



March 04, 2014

Ms. Pamela Lew  
Office of the Associate Chief Counsel  
Financial Institutions and Products  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20024

Re: Comments on Final Regulations Regarding Treasury Decision 9616: Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options; Reporting for Premium

Dear Ms. Lew:

The American Institute of Certified Public Accountants (AICPA) has been actively engaged with the Internal Revenue Service (IRS) and other affected stakeholders throughout the implementation of the new basis reporting requirements, enacted as part of the Energy Improvement and Extension Act of 2008 (Act of 2008), contained in sections<sup>1</sup> 6045(g), 6045(h), 6045A, and 6045B of the Internal Revenue Code (IRC). We generally support the concept of requiring brokers to report, both to clients and the IRS, a client's adjusted basis in securities, or "covered securities" within the meaning of the Act of 2008, when such securities are sold. The AICPA supports this concept because we believe that this procedure of reporting may increase tax compliance over the long-term.

However, we respectfully request that the IRS take into consideration the technical problems and uncertainties associated with implementation of basis reporting from the perspective of taxpayers, tax preparers and brokers. To assure there is sufficient time to address these issues, we propose that the IRS further extend the effective dates in Treasury Decision (T.D.) 9616 by one year each – moving the initial tracking of cost basis for options and debt instruments from January 1, 2014 to January 1, 2015, transfer reporting from January 1, 2015 to January 1, 2016 and reporting for complex debt instruments from January 1, 2017 to January 1, 2018.

The AICPA's engagement in the process of implementing the new basis reporting requirements, enacted as part of the Act of 2008, has included conference calls with the IRS during and after the 2012 filing season and a comment letter<sup>2</sup> dated July 31, 2012 to the IRS. We also testified before the IRS Information Reporting Program Advisory Committee (IRPAC) in January 2013 on this issue. We appreciate the opportunity to provide comments regarding the final regulations relating to basis reporting by securities brokers and basis determination for debt instruments and

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<sup>1</sup> All section references in this letter are to the Internal Revenue Code of 1986, as amended, or the Treasury regulations promulgated there under, unless otherwise specified.

<sup>2</sup> The AICPA submitted a comment letter to the IRS regarding [Form 1099-B and the reporting of a customer's basis when a security is sold](#), dated July 31, 2012.

options and reporting for premium. These comments were developed by the AICPA Individual and Self-Employed Tax Technical Resource Panel and approved by the AICPA Tax Executive Committee.

### Issues and Concerns

Two issues of particular concern to the AICPA are the inconsistency among brokers in reporting the disallowed loss from a wash sale and the fact that there are different views among experts on how to properly account for market discount bonds that are not subject to the current inclusion election. Without the clarifications<sup>3</sup> and the consistency of reporting transactions from brokers, an undue burden is placed on taxpayers and tax return preparers to resolve these discrepancies (often without the needed information to make the proper determination).

We are also concerned that the final regulations which mandate reporting procedures that are significantly different from what has been industry practice may confuse taxpayers, result in inaccurate gain/loss reporting, and possibly cause double taxation of certain income. We specifically highlight the regulations prohibiting brokers from making income adjustments to the basis of underlying stock for compensatory stock options and other equity based compensation arrangements granted after January 1, 2014, which is not only a change from common industry practice, but a reversal from the proposed regulations issued in 2011.

The AICPA also expresses concern with the requirement that brokers assume taxpayers have made an election under section 171 to amortize bond premium on a taxable debt instrument, unless notified otherwise. Under section 171 and the accompanying regulations, a taxpayer is required to attach a statement to his or her tax return in the first year the election is in effect. Furthermore, the election is applicable to all taxable bonds owned in that first tax year, or acquired in subsequent years, and only the Commissioner may approve the revocation of the election. The proposed regulations under section 1.6049-9T permitted a broker to report the net interest paid during the year, reflecting the reduction from amortization of bond premium, without separately reporting the amount of amortization or even indicating that the interest amount is being reported, net of amortization. Taxpayer confusion and overstating income may result from duplicate reporting of these items. There is also the possibility of an error if the taxpayer did not actually make the election but simply assumed that the election was made.

Additionally, the AICPA agrees with the comments<sup>4</sup> submitted by the Securities Industry and Financial Markets Association (SIFMA) on October 4, 2013 and the comments<sup>5</sup> submitted by the American Bankers Association (ABA) on September 18, 2013 which express concerns regarding

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<sup>3</sup> See Securities Industry and Financial Markets Association (SIFMA) comment letter, "[Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options; Final Regulations](#)," for other identified areas that require clarification, submitted to IRS on October 4, 2013.

<sup>4</sup> *Id.*

<sup>5</sup> See American Bankers Association (ABA) comment letter, "[Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options; Reporting for Premium; Final and Temporary Regulations; 78 Federal Register 23116](#)," submitted to IRS on September 18, 2013.

specific elements of T.D. 9616 that both organizations believe will further confuse and complicate cost basis reporting for taxpayers.

### Recommendation

We appreciate the IRS's decision to delay the proposed effective dates for the basis reporting involved with debt instruments and options from January 1, 2013, to January 1, 2014. However, we believe a further delay is necessary to reduce compliance burdens for individual taxpayers. The delay will provide additional time for third party reporting entities to change their programming and processes to comply with the regulations. During the 2013 filing season, our members and their clients experienced significant confusion from the implementation of cost basis reporting for stocks and mutual funds. In many instances, our members found the Forms 1099-B to contain inaccurate, incomplete or inconsistently reported information by various third party reporting entities. The number of corrected Forms 1099-B was arguably greater than in prior years and many more original Forms 1099-B were received post February 15<sup>th</sup>. We believe the delay in expanding basis reporting may allow additional time for these issues relating to basis reporting for stock and mutual funds to come to a resolution. Adding additional complexity by expanding those securities requiring basis reporting may strain the ability of third party reporting entities, software developers and tax preparers to provide complete and accurate data to both the IRS and taxpayers. This complexity may result in increased tax compliance costs for taxpayers.

### Conclusion

Accordingly, the AICPA respectfully requests the IRS to further extend the effective dates in T.D. 9616 by one year – moving the initial tracking of cost basis for options and debt instruments from January 1, 2014 to January 1, 2015, transfer reporting from January 1, 2015 to January 1, 2016 and reporting for complex debt instruments from January 1, 2017 to January 1, 2018.

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The AICPA is the world's largest member association representing the accounting profession, with more than 394,000 members in 128 countries and a 125-year heritage of serving the public interest. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. Please feel free to contact me at (304) 522-2553, or [jporter@portercpa.com](mailto:jporter@portercpa.com); Jonathan Horn, Chair, AICPA Individual & Self-Employed Tax Technical Resource Panel, at (212) 744-1447, or [jmhcpa@verizon.net](mailto:jmhcpa@verizon.net); or Amy Wang, AICPA Technical Manager – Taxation, at (202) 434-9264, or [awang@aicpa.org](mailto:awang@aicpa.org).

Ms. Pamela Lew

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Page 4 of 4

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Porter". The signature is fluid and cursive, with the first name "Jeffrey" being the most prominent.

Jeffrey A. Porter, CPA

Chair, Tax Executive Committee

cc: The Honorable John Koskinen, Commissioner, IRS  
The Honorable William J. Wilkins, Chief Counsel, IRS  
The Honorable Jacob J. Lew, Secretary of the Treasury, U.S. Department of the Treasury