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February 21, 2013

Tammie A. Geier
CC:PA:LPD:PR (REG-148873-09)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station, N.W.
Washington, DC 20044

RE: Proposed Regulations: *IRS Truncated Tax Identification Numbers on Payee Statements*

Dear Ms. Geier:

The American Bankers Association (ABA)[1] and The Clearing House Association, L.L.C. (TCH)[2] (together, the "Associations") are pleased to submit comments on Proposed REG-148873-09 (IRS Truncated Tax Identification Numbers) (the "Proposed Regulations") issued by the Internal Revenue Service (IRS) on January 2, 2013 relating to the masking of taxpayer identification numbers (TINs) on payee statements.

In 2009, after several years of industry advocacy on the issue of TIN masking for security purposes on payee statements, the IRS initiated a pilot program (the "Pilot Program") permitting filers to truncate a taxpayer's individual payee identifying numbers (specifically, social security numbers (SSNs), individual tax identification numbers (ITINs) and adoption tax identification numbers (ATINs)) on certain paper payee statements for calendar years 2009 and 2010. In response to comments from the ABA, TCH and others, the IRS issued Notice 2011-38 extending the Pilot Program through 2012. In Notice 2011-38, the IRS requested comments on several questions, including (i) whether TIN truncation should be extended to other types of TINs including employer identification numbers (EINs); (ii) whether TIN truncation should be extended to electronically furnished payee statements; and (iii) whether TIN truncation should be extended to additional types of payee statements (such as the Schedule K-1).

[1] 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.

[2] Established in 1853, The Clearing House is the oldest banking association and payments company in the United States. It is owned by the world's largest commercial banks, which collectively employ over 2 million people and hold more than half of all U.S. deposits. The Clearing House Association L.L.C. is a nonpartisan advocacy organization representing—through regulatory comment letters, amicus briefs and white papers—the interests of its owner banks on a variety of systemically important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost $2 trillion daily and representing nearly half of the automated-clearing-house, funds-transfer, and check-image payments made in the U.S. *See* The Clearing House's web page at www.theclearinghouse.org.

In a letter dated May 24, 2011, the ABA provided responses to these questions and reiterated some of the suggestions and recommendations made by the ABA and TCH respectively in letters submitted in 2010 in response to the Pilot Program. The Associations continue to support and applaud the IRS's efforts to address concerns about identity theft and privacy issues as they relate to safeguarding sensitive information of customers and depositors by creating the TIN truncation program in 2009. We further commend the IRS for enacting the Proposed Regulations, which incorporate the following important industry recommendations:

- Makes the TIN truncation program permanent;
- Permits, rather than requires, filers to truncate TINs;
- Permits TIN truncation on payee statements furnished electronically; and
- Provides a standard and uniform method for truncation.

These provisions are very important to the effectiveness and usefulness of the TIN truncation program and should be retained in the final regulations. However, we strongly suggest that the IRS consider including the following recommendations in the final regulations in order to improve the effectiveness and usefulness of the rules.

1. ***Payors should be permitted to truncate a payee's EIN***

As explained in previous letters submitted by both the ABA and TCH, the fact that the rules do not permit truncation for EINs continues to make it extremely difficult for many filers to take advantage of their benefits. These filers face administrative and system programming challenges that make it difficult to distinguish EINs from individual payee identifying numbers. Hence, many payors have not been able to participate in the TIN truncation program (since its inception in 2009) and will not be able to take advantage of the new regulations unless truncation for EINs is permitted.

The IRS initiated TIN truncation in the Pilot Program by permitting truncation only for individual payees' identifying numbers (SSN, ITIN, & ATIN). EINs were specifically excluded. The Proposed Regulations continue to exclude EINs from the TIN truncation process because, according to the IRS, the misuse of EINs is less frequently an element of identity theft. While we agree that the greater concern for identity theft and privacy relates to individual TINS (such as the SSN) and to a lesser degree, the EIN, the fact still remains that EINs could also be the subject of identity theft and privacy issues. Moreover, there is no evidence that including EINs in the truncation program would create any identifiable incremental burden to the IRS – unlike the significant burdens that the EIN exclusion creates for some payors. This EIN exclusion directly affects many financial institutions' ability to participate in TIN truncation for individuals. Approximately 70% of the ABA and TCH financial institution members informally surveyed advised that their institution would be unable to limit truncation to individual TINs on some or all of their information returns without extensive system programming or maintenance updates to customer accounts.

Banks and other financial institutions are currently devoting enormous resources (time, money, personnel) to implementing FATCA, Dodd-Frank, cost basis reporting, "fiscal cliff" changes, and other mandatory compliance projects. To require the commitment of additional significant resources to program systems and update records in order to distinguish EINs from SSNs places an undue burden on financial institutions.. If the final regulations exclude EINs from truncation, many payors will be forced to postpone or completely abandon plans to participate in the TIN truncation process. The result would be that these payors would continue to provide their customers with payee statements that display their entire TINs, which would be counter-productive to the IRS's efforts to address privacy and identity theft issues. Moreover, the fact that some filers would be able to truncate and others would be unable to do so is likely to create some type of artificial distinction between financial institutions as it relates to the treatment of customer information for purposes of tax reporting.

We **strongly** recommend that the final regulations permit payors to truncate all TIN types. We believe that this is the most efficient and cost effective method to promote maximum participation in the TIN truncation program and safeguard sensitive customer information. The Associations cannot identify any effect of EIN truncation that would constitute a harm or limitation on the IRS's ability to collect tax from EIN holders. Furthermore, we do not believe that EIN truncation will reduce, limit or deteriorate the quality or completeness of the data provided by the payor, whereas such truncation would help eliminate the inconsistency in the TIN truncation rules for payors.

2. ***Truncation should be permitted on additional types of payee statements***

The final regulations should expand the scope of payee statements for which truncation is permitted. Members of the ABA and TCH include numerous banks and trust companies that provide both trust and investment services to individuals and small businesses. In addition to producing Forms 1099 for investment management and custodial accounts, bank trust departments often produce 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 concerns as other IRS forms and statements.

It is difficult for a bank that is able to truncate SSNs on the permitted forms (such as Form 1099 or 1098) to explain satisfactorily to customers who are concerned about identity theft and privacy issues why the same bank is truncating SSNs on those forms but not on the other types of statements, such as the trust statements. Merely stating that the IRS permits truncation for those forms but not other types is neither convincing nor responsive to customer privacy concerns, and puts the bank in the unfortunate position of trying to justify the correctness of a rule that we do not support – and do not believe is correct.

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 Schedule K-1, Grantor tax information letter or other IRS information reporting form or statement. Thus, a filer that elects to truncate TINs under the IRS's TIN truncation program would need to expend considerable resources to make system and technological changes in order to be able to truncate TINs on some documents and not on others. Therefore, we suggest that for a filer that elects to truncate, the IRS should permit truncation for additional types of statements, such as trust statements.

We appreciate your consideration of our comments. If you have any questions or would like to discuss any of the issues raised in this letter in further detail, please feel free to contact Fran Mordi, ABA tax counsel (fmordi@aba.com or (202) 663-5317) or David Wagner, Executive Managing Director and Head of Finance Affairs at TCH (david.wagner@theclearinghouse.org or (212) 613-9883).

Sincerely,

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