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June 29, 2007

Russ Sullivan
Staff Director
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC 20510

Kolan L. Davis
Republican Staff Director
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Sullivan and Mr. Davis:

The American Bankers Association ("ABA") is writing in response to the request by the Senate Finance Committee ("Committee") for comments on its proposal requiring entities covered by Section 6045 of the Internal Revenue Code ("IRC") to report to both the Internal Revenue Service ("IRS") and their customers the cost basis of securities sold. ABA appreciates the opportunity to share our views on this proposal.

The ABA, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest banking trade association in the country. Many of our members provide fiduciary and related services to individual and institutional clients. As of year-end 2006, banks and thrifts held more than $19 trillion in fiduciary assets for both retail and institutional customers in 19 million accounts.[1] In these capacities, our members may be required to file with the IRS information returns on Form 1099-B reporting a customer's gross proceeds on sales of certain securities pursuant to IRC Section 6045.

The Committee has proposed that all firms required to file information returns under Section 6045(a) include in such returns the customer's adjusted cost basis for each applicable security as well as information necessary to determine the customer's holding period in that security. The proposal would also require that same information to be included in the statement provided to customers pursuant to Section 6045(b).

The Committee's proposal raises a number of significant issues for our members who file these information returns in fiduciary and related capacities. These capacities include

[1] FDIC Call Report Data, December 2006. As used in this letter, the term "banks" will include all ABA members who act in fiduciary and related capacities.

personal, institutional and indenture trustees, paying, escrow, tender offer and exchange agents as well as registrars. We will briefly identify these issues in this letter and would appreciate the opportunity to discuss our concerns in detail with the Committee.

Discussion

Although banks serving in fiduciary and related capacities are covered by the Section 6045 filing requirement, unlike registered broker-dealers, they are not necessarily involved directly in either the acquisition or sale of securities. Accordingly, they either may not have any of the relevant customer information that would be required by the proposal, or they may only receive that information from third parties.

For example, in connection with the issuance of bonds, indenture trustees generally serve in related capacities such as paying agents and registrars. As such, they simply hold securities, sometimes making ongoing interest payments, until a final principal payment is due at maturity. The following example demonstrates the role of the paying agent bank with respect to bonds.

Issuer A decides to issue bonds pursuant to an indenture. Once issued, the bonds are sold to investors by an underwriter or broker-dealer. As paying agent and registrar, Bank B receives a list of bondholders from the issuer and is, thereafter, responsible for making ongoing payments to the bondholders. Most of the bonds are held through the Depository Trust Company. However, for those owners that hold the bonds in their own names, Bank B will make payments directly to them. When the bonds mature (which may be as long as 30 years later) or are called or redeemed, Bank B will make the final payment, thus triggering the filing of Form 1099-B.

As the paying agent and registrar, Bank B has no information about how the bondholder acquired the security (at issuance, in the secondary market, as a gift, etc.), nor does it know how the bondholder will choose to compute his/her cost basis. Moreover, when a bond matures, the payment occurs without a purchase or sale and without the involvement of a broker-dealer.

In addition, 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 proposal. However, in cases where the relevant information comes from third parties, banks may lack the ability to confirm the accuracy of the data.

Following are key issues raised by the proposal that our members have identified.

A. Access to Information

Because banks either have none of the required information or the information they have may be unreliable, the proposal should establish a mechanism by which they can receive the necessary data. The firm that does have the information should be directed to pass that information to the party that will have to file Form 1099-B.

In addition, banks should be able to rely – without penalty – on information provided to them by customers and other third parties. While many institutions currently track and provide basis information to their clients as part of an overall customer service program, these institutions have to rely on third-party information to provide basis data. To the extent this data relies upon information from third parties, its accuracy cannot be guaranteed.

The cost basis of assets received by the financial institutions (previously bought elsewhere by the client or an unaffiliated agent of the client) is information that the client needs to provide and upon which banks will necessarily have to rely. Very few banks have the ability to determine whether the cost basis provided by a client has been correctly adjusted in the past. This would include adjustments such as amortization, accretion, original issue discount, return of capital, corporate actions, wash sales, options, etc.

B. Implementation

For banks that do not track cost basis, the proposal will require major systems changes to accommodate the necessary information. In addition, it may be impossible to rebuild basis for securities acquired prior to the effective date. Accordingly, ABA requests that the Committee consider the following issues.

1. Prospective Effective Date

The proposal should be effective prospectively and only after regulations providing sufficient lead time for implementation are in effect.

Because banks have not been required to track customers' cost basis, it is not feasible, and may well be impossible, to rebuild the basis for any given security. Currently, assets bequeathed to a taxpayer acquire a new cost basis under IRC Section 1014 determined by reference to date-of-death of the decedent or some alternate valuation date. In contrast, property acquired by gift generally is received with a carryover basis (the donor's cost basis). It may be virtually impossible to ascertain reliably basis in such situations. Requiring trustees to assume this burden would create untenable compliance burdens in these situations because there may be no information relating to a donor's original cost basis. Nor is it possible to discern readily values that may have been used on the decedent's estate tax return, assuming a return is required to be filed. Moreover, even if records initially existed, they may often have been lost or destroyed due to any number of reasons.

Finally, for assets received by gift, there may be a basis adjustment for some or all of the gift tax paid by the donor. Since the bank would not have information on that adjustment, the proposal should clarify that banks are not required to adjust basis to reflect gift taxes paid.

2. Lead Time for Systems Changes

The proposal should allow ample time to make the necessary systems changes and test them for accuracy.

To date, banks and other filers have not been required to compile the data necessary for reporting cost basis, and bank recordkeeping systems will require significant lead time to implement and test the changes necessary to comply with the proposal. Although some institutions currently provide such information to customers, they have done so only as a courtesy and have not refined their systems to ensure the kind of accuracy that would comport with legally required reporting.

In addition, while banks may have within their institutions the original cost of assets bought by them on behalf of their fiduciary clients, this original data needs to be adjusted by events such as amortization of premium, accretion of market discount, original issue discount, return of capital, corporate actions, wash sales, options, put option premium payments under a forward contract within a reverse convertible security, REMICs, paydowns, capitalization of accrued interest, etc. The automatic adjustment of cost requires sophisticated systems not available to all banks.

For example, the taxpayer's basis adjustment requirements for non-recognition of loss resulting from a wash sale could result from transactions in other accounts or at other institutions. So, in most institutions, the preparation of fiduciary income tax returns still requires manual intervention to update the cost basis of assets sold or exchanged. Such adjustments are often made in the year after the relevant events occurred in order to have the necessary information available.

Further, ABA recognizes that there will be issues in determining which shares may have been purchased before and which shares may have been purchased after the eventual effective date of the proposed requirement. The legislation or regulations should maintain current rules that allow a taxpayer to use the "specific ID" method or other methods (e.g., FIFO, LIFO or the average cost method for mutual funds) for purposes of accounting for gains and losses on securities sold.

Additionally, most systems do not retain the transfer date in their cost basis system, or the transfer date may be used instead of the original purchase date since the receiving institution does not know that date, which then results in an incorrect holding period calculation. As a result, the systems to provide basis reporting may well need to accommodate four different dates: original acquisition date, transfer-in date, the last "as of" basis adjustment date, and sale date.

3. Phased Implementation

Any new basis reporting requirement should be implemented in several phases.

Some institutions currently have in place systems that comply with basis reporting requirements, at least in the case of some non-complex transactions. However, in more complex cases, even these existing systems would likely result in inaccurate and unreliable information.

However, if the implementation proceeds in phases, filers should be able to progress from one phase to another in a cost-effective and efficient manner. As a result, by the

final phase, any issues or difficulties encountered at earlier stages should have been addressed.

4. Treatment of Long-term versus Short-term Capital Gains

The proposal's requirement to provide for the reporting of holding periods should be adjusted to accommodate situations when shares of the same security are acquired on multiple dates but sold in a single or only a few sales.

For example, dividend reinvestment plans will allow taxpayers to accumulate shares with multiple holding periods. If all the shares acquired are sold in a single sale, normally a single Form 1099-B would be issued under current reporting rules. However, the proposal would now require separate Form 1099-Bs to be issued for each lot of the shares sold that has a different holding period.

The proposal should be changed to provide that a single sale of securities with multiple holding periods can be reported on two separate Forms 1099-B. One form would report all the securities sold that have a holding period of more than one year that would result in a long-term capital gain or loss. A second Form 1099-B would report all the securities sold that have a holding period of one year or less that would result in a short-term gain or loss. This would significantly reduce the number of Form 1099-Bs required to be filed and processed by the IRS and taxpayers and would still result in the data required to properly complete tax returns.

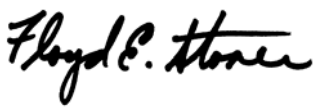
5. IRS Authority for Exceptions and Safe Harbors

The IRS should be given broad authority to provide exceptions or safe harbors in areas where tracking or adjusting basis is particularly difficult or impossible, especially when the perceived benefit in such exercise is insignificant when compared to the cost involved. For example, some of the areas of concern to our members include imposing this reporting requirement on corporations, as well as difficulties associated with computing cost basis for debt instruments and gifted securities.

Conclusion

We appreciate this opportunity to share our thoughts on this proposal. We recognize that a significant amount of time and effort has been put into the research, examination and resolution of this issue, and we look forward to discussing these issues with you further in order to make this process as efficient as possible.

Sincerely,



Floyd E. Stoner