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Transcript of May 18, 2011, IRS Hearing on Guidance(REG-146097-09) on Reporting Interest Paid to Nonresident Aliens

ALEJANDRO M. SANCHEZ: Good morning. My name is Alex Sanchez, president and CEO of the Florida Bankers Association. Thank you for this opportunity for us to testify against the IRS proposal on the reporting of interest earned by nonresident aliens.

Florida Bankers Association is 122 years old. We represent over 300 financial institutions in the state of Florida, and we ask that this proposal be withdrawn by the IRS. We are joined by many in Congress. In my hand is a letter signed by Republicans and Democrats from our entire house delegation in...from Florida to the president, dated March 2, 2011, asking him to withdraw this proposal. And our senators have written to the president, to the Treasury secretary, as other members of Congress as well.

We are concerned with this proposal and its impact that it will have on our banks and obviously our economy. The withdrawal of capital...at this very important time, as our economy is trying to recover...by this proposal would be fatal. It would be a very negative impact. And at a time when the president of the United States himself in January, at his State of Union, called for less rules and regulation, this department, the IRS, at that point in time, approximately in January, proposed this regulation that according to many could take out a hundred-billion-plus (dollars) in capital of our country. Money, as Grisel just pointed out earlier, is lent by our banks to small businesses in the United States, the main creator of jobs in our country.

And we appreciate the professionalism of the IRS and the Treasury officials we met with, and we are very, very considerate for the time that you've given us. And this proposal would not tax the nonresident aliens, and our banks... as Grisel pointed out... do all the necessary paperwork and comply with all the rules and regulations to determine who is a nonresident alien. But since 1922 it's been the intent of Congress to encourage the flight of capital to the United States, which is why we have not taxed the interest earned by nonresident aliens. This rule, in effect, overrules the congressional intent by pouring cold water on that congressional intent to discourage the flight of capital to the United States.

The market for NRA deposits is very competitive, and subtle differences in the regulatory regimes in the competing countries affect the flow of NRA deposits in and out of U.S. banks. Competitors from other countries will seek these funds as they did 11 years ago, when this department first proposed this regulation. And I think for many of our banks in Florida...and there are other states that have written in...but for our state, the fourth largest state in the country, many of our banks, especially in the southern part of our state where substantial NRA deposits are held, those... the percentages in some of our banks is up to 40, 50%. And that could cause a tremendous liquidity crisis, a crisis we want to further avoid in the banking industry through the Great Recession we... our country has suffered the last three years.

And these deposits... let's not kid ourselves... will leave our country, as the George Mason University study from 2006 pointed out... and I'll refer that in...more in detail in a few minutes.

But these NRA deposits are particularly valuable because they tend to be stable, very stable, and often our certificates of deposits are rolled over upon maturity. This money has been generational. It's been in the United States for many, many years for reasons that we know, and primarily there are two: People are concerned about kidnappings back home, and they're concerned about the stability and safety of their economies in their countries.

And most of the money in most of the NRA deposits in Florida banks tend to be from our friends in the southern part of our hemisphere, from South and Latin America. And folks there are... unlike the freedom and democracy and stability that we enjoy in the United States...they're worried about kidnappings. They're worrying about the IRS reporting to the equivalent department in their home countries, and someone will squeal to the kidnappers that these folks have monies in the United States — substantial amount of monies. And unfortunately, it's sad, but there are a lot of kidnappings and other type of crimes that occur down there due to the wealth that people have in possession.

My question to the IRS is, have you done an impact on how these countries would protect the privacy to the level that we enjoy here in the United States? I think the answer to that question is no.

I've asked the IRS that. Have they done an impact? Has the IRS done an impact on what it would mean to our economy? Especially when the president has outlined his main priorities. The creation of jobs in our country. What impact would that have to the president's priority? A department that is under his administration. What impact would this have, if this rule is implemented, to the economy of our great nation?

In a recent study by George Mason University, in a scaled-back version of this rule, which the university limited to 15 countries...obviously the rules proposed to written to the entire world...George Mason University estimated that \$88 billion would leave American financial institutions. And according to the Commerce Department, in the report, they estimated in the university study that there's \$3.6 trillion in U.S. banks and securities brokers. What would happen if we impose this rule?

I think from what we saw from 10-plus years ago, our competitors already had advertised back then...and I'm looking for those advertisements today... of advertising to the nonresident aliens: Hey, you know what? The U.S. government is going to do this. Let's take your money out and put it in our countries. That is a danger that's going to happen, and we've got to be very sensitive to that.

The two countries that we have treatises with, Venezuela and Mexico, we've got to be really serious about that. Are we going to exchange information with Hugo Chavez's IRS department? Are we going to exchange information with, probably the number-one

kidnapping country in South America — Mexico? I just...you know, I... you know... I think the answer to that is no. I think we wouldn't do that, and I certainly would ask the IRS to do a study on what that impact is.

I want to now change tone a little bit and refer to the letter that Assistant Secretary for Tax Policy Michael Mundaca wrote in response to the letters sent by members of Congress on this issue, and I want to refer to certain responses that he gave.

He said in his letter that there was no requirement that the information be exchanged with other governments. The problem is not the exchange is mandatory. The problem is the fear of the depositor that it could be exchanged when the IRS, in its discretion, decides to do so. The IRS counsel told me in a meeting in February that it was our responsibility to tell our customers that this information would not be exchanged.

From a practical perspective, that is impossible to do to millions of customers out there and millions of other potential customers. The fact that the IRS may do it at its discretion... at whatever time that may happen... is obviously... would be a disaster. The letter says that the information is not exchanged, and unless and till several conditions are met, including a review of the protections against a misuse of information. There is, however, no reference to what those conditions are in Mr. Mundaca's letter. What are the conditions?

There is no disclosure of how or by whom the review is conducted at the IRS. There is no identification of any written rule, policy or procedure by which a decision will be made to exchange information. There is no way that the depositor could assess the risk that his or her information could be disclosed.

The letter points out that the information can only be exchanged if there's a tax treaty or a tax information exchange agreement. This is no comfort to the NRA depositor who's had his or her money for generations in the United States, unless the treaty has protections built into it. The letter does not mention what, if any, provisions are made regarding confidentiality or misuse of the information in any treaty.

Also, the IRS counsel told me that they already have...the IRS already has the authority to investigate someone and ask for information from a bank in the United States. The letter states that under existing law, if a foreign government requests bank information regarding deposits under a treaty, the IRS can request that information from banks and provide it to the foreign government.

If this is the case, that begs the question, why are we doing this? Why are we making this proposal?

[...]

At the end of the day, this will be very harmful to the United States economy. And, as 11 years ago, Canada was put in... to exchange information with Canada. But I will tell you,

Canada is not Latin America or Central America. Canadian citizens, to the best of my knowledge, are not concerned with a government that does not follow its own rule of law.

I respectfully thank you for the time allowed to me, and I would ask you that this rule be withdrawn. Thank you very much.