

May 27, 2010

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Branch 1  
Associate Chief Counsel (Procedure and Administration)  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20044

***RE: REG-139255-08: Alternative Approach to Foreign Address Exception***

Dear Ms. Pettoni:

The American Bankers Association (ABA)<sup>1</sup> is pleased to submit further comments on the proposed regulations relating to Information Reporting of Payments Made in Settlement of Payment Card and Third Party Network Transactions (the “Proposed Regulations”) issued by the Treasury Department and Internal Revenue Service (collectively, the “Service”) on November 24, 2009. In particular, we urge the Service to adopt an alternative approach in the final regulations for purposes of determining whether a payee qualifies for the “foreign address” exception contained in the new law.

In general, the new Section 6050W provides an exclusion from the definition of “participating payee” for “any person with a foreign address.” As drafted, the Proposed Regulations would require a U.S. or U.S.-owned payment settlement entity (“PSE”) to collect Forms W-8 or other documentary evidence on its foreign merchants for whom it already has foreign addresses on file in order to establish foreign status,<sup>2</sup> whereas non-U.S. owned or foreign PSEs would not be subject to such documentation requirements<sup>3</sup>. In addition to being considerably burdensome and costly, this requirement puts U.S. and U.S.-owned PSEs at a considerable competitive disadvantage compared to solely foreign PSEs. The ABA continues to urge the Service to adopt rules that would ensure that the treatment of both U.S and non U.S. PSEs are the same with respect to the application of the foreign address exception.

Recently, a number of ABA member banks met with the Service to discuss this issue and have attempted to identify a way to address it in a manner that would resolve these concerns. One possibility that is currently being explored is the idea of leveraging the pre-existing customer identity verification process under Anti-Money Laundering (“AML”) compliance standards as a means to qualify for the “foreign address” exception under Section 6050W(d)(1)(B). In light of our position that the final regulations be drafted to ensure that all PSEs are treated in the same manner and that duplicative account verification processes are reduced or eliminated, we believe that using the AML rules that currently exist as an alternative approach would help establish an easier process of determining whether a payee qualifies for the foreign address exception without the PSE having to go through onerous documentation processes. Thus, the ABA strongly supports language in

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<sup>1</sup> 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.

<sup>2</sup> See Prop. Treas. Regs. Sec. 1.6050W-1(d)(3)(i).

<sup>3</sup> See Prop. Treas. Regs. Sec. 1.6050W-1(d)(3)(ii)

the final regulations clarifying that a PSE, whether a U.S. person, foreign person, or CFC of such a U.S. person, can exclude a foreign merchant from Form 1099-K reporting under the new law – as long as the foreign merchant’s identification information has been collected and verified, and the PSE has maintained records that are consistent with the customer identification rules required for banks and other financial institutions under the Patriot Act.

We would welcome an opportunity to further discuss this issue or any other comments with you. Please feel free to contact me at 202.663.5317 or [fmordi@aba.com](mailto:fmordi@aba.com) if you would like to discuss this in further detail.

Sincerely,

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

Francisca N. Mordi