



FLORIDA BANKERS ASSOCIATION

ALEX SANCHEZ
PRESIDENT & CEO

March 25, 2011

Department of the Treasury
Internal Revenue Service
PO Box 7604
Room 5203
Ben Franklin Station
Washington, DC, 20044

REG – 146097-90
Guidance on Reporting Interest Paid to Non Resident Aliens

Ladies and Gentlemen:

I am writing on behalf of the Florida Bankers Association (FBA), a banking trade organization founded in 1888, representing more than 300 financial institutions of all types that operate in Florida, including community banks, thrifts, trust entities, super-regional banks, and nationwide banks. I am writing to strongly oppose the proposal on reporting the interest paid to Non Resident Aliens (“NRA”) and appreciate the opportunity for the FBA to discuss our concerns with you.

As outlined below, the FBA is concerned that the proposed regulations will have a dramatic adverse impact on its members as well as banks throughout the United States. Given this adverse impact and that the proposed regulations would not significantly further the United States’ financial interests, the FBA submits that the proposed regulations should be withdrawn. As provided in the Notice of Proposed Rulemaking, we respectfully request the opportunity to appear and testify on the issues outlined in this letter at the April 28, 2011 hearing.

The FBA recognizes the high degree of professionalism and integrity of the IRS personnel responsible for collecting and safeguarding confidential information. Moreover, we acknowledge that information reporting regarding confidential financial information plays a critical role in ensuring the proper assessment of U.S. taxes.

Accordingly, the current framework of information reporting and taxpayer confidentiality rules, which are directed toward those who are subject to U.S. tax, reflect a reasonable balancing of the competing concerns of U.S. tax collection and financial privacy. NRA depositors, however, are exempt from U.S. tax on their interest income from U.S. banks. Code § 871(i). Because there is no U.S. tax at stake for NRA depositors, the balance between these competing concerns is different. Against the relatively few marginal U.S. tax dollars that Treasury may collect through information reporting on NRA deposits, Treasury should weigh the adverse impact that the information collection will have on the international banking industry in states such as Florida.

We believe this proposal is in conflict with a longstanding objective of the Department and the Congress: to encourage nonresident aliens to deposit their money in U.S. banks so that those funds can, in turn, be used to foster growth and development in our country. We are convinced that adoption of the proposal will place U.S. banks at a competitive disadvantage relative to the banks of our trading partners and will result in significant withdrawals of foreign deposits from U.S. banks. This will ultimately reduce the amount of credit available to local communities and others who traditionally seek bank loans as their chief sources of credit.

From a business perspective, the competitive situation created by the proposed regulations would be untenable. The market for NRA deposits is highly competitive, and subtle differences in the regulatory regimes of the competing countries affect the flow of NRA deposits in and out of U.S. banks. Competitors from other countries tout the advantages of depositing funds in their countries as compared to the United States. As explained below, NRA depositors are very sensitive to any collection or dissemination of their financial information, and the information collection and unilateral exchanges of depositor information that would result under these proposed regulations could only lead to large-scale reductions in NRA deposits with U.S. banks.

The proposed regulations threaten the future growth and, in some cases, even the current stability of Florida's banking institutions. NRA deposits form a critical component of the overall depositor base for many Florida banks. In the context of responding to these proposed regulations, FBA conducted an informal survey of some of its members, which revealed estimated deposits in Florida banks from NRAs in the tens of billions. NRA deposits have grown to account for more than 50 percent of the deposits at some of these banks. Moreover, NRA deposits are particularly valuable because they tend to be highly stable – often certificates of deposit that roll over upon maturity. If the proposed regulations stimulate a sudden withdrawal of NRA deposits from U.S. financial institutions, some FBA members may experience a liquidity crisis threatening their short-term stability. Even if the withdrawals are more gradual, many banks will experience a material decrease in their lending capacity, which will reduce their income and growth.

Because the interest payments in question are not subject to U.S. tax, this additional reporting requirement for banks will not further any U.S. financial interest in collecting revenues from foreign depositors. Nor, in our view, is the requirement an appropriate means to accomplish any other public policy purpose intended to be served by the proposal. In addition, the regulation, for the reasons discussed below, will impose significant costs on the nation as a whole and continue to weigh on an economy trying to recover. Accordingly, we strongly urge you to withdraw the proposal, at least until significant additional analysis of the costs and benefits associated with the proposal can be provided.

We also believe this proposal conflicts with the President's recent call for a reduction of regulation on U.S. industry to help create jobs in our economy. This proposal will drain tens of billions of dollars from our economy. These deposits could be used by banks in the U.S. to lend to small businesses, and to all the businesses creating jobs for our nation and economy.

America's financial institutions benefit greatly from deposits of foreigners in U.S. banks. These deposits help finance jobs and generate economic growth mainly benefiting local communities, consumers, families, and small businesses. For more than 90 years, the United States has recognized the importance of foreign deposits and has refrained from taxing the interest earned by them or requiring their reporting.

Unfortunately, the rule proposed by the Internal Revenue Service would overturn this practice and would likely result in the flight of tens of billions of dollars from U.S. financial institutions. This proposal would require the reporting of bank deposit interest paid to foreign account holders so that this information can be made available to the countries of origin of the nonresident alien account holders.

We have several objections to this initiative, and strongly urge you to permanently withdraw the proposed regulation. Specifically:

The regulation will cause serious irreparable harm to the U.S. economy.

The regulation could drive job-creating capital out of America and harm U.S. financial markets. According to the Commerce Department, foreigners have \$10.6 trillion passively invested in the American economy, including nearly \$3.6 trillion "reported by U.S. banks and securities brokers." In addition, a 2004 study from the Mercatus Center at George Mason University estimated that "a scaled-back version of the rule would drive \$88 billion from American financial institutions, and this version of the regulation will be far more damaging."

Because of the security our country offers to many around the world, nonresident aliens deposit their monies in U.S. financial institutions for safety and security reasons. Should this regulation be finalized, economic and academic sources indicate that a substantial portion of that capital will be withdrawn from the U.S. economy. Some deposits may have already been withdrawn from U.S. financial institutions, as was the case in 2002 when this issue was previously considered. During this time of economic concern, we urge that every effort be made to keep capital within the borders of the United States.

Many nonresident alien depositors are from countries with unstable governments or political environments, where personal security is a major concern. They are concerned that their personal bank account information could be leaked by unauthorized persons in their home country governments to criminal or terrorists groups upon receipt from U.S. authorities, which could result in kidnappings or other terrorist actions being taken against them and their family members in their home countries, a scary scenario that is very real.

NRA customers are willing to make long-term deposits in Florida's banks based on the confidentiality and stability of the U.S. banking system and the international banking expertise that Florida's banks provide. For many NRA depositors, confidentiality is the paramount concern, and without assurances of confidentiality they will withdraw their U.S. deposits. In many cases, the customers' home countries lack adequate confidentiality rules, those rules are poorly enforced, or local corruption leads to unauthorized leaks of confidential financial and tax information.

Indeed, the U.S. Treasury has declined to negotiate tax treaties with many countries because they lack sufficient safeguards for confidential information. Because these same countries often have significant criminal activity and political instability, the lack of confidentiality with respect to financial and tax information can lead to personally devastating results, such as kidnapping and/or assassination of high net-worth individuals. Although these crimes and local corruption may sound remote from the perspective of a U.S. resident, they are real and immediate to many NRA customers of FBA members. From the perspective of these customers, any government intrusion into their confidential financial information represents a threat and is a potentially decisive factor in their decisions about where to bank.

In summary, the current documentation regulations administered by U.S. banks represent the most effective means of avoiding U.S. tax evasion by persons falsely claiming NRA status, and the proposed regulations would provide little if any marginal benefit to ensure accurate assessment of U.S. tax. It is particularly inappropriate for Treasury to pursue this small potential benefit by hobbling FBA members in their efforts to compete for NRA deposits. FBA members have already taken up front line responsibility for enforcing Treasury's documentation requirements, which are the most effective means of preventing U.S. tax avoidance.

They should not be punished for their efforts through further regulations that do little to enhance U.S. compliance, yet seriously undermine their ability to compete with foreign banks for the NRA deposits that are critical to their business.

In addition, if the Treasury's objective is to collect information for exchange only with several U.S. treaty partners, the proposed regulations are overbroad. The United States treaty network is limited to certain countries, and Treasury officials have acknowledged to me that only "several" countries have requested that information. The proposed regulations would require U.S. banks to report interest on all NRA deposits – regardless of whether the particular NRA depositor was a resident of a requesting treaty partner. Treasury's objective of furthering automatic exchanges with several treaty partners does not justify collecting information regarding NRAs from all countries. Given the potential adverse impact on these NRA deposits, and that the IRS does not even plan to use the information, there would seem to be little basis for collecting information regarding NRA depositors from all countries.

The regulation flagrantly violates the intent of Congress.

On several occasions, lawmakers have chosen to refrain from taxing the deposit interest paid to nonresident aliens. These actions were made for the explicit purpose of attracting and keeping capital in the U.S. economy. We feel the IRS is abusing its regulatory authority and doing so in a manner that is contrary to Congress' intent and the last ninety years of legislative history.

The regulation will weaken the competitiveness of U.S. financial institutions.

Should the proposed rule take effect, American companies will lose tens of billions of dollars in deposits to institutions in competing jurisdictions that maintain privacy protections. The purported goal of the regulation will not be achieved, but will instead disadvantage American businesses and communities.

This proposal may be good news for high-tax governments, or for those countries where security of its own citizens is in jeopardy, but it is contrary to American economic interest and the notion that America has always been the beacon of hope for millions from around the world who see our country as the last great hope to invest in and keep their hard earned monies in our banks. The jobs of American workers and the competitiveness of U.S. companies should be our top priorities. This regulation works against both. It will put Americans out of work and it will force dollars out of U.S. financial institutions and into foreign financial institutions.

FBA-Nonresident Alien Issue
March 25, 2011
Page 6

We urge that you withdraw this proposed regulation and send a clear message to existing and potential depositors that the U.S. encourages such deposits and believes America's best interest is served by maintaining current policy.

I look forward to testifying at the April 28 hearing in Washington on this subject. I can be reached at 850-224-2265. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Sanchez". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Alex Sanchez
President and CEO
Florida Bankers Association