



New York Bankers Association

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**Michael P. Smith**  
President

April 7, 2011

CC:PA:LPD:PR (REG-146097-09)  
Room 5203  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

RE: IRS REG-146097-09

To the Service:

In response to the notice of proposed rulemaking published in the January 7, 2011 Federal Register, the New York Bankers Association is submitting these comments on the proposed Guidance on Reporting Deposit Interest Paid to Nonresident Aliens. Our Association respectfully opposes the proposal, anticipating that it will bring in very little revenue, create a new barrier for U.S. banks in competing for foreign deposits, and impose unnecessary costs on the banking system at a time when it is struggling to recover from the recent financial turmoil. The New York Bankers Association (NYBA) is comprised of the community, regional and money center banks doing business in New York. Our members employ more than 250,000 New Yorkers and hold assets in excess of \$9 trillion.

This proposal would amend the reporting requirements for interest paid to non-resident aliens, which currently apply only to Canadian residents, to include all nonresident aliens with deposits in U.S. depository institutions. The proposal also describes documents acceptable for reporting purposes which a financial institution may rely on in determining whether a customer is a valid non-resident alien. It also defines the relatively narrow set of circumstances in which back-up withholding of interest otherwise payable to non-resident alien depositors would apply.

Tax is not ordinarily due on the interest earnings of non-resident aliens. The only substantive reason for requiring the reporting of interest paid to non-resident aliens stated in the proposal is to determine whether there are U.S. citizens or resident aliens falsely representing themselves as non-resident aliens in order to

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escape tax on their interest earnings. However, the robust system of “know your customer,” anti-money laundering, BSA compliance and USA PATRIOT Act rules currently in effect is designed to make it extremely difficult for bank customers to avoid positive identification by their banking institutions. Moreover, the fact that depositors must certify under penalty of perjury (using forms W-9 or W-8BEN) the country of which they are residents minimizes the likelihood of attempted evasion. The wholesale imposition of a vast new reporting requirement would be an enormously burdensome method of attempting to prevent the goal of depositor misrepresentation, particularly when the proposal itself presents no evidence that large-scale misrepresentation is occurring.

The proposal would also have the effect of potentially driving substantial deposits out of the U.S. banking system into other jurisdictions without such a reporting requirement. The United States has always welcomed deposits from citizens of all countries. So long as the U.S. is one of the few countries to require the type of wholesale deposit interest reporting in this proposal, it will place American banking establishments at a serious competitive advantage to their foreign counterparts not subject to such a reporting system.

Additionally, the Service’s proposal, we believe, vastly understates the potential costs of compliance. There is no de minimis test in the proposal, so that every bank, thrift institution or credit union with any deposits from non-resident aliens will be subject to it – a number of institutions, we believe to be greatly in excess of the 2,000 stated in the proposal. In addition, the proposal’s estimate that it will take no more than 15 minutes per respondent to comply is, we believe, a gross underestimate.

For these reasons, the New York Bankers Association opposes this regulation and urges that it be withdrawn.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Smith". The signature is fluid and cursive, with a large initial "M" and "P".

Michael P. Smith