customer has elected under section 171 to amortize bond premium on a taxable debt instrument. This presumption, although well-intended, does not conform to what most bank and trust company customers currently do and would likely provide no useful information to the IRS. In the end, the presumption would only serve to confuse bank customers who had never elected to amortize taxable bonds. We therefore strongly urge the IRS to

[1] ABA represents banks of all sizes and charters and is the voice for the nation's $14 trillion banking industry and its two million employees.

reconsider this presumption and craft a final rule that is consistent with the treatment of all other elections in the Code. In other words, IRS should maintain the current regime in which taxpayers must *affirmatively* elect the election in the first place and brokers will not assume that the election was made by the taxpayer unless notified by the taxpayer.

Without making this important change, the Rule will surely create discrepancies between the broker tax statement provided to the customer and the required tax reporting by the customer. Because customers expect their brokers to provide information highlighting the areas of possible discrepancies, banks will need to implement further communication mechanisms with the customers about the cost basis reporting, as well as make enhancements to their internal reporting systems to allow a dual treatment of non-covered and covered debt instrument elections. Furthermore, many brokers are now using third-party vendors to help in the calculation of amortization, original issue discount, acquisition premium, and market discount. These vendors will likely need to change not only the way they are calculating these adjustments but also the information required from the brokers.

When acting as brokers, banks are not in the business of providing tax advice and therefore do not advise their customers on whether to amortize their taxable bonds. The customer should be responsible for making the decision to amortize, because the election would affect taxable bonds held at other brokers. That is because, if the broker were to assume that the customer has amortized, then under section 171 of the Code, the taxpayer must amortize all taxable bonds in that account, including those that are not "covered securities."

Lastly, if the broker decides to amortize the non-covered bonds, systems will have to be modified to store the previously unamortized amount that would have been amortized had the amortization been in effect since the bonds were purchased. In effect, the Rule requires the broker to keep two books of records for clients that have not elected to amortize: one for the client and one for purposes of the 1099-B reporting and transfer statements. Such a requirement is excessively costly to maintain and of no help to the customer who never affirmatively elected to amortize in the first place.

Conclusion

ABA appreciates this opportunity to offer additional comments on the Rule. We urge the IRS to address this significant concern 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,

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