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September 17, 2008

Internal Revenue Service
Attn: Substitute Forms Program
SE:W:CAR:MP:T:T:SP, IR 6526
1111 Constitution Ave., NW
Washington, DC 20224

RE: *IRS Ban on the Use of Logos on Substitute Forms – Rev. Proc. 2008-36*

Dear Sir/Ma'am:

The American Bankers Association (ABA) appreciates the opportunity to comment on the Internal Revenue Service's (the Service) proposal to prohibit the inclusion of payer's logo, slogan, or advertising on substitute forms used for reporting certain reportable payments to recipients. This prohibition, which is contained in the recently released Rev. Proc. 2008-36,¹ will create unnecessary confusion for the taxpayers who receive these forms, and also cause both administrative and financial disruptions to the operations of businesses that use these substitute forms for reporting payments. While we understand the Service's concerns regarding the use of logos and related items on substitute forms, we believe that the difficulties that may result from a comprehensive ban would far outweigh any benefits that the Service expects to achieve.

The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$13.3 trillion in assets and employ more than two million men and women.

More than 10 years ago, the IRS started permitting payers using substitute forms for reporting payments to include slogans, some advertising, or logos on the forms in order to help their customers or clients to identify the sender and thus identify the document as an important tax return preparation document.² Since then, the practice of including logos and slogans on substitute forms became a generally accepted practice in the tax reporting industry, as long as the use of such logos, advertisements, or slogans did not detract from the importance of the document

¹ See, Rev. Proc. 2008-36 (*General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, W-2G, and 1042-S*), Section 1.3.2, Part 1. "Thus, with the exception of the electronic tax logo (i.e., the IRS e-file logo), the IRS has determined that slogans, advertising, and other logos will not be allowed on Forms 1096, 1098, 1099, 5498, W-2G, 1042-S, or any payee statements reporting amounts paid during the 2010 calendar year, and thereafter. The IRS e-file logo on the IRS official payee copies may be included, but it is not required, on any of the substitute form copies."

² See Notice 96-62, 1996-2 C.B. 228.

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itself. As a result of this sanction from the Service, many payers (including financial institutions) have invested a lot of time, effort, and financial resources in developing substitute forms that contain their logos or slogans and provide useful information to the taxpayers receiving these forms. In fact, for some banks their name (presented in special graphics) is their logo.

In 2007, the Service stated that it was concerned that these forms “that include logos, slogans, and advertisements (including advertisements for tax preparation software) may be confused with questionable forms”, and may not in fact represent valid payee forms. At that time, the Service noted that a “payee may not recognize the importance of the payee statement for tax reporting purposes due to the use of logos, slogans, and advertisements.”³ The Service has not provided any empirical evidence that such confusion currently exists, or that these logos or slogans detract from the importance of the document. In fact, financial institutions strongly believe that their clients are better served because of the logos included on these documents. A taxpayer would be more inclined to pay attention to a document that is easily identifiable as a tax document from its financial institution than one that is not so easily identifiable. Thus, without such an identifier, it is possible that many taxpayers may misplace or otherwise fail to appreciate the importance of information returns sent to them, which would result in many taxpayers failing to file accurate and complete tax returns.

The Service should distinguish between “promotional or advertising material,” which is specifically prohibited by Treasury regulations,⁴ and logos or slogans that identify the payer but do not try to sell the taxpayer a product or service or invite the taxpayer to contact the payer for information about products and services. Promotional and advertising material should continue to be prohibited in statement mailings, whether on the information return statement itself, or as separate enclosures in the statement mailing envelope, attachments perforated to otherwise-allowable enclosures, or text printed on otherwise-allowable enclosures. For example, a letter explaining the tax consequences of information reported on the enclosed Form 1099, which is specifically permitted,⁵ should not be allowed to contain language inviting the taxpayer to call a certain phone number, visit a certain website, or otherwise contact the payer for information about products or services.

IRS regulations provide that payers are not required to imprint the legend “Important Tax Return Document Enclosed” on the outside of the statement mailing envelope in all cases.⁶ In order to ensure that the use of a logo or slogan does not detract from the importance of the document, the Service could require that the legend “Important Tax Return Document Enclosed” be imprinted on the outside of the mailing envelope containing such documents.

³ See IRS Publication 1179 (2007 version).

⁴ See Treas. Reg. section 1.6042-4(d)(2)(i).

⁵ See, Treas. Reg. section 1.6042-4(d)(2)(i)(D).

⁶ See Treas. Reg. section 1.6042-4(d)(2)(ii)(A). For instance, the legend is not required if the envelope contains certain types of enclosures (such as a letter explaining the tax consequences of information reported on the enclosed Form 1099).

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Furthermore, to determine if a particular payer's logo or slogan actually impairs the ability of taxpayers to recognize the importance of an information return statement, the Service could use its "notified payee underreporting" (C-Notice) program to learn which payers' 1099 filings are associated with abnormally large percentages of taxpayers failing to include the reported interest or dividends on their tax returns.

The ABA strongly urges the Service to retain the current rule that permits logos or slogans on substitute forms as there appears to be no evidence that this rule has created any negative impact in the industry. In some cases, a financial institution's year end mailing to a customer may include (1) a substitute Form 1099, (2) a year-end statement, and (3) an informational/instructional brochure. The year-end statement would typically contain financial information that supports the amounts reported on the 1099, whereas the brochure would contain information describing items on the 1099 and the year-end statement (as well as other information). These three documents (including the envelope in which they are being sent) would typically have the same company name, logo, or slogan. If the Service proceeds with its decision to eliminate the use of logos on the 1099s, only one of these four items would be sent without an identifier. This will increase a recipient's confusion and would most likely lead to a situation where the recipient *more* easily discards the important document that does not contain the sender's name/logo and retains the less important documents containing the sender's name/logo. As stated above, there is no clear, demonstrated justification for the Service's decision to eliminate the use of logos or slogans on the substitute 1099.

Rather than a complete ban on the use of logos and slogans, we respectfully request that the Service permit the inclusion of slogans or logos (e.g., name graphics and or the institution's picture logo) as identifiers for the taxpayers and set specifications as to the type and location of such logos or slogans on the forms. We believe that the use of logos on information returns is important for both the taxpayer receiving the form and the entity that issues it. Such logos help taxpayers more readily identify the sender and the accounts and payments to which the document relates. The members of the banking industry are currently expending a significant amount of resources to ensure that their processes and procedures are in compliance with the law. A change in the rules to eliminate completely the current practice will cause payers to expend a significant amount of time and resources to redesign their systems and programs in order to achieve compliance.

We would welcome an opportunity to discuss this with you further. Please feel free to contact me at 202.663.5317 or fmordi@aba.com.

Sincerely,

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

Francisca N. Mordi