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December 8, 2011

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BY E-MAIL AND REGULAR MAIL

Ms. Pamela Lew
Office of Associate Chief Counsel
Financial Institutions & Products
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Re: Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments [Reg.-102988-11]

Dear Ms. Lew:

On behalf of Wolters Kluwer Financial Services, we are writing to ask the IRS to delay, by at least one year, basis reporting for debt instruments. Congress granted the IRS the authority to delay basis reporting for these securities and, we believe, a delay would be best for both taxpayers and the IRS.

In 2008, Congress enacted the new basis reporting regime for securities. To ease the transition, Congress staggered the effective dates and authorized the IRS to grant further delays for debt instruments and commodities (or commodities derivatives). Congress set the first phase for reporting for stock in a corporation, effective for stock that is acquired on or after January 1, 2011. The second phase is for stock for which average basis is permitted (generally shares in a mutual fund), which is effective for stock that is acquired on or after January 1, 2012. The final phase is for "other specified securities," which includes debt instruments and commodities (or commodities derivatives), effective for securities acquired on or after January 1, 2013, or "such later date" determined by the IRS.

Under the staggered schedule above, Congress reserved the most complicated reporting for the latest date, while authorizing the IRS to delay such reporting further. While the IRS has apparently delayed the reporting for commodities and commodities derivatives, it has not done so for debt, which we believe is mistaken.

Debt reporting raises a variety of difficult practical and legal questions, which brokers and customers are presently poorly-equipped to handle. A threshold question for debt is how brokers can obtain the data that is necessary to project a payment schedule. Municipal debt, foreign debt,

privately-placed debt, certificates of deposit, commercial paper and loans all raise difficult issues in obtaining adequate electronic data-formatted issue price and other payment terms necessary for tax-related basis calculations. This difficulty is reflected by IRS Pub 1212 which excludes these types from coverage in the publication. Although the newly-proposed cost basis regulations for debt exempt Section 1272(a)(6) debt instruments, there is no similar exemption for the other types of debt instruments that raise data difficulties.

In addition, investors may elect a variety of different accrual methods, which are not communicated to their brokers. The proposed regulations try to reduce the challenges of elections for debt instruments by permitting brokers to assume that the election to accrue market discount at a constant interest rate and the election to amortize bond premium will be made. However, many investors will be unaware of the elections that need to be made and cannot be expected to communicate their choices to their brokers. And, if investors fail to make the elections that are assumed to be made, or to make elections that have been ignored by their brokers, the reported tax information will be wrong.

Because of problems like those described above, brokers do not currently calculate cost basis or report gains and losses on the sale of debt instruments by their customers. While some brokers have systems that calculate, for example, OID accruals without adjustment for acquisition premium for a subset of debt instruments, these systems are not built for daily processing and adjustment. As a result, most brokers will likely need to start entirely from scratch to develop cost basis reporting systems for debt.

By contrast, many brokers started with pre-existing systems or, at least, with some experience, when building their new systems to report basis for stocks and mutual funds. Yet, even with this head-start, individual brokers have incurred millions of dollars, or tens of millions of dollars, to refine their systems. And they must still incur substantially more time and expense in the future to complete these projects

Brokers are working hard to complete their cost basis reporting systems for stock and mutual fund shares. This February, the brokers will distribute the first set of information returns for stock with basis information. Around the same time, brokers will start receiving a backlog of corporate action reports as well as new account transfer information, which must be reflected in amended or new information returns and statements.

In April, taxpayers must use the new information returns to file their 2011 tax returns. Many taxpayers will turn to their brokers and, perhaps, the IRS, to help them understand their filing responsibilities. For example, taxpayers may be confused on the differences in reporting for covered and noncovered securities and the differences between the rules a broker applies for reporting purposes and the rules taxpayers must follow in filing their returns. Taxpayers might also be confused by the new IRS forms (the Schedule D and Form 8949) that must be used to report stock gains and losses.

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We believe the IRS ought to use the opportunity between now and the March hearing to assess the overall progress made to date to implement cost basis reporting—as well as the challenges that brokers, customers, and the IRS will be facing during the first filing season under cost basis reporting. We believe both taxpayers and the IRS will be best served by delaying by at least one year basis reporting for debt instruments generally as well as exempting or further delaying coverage of the types of debt securities listed above that raise data access and adequacy concerns.

Best regards,



Steven M. Rosenthal

cc: Stevie D. Conlon, Wolters Kluwer Financial Services
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