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March 3, 2009

Via electronic delivery

Internal Revenue Service
CC:PA:LPD:PR (Notice 2009-17)
Room 5203
Post Office Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Information Reporting of Customer's Basis in Securities Transactions; Notice 2009-17 (February 6, 2009).

To Whom It May Concern:

The American Bankers Association[1] (ABA) appreciates the opportunity to provide comments on forthcoming Internal Revenue Service (IRS) guidance on basis reporting of securities transactions. Under the Emergency Economic Stabilization Act of 2008 (EESA), brokers that file IRS Form 1099-B will soon be required to report additional information on these forms, such as the adjusted cost basis of customer securities sold and whether any resulting gain or loss is short or long term. The new reporting requirement will take effect for sales of stock in corporations after December 31, 2010, for sales of shares of regulated investment companies after December 31, 2011, and for sales of other specified securities (such as bonds) after December 31, 2012.

Many of our members provide fiduciary and related services to individual and institutional clients. In 2008, banks held more than $17 trillion in fiduciary and related assets in 22 million accounts.[2] In these capacities, many of our members will be required to comply with the new cost-basis reporting requirements on Form 1099-B. Because there are a number of areas for which additional clarification is needed, guidance from the IRS will be important. In addition, as we discuss below, it may be appropriate for the IRS to provide an exemption from cost basis reporting for certificated bonds for trustees that are serving as paying agents or registrars due to the significant and continuing decline in the numbers of such bonds.

Finally, given the significant additional reporting required under EESA, we believe that IRS guidance would be very helpful to the broader industry in clarifying the responsibilities of the various parties and creating a consistent framework for the new requirements.

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[1] 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 $12.7 trillion in assets and employ over 2 million men and women.

[2] FDIC Call Report Data, December 2008. As used in this letter, the term "banks" will include all ABA members who act in fiduciary and related capacities.

For example, banks that serve as trustee or in some other fiduciary capacity with respect to individuals, charities, employee benefit plans, and other institutional clients may have the necessary information to comply with the statute. However, in cases where the relevant information comes from third parties, banks may lack the ability to confirm the accuracy of the data.

Applicability of Reporting Requirements

ABA recommends that the IRS guidance clarify a number of matters with respect to the applicability of reporting requirements. Most importantly, we strongly urge the IRS to clarify that the term "acquired through a transaction" in newly added subsection 6046(g)(3) means the purchase of a security or an acquisition from corporate action. The Joint Committee on Taxation in its technical explanation of the new requirements has specifically defined the term to not mean transfers by gift or inheritance.[3]

> A covered security is any specified security acquired on or after an applicable date if the security was (1) acquired through a transaction in the account in which the security is held or (2) was transferred to that account from an account in which the security was a covered security, but only if the transferee broker received a statement under section 6045A with respect to the transfer. *Under this rule, certain securities acquired by gift or inheritance are not covered securities.* [Emphasis added]

Similarly, the term should not encompass situations when an employer awards stock to employees, as there has been no purchase at that time. The term "broker" should not be expanded to include trusts or partnerships that may purchase securities for the benefit of beneficiaries or partners. These entities are excluded from the definition of broker in 26 CFR 1.6045-1(c)(3)(v).

With respect to the classification of a security, the issuer should be required to identify whether it is stock or debt. Furthermore, the issuer should communicate to investors if the character of the security has changed. It would be very helpful if issuers could communicate this information through commonly-used sources, such as the wire news agencies. Because of the difficultly for brokers to obtain information on the true classification of certain securities, the IRS should impose no penalty for relying on incorrect publicly available information. On a similar note, the IRS should clarify the status of exchange-traded funds (ETF) as either stock in a corporation or shares of a regulated investment company.

ABA strongly urges the IRS to exempt certain securities from the reporting requirements altogether. In particular, partnerships and S-corporations should not be covered under the basis reporting requirements. To arrive at the correct basis, brokers would have to adjust individually the basis each year using the entities' Schedule K-1s. In these cases, the cost of making these adjustments would be prohibitive, given the significant number of investments in these entities. These adjustments should remain the responsibility of the individual investor.

Basis Method Elections

Most of our members have selected a default method for determining the lots selected for sale. This methodology may or may not be defined in the current agreements with clients. For the sake of efficiency, ABA urges the IRS to allow brokers to use their institution's default method of basis determination, unless asked otherwise by the customer.

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[3] Joint Committee on Taxation, *Technical Explanation of H.R. 7060, the "Renewable Energy and Job Creation Tax Act of 2008," as Scheduled for Consideration by the House of Representatives on September 25, 2008* (JCX-75-08), September 25, 2008, page 134.

With respect to the term "account by account" basis, the IRS should clarify that this term means the broker-level account, not the tax identification level. Particularly in the case of wash sales, brokers should not have to search for all sales in different accounts on behalf of the same taxpayer. Such tracking would be very difficult and costly to accomplish in a reliable and consistent manner. In addition, if the client has accounts with another broker, the process would not be accurate. This review should remain the responsibility of the individual investor. Wash sales that occur in during two different tax years should be excluded from this review.

Reconciliation with Customer Reporting

For administrative ease and efficiency, some ABA members would like to report adjusted basis for covered and non-covered securities starting in 2011. To facilitate this more efficient reporting, ABA recommends adding a box to the Form 1099-B indicating whether the reporting is required under law. In those cases for which reporting is not required, but is done nonetheless, the IRS should clarify in guidance that it would not impose penalties for incorrect or incomplete reporting.

The IRS in the forthcoming guidance should explicitly state it is the responsibility of the taxpayer to identify to the broker which securities are to be sold. Unless the broker has made a mistake, brokers should not be responsible for any corrections after the asset has been traded.

Special Rules and Mechanical Issues

ABA recommends that the guidance allow brokers to apply basis reporting rules on an account-by-account basis, as defined above. Brokers should not have to link the option activity in the account to activity in the underlying security. To require otherwise would be very burdensome and costly to brokers.

With respect to short sales, the guidance should clearly state that brokers are not responsible for sales that were open before the effective date. Only those short sales that were entered into after the applicable effective date should be required to be reported. Brokers may not have the tracking systems up and running before the effective date, because they are not legally required to begin reporting under the new Section 6045.

Brokers should be allowed to make a good faith effort to make basis adjustments to securities when not in possession of all the necessary information. Such situations, such as gift-related and death-related adjustments, do arise frequently, and trust departments will make their best efforts to provide the correct information for customers. Nonetheless, this information gathering can be extremely expensive and delay necessary reporting. Therefore, the IRS should not impose penalties on brokers that make a good faith effort with less than perfect information in these circumstances.

Transfer Reporting

Many ABA members will avail themselves of the services of third-party intermediaries to transfer and receive information to other brokers. The IRS, however, cannot assume that all brokers subject to the reporting requirements will use a third-party, let alone the same third-party intermediary. Therefore, it is very important for the IRS to take into consideration when drafting guidance the fact that many brokers will manually, by fax or by email, transfer information to the transferee broker.

Due to the fact that many information transfers will be manual, the IRS should allow flexibility in the transfer reporting period. Fifteen days will likely be sufficient, but the guidance should allow for

situations when a receiving broker rejects the transfer. These circumstances, although unusual, do occur from time to time—especially with mutual fund assets that may have various classes of shares. For example, some share classes can only be held by individuals and some only by institutions. Some institutions will not accept certain assets under their internal asset acceptance policies.

ABA recommends that the IRS require a minimum of information from transferring brokers. In particular, transferring brokers should report: (1) the date of purchase; (2) the lot numbers; (3) the CUSIP numbers; (4) the number of units; (5) the original cost basis; and (6) the adjusted cost basis at the time of transfer.

Broker Practices and Procedures

IRS guidance should explicitly state that receiving brokers are not responsible for verifying the reasonableness of basis information received. In addition, the guidance should clarify that brokers that rely in their reporting on information that turns out later to be incorrect should not be subject to information reporting penalties. These requirements should be no different than requirements for other basis documentation situations. ABA also urges that the IRS set a statute of limitations on document retention for at most one year after the sale of the security. To require additional retention would be very costly to maintain and would likely require different and expensive recordkeeping systems.

ABA urges the IRS to limit clearly the responsibility of brokers when other parties have not fulfilled their obligations. For example, if a transferring broker fails to send the necessary information, the receiving broker should not be required to follow any additional procedures. Similarly, if an issuer does not timely or properly report information on corporate actions, the broker should not be required to follow any additional procedures. In these circumstances, brokers do not have the resources and time to track down information that is required to be reported to them. ABA believes that penalizing the negligent party will provide enough incentive for parties to act promptly and responsibly.

Exemption for Corporate Trustees

ABA's member banks that act as indenture trustees in connection with the issuance of bonds, notes and similar debt instruments often serve in related capacities, such as paying agents and registrars. In these capacities, the bank receives a list of holders from the issuer and maintains ownership records of the debt securities, sometimes making ongoing interest payments However, it is not until a final principal payment is due at maturity (which may be as long as 30 years later) or when the debt securities are called or redeemed that filing of Form 1099-B is triggered.

Such events occur largely without the purchase or sale of a security. Rather, upon maturity, redemption or call, the trustee serving as paying agent or registrar simply sends the principal amount to the holder of record. As a result, trustees have no information about the customer's basis in a security or the facts and circumstances of its purchase or sale. Accordingly, to comply with the new basis reporting requirements, trustees would have to create new systems to capture the necessary customer information—a process that will be both costly and time-consuming.

Importantly, because the vast majority of bonds and notes are held in book-entry uncertificated form at the Depository Trust Corporation, corporate trustees only handle interest and principal payments to holders in cases where the debt securities are *certificated* – i.e., in paper form.

However, the number of certificated bonds and notes is decreasing rapidly. In fact, the trend in the entire securities industry is toward dematerialization and immobilization of securities. To illustrate this point, of over 14,246 municipal issuances that came to market in 2008, only five of them were

certificated.[4] This decline in the issuance of paper certificates can only be expected to continue into the foreseeable future.

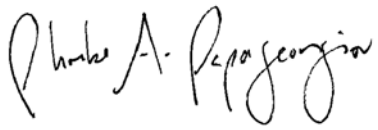
Because corporate trustees acting as paying agents and registrars deal only with certificated debt securities, ABA believes that it will be unduly burdensome and costly for them to develop systems by 2012[5] to provide cost basis information on certificated securities which will compose an increasingly small part of the debt market. Accordingly, we request that the IRS exclude corporate trustees serving in these capacities from the requirement to report cost basis information on certificated securities.

Conclusion

In conclusion, ABA appreciates this opportunity to offer comments on the forthcoming IRS guidance on cost basis reporting of customer securities transactions. In particular, for the reasons set forth above, we urge the IRS to exempt corporate trustees serving as paying agents and registrars from the cost-basis reporting requirement. We are currently compiling additional supporting information, which we will provide in the near future.

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. If you have particular questions about the role of corporate trustees as bond paying agents or registrars, please call Cris Naser at (202) 663-5332.

Sincerely,



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[4] This information is based upon data derived from Thomson Reuters.
[5] The effective date of the requirement for providing cost basis information on bonds is 2012.