Internal Revenue Service
Hearing on Proposed Regulations
(REG-146097-09)
Guidance on Reporting of Deposit Interest Paid to Nonresident Aliens

Statement by
Brian Garst
Director of Government Affairs
Center for Freedom and Prosperity

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Thank you for this opportunity to share my views with you. My name is Brian Garst, and I serve as Director of Government Affairs for the Center for Freedom and Prosperity, a 501(c)(4) citizen organization that lobbies Congress and the Administration on tax competition, financial privacy and fiscal sovereignty.

We are deeply concerned with the impact this rule would have on financial institutions, the U.S. economy, and the welfare of individuals throughout the world who rely on the level of security and privacy historically afforded by the American financial system.

I want to focus my testimony on three key points: 1) That this regulation is entirely unnecessary; 2) That the IRS is undermining the intent of legislative authorities; and, 3) That this rule would be detrimental to the U.S. economy.

IRS Justifications Are Not Sufficient

The purpose of Executive branch agencies and departments is to issue regulations that implement laws enacted by Congress. More specifically, the IRS is supposed to promulgate regulations that help enforce U.S. tax law. Yet the primary justification offered for bringing back this proposal, which has previously faced overwhelming opposition from lawmakers and the financial industry, is not to implement any law enacted by Congress, but is rather the supposed importance of strengthening U.S. exchange of information programs with other countries. The Center for Freedom and Prosperity is not only philosophically opposed to the view that tax collection requires putting an end to all rights and expectations to financial privacy, but we also disagree with this justification on the facts.

The ability of the U.S. government to bully other nations into providing the information necessary to sustain its ill-conceived, worldwide tax system is not dependent on also making the U.S. an undesirable destination for flight capital. Our organization's objections to the Foreign Account Tax Compliance Act aside, foreign financial institutions will either drop their American clients and disinvest in U.S. securities and assets because of its passage, or they will decide that keeping their U.S. customers is worth the additional burdens. In either case, implementation of this rule will have no bearing on their decision process. It is simply not true to suggest that this regulation is required to carry out law as passed by Congress.

The other justification offered for proposing this rule, and which seems almost to be an afterthought, is that the regulation will help improve compliance rates among U.S. taxpayers. Given that the deposits in question are exempt from U.S. tax, the concern is presumably that significant numbers of U.S. residents

may falsely claim NRA status. But given the scope of existing reporting requirements, this is highly unlikely. Moreover, the IRS has not even attempted to quantify the question with a cost-benefit analysis, hiding instead behind the flimsy claim that the proposed regulations will not have "a significant economic impact."

Congressional Intent is to Promote Investment

Time and again, Congress has looked at the issue of NRA deposits and decided to exempt them from taxation. In the public comments, others have already done a thorough job highlighting the questionable nature of the authority asserted to require reporting of NRA deposits. But what is not at all questionable is that such reporting will undermine the fundamental purpose behind the Congressional exemption from taxation of such deposits.

Proposal Will Harm U.S. Economy

The reason Congress has consistently opted not to tax NRA deposits is so that the U.S. will remain an attractive destination for flight capital. Yet the impact from this proposed reporting requirement would be exactly the same as if Congress had itself authorized such a tax. Whether or not U.S. authorities directly tax those deposits, or they give the information to foreign governments so that their own tax collectors may do so, the result will be an exodus of foreign capital toward more hospitable jurisdictions. Such loss of capital stock is never desirable, but would be particularly pernicious as many financial institutions continue to struggle to recover from the recession.

But for many investors, and perhaps far more importantly, it is not simply a question of minimizing tax burdens through lawful tax avoidance or mitigation – a practice which authorities increasingly, and falsely, conflate with tax evasion. Rather, it can also be a question of life and death.

In many countries, governmental authorities are not just a source of frequent annoyance, they are also a threat to basic civil liberties. For those who live under rampant corruption, or must regularly face threats of extortion, blackmail or kidnapping, financial privacy becomes a matter of personal safety. While we can rest assured that individuals facing such threats will remove their funds from the U.S. if the proposed regulations are approved, and thus continue to protect themselves and their families from becoming easy targets, it will be at the expense of the U.S. economy and the citizens this office serves.

Some have argued that the absence of such an exodus by Canadian depositors, who already face this reporting requirement, is evidence that these fears will not be realized. But it is not evidence of any such thing, as Canada is not the type of country from which people regularly flee. Canadian citizens do not have the same sensitivity to financial privacy concerns as depositors from unstable or corrupt regimes.

Conclusion

To summarize, the proposed rule represents bad governmental process, awful tax and economic policy, and a shameful disregard for basic human rights. It should be immediately withdrawn.