

Notice 2009-17



May 5, 2009

LEGAL PROCESSING DIVISION
PUBLICATION & REGULATIONS
BRANCH

MAY 15 2009

The Honorable Douglas H. Shulman
Commissioner of Internal Revenue
CC:PA:LPD:PR (Notice 2009-17)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Notice 2009-17, Information Reporting of Customer's Basis in Securities Transactions

Dear Commissioner Shulman:

The AICPA is pleased to provide comments on Notice 2009-17, with respect to prospective guidance relating to the reporting of a customer's basis in securities transactions. These new reporting requirements, enacted into law as part of the Energy Improvement and Extension Act of 2008, are contained in sections 6045(g), 6045(h), 6045A, and 6045B of the Internal Revenue Code.

As a critical IRS stakeholder and representing approximately 350,000 CPAs, we stress our continuing support for the concept of requiring brokers to report to the IRS a customer's adjusted basis in publicly-traded securities; or what the 2008 Act refers to as "covered securities." In written comments submitted to Congress in 2007, the AICPA stated "While we believe that this proposal could significantly increase tax compliance...over the longer term, we stress that the technical problems associated with implementation...in the short-term should not be underestimated."¹ We have not changed this view.

We plan on offering the IRS more detailed comments when the Service releases proposed regulations regarding basis reporting which we understand are expected to be released sometime during summer 2009. However, at this time, we offer some general comments regarding: (1) reconciliation of basis reported by a broker with a customer's income tax return; (2) Form 1040, Schedule D, reporting; (3) electronic transmission; and (4) other challenging issues that must be addressed in the IRS regulations.

¹ AICPA, Comments on the Joint Committee on Taxation Staff Options to Close the Tax Gap, January 5, 2007.

Reconciliation with Customer Reporting

Question 12 of Notice 2009-17 highlights the need “to ensure that broker reporting on Form 1099-B and customer reporting on Schedule D of 1040 are maximally consistent...” Although we support this notion of “maximal consistency” in concept, we stress that near 100 percent consistency may prove difficult to achieve in practice.

Differences in customer reporting may result for a number of reasons. First, differences may result when a customer exercises his or her right under section 6045(g)(2)(B)(i) to elect an “adequate identification of the stock sold or transferred” or an “acceptable method” for computing the adjusted basis of covered securities – and the brokerage house does not properly reflect the customer’s election in its records. Second, due to inherent reporting complexities that may result from brokers’ reporting “covered securities” (securities generally purchased after January 1, 2011) in one way and other non-covered securities (e.g., “pre-owned” securities) in a different way, customer reporting on Form 1040, Schedule D may differ from the Form 1099-B issued by the broker. Third, as discussed below, the reporting of wash sales, securities received through inheritance or by gift, and information relating to certain corporate actions will add to the challenges in achieving “maximal consistency” in basis reporting.

In order to overcome these potential reporting changes, we suggest the IRS create a form to be used when necessary to address reconciliation of a customer’s Form 1040, Schedule D and a broker issued Form 1099-B. This new form could be conceptually similar to Form 8082, Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR). Form 8082 permits S corporation shareholders, beneficiaries of an estate or trust, and others to notify the IRS of any inconsistencies between the taxpayer’s tax treatment of an item on his return and the way the pass-through entity treated and reported the same item on Schedule K-1, Schedule Q, or a foreign trust statement. A new securities basis reconciliation form could contain a number of “check boxes” to address the inconsistent treatment, covering the most common reasons for inconsistent treatment, such as stepped-up basis, wash sales, and other factors.

Without a procedure – like a Form 8082 – to reconcile differences between a taxpayer’s Schedule D and the broker issued Form 1099-B, taxpayers (and their tax return preparers) and the IRS will regularly become engaged in a series of IRS notices, taxpayer responses and on-going correspondence.

Form 1040, Schedule D Reporting

We believe that if a taxpayer agrees that the gain and loss calculations provided by a broker are correct, that no Schedule D reporting by the taxpayer should be required. Furthermore, to the extent that a taxpayer must complete Schedule D, we believe the new basis reporting requirements should not impact in any way the IRS long-standing practice of permitting tax preparers (on behalf of their clients) to report the summary totals found on a year-end brokerage statement directly onto the taxpayer’s Form 1040, Schedule D, with an attachment detailing each

sales transaction in a substantially similar format to what is otherwise required on Schedules D and D-1.

This is consistent with what the AICPA stated in a December 23, 2005 letter to Commissioner Mark W. Everson. In that letter, the AICPA raised concern about a change in the 2005 instructions to Form 1040, Schedule D requiring taxpayers filing Schedule D to list each capital gain or loss transaction on a separate line. Our 2005 letter stated:

We acknowledge that the IRS needs access to sufficient information about capital gain and loss transactions to ensure proper compliance. However, for the many taxpayers who are involved with hundreds (and in some cases, thousands) of security sales transactions during the course of a calendar year, the time required to manually list each individual capital gain and loss transaction would create a significant burden and in the case of taxpayers using paid preparers, unnecessarily raise the overall cost of preparing the return.

Electronic Transmission

We believe that by exempting taxpayers and practitioners from the completion of Schedule D when they agree with a broker's gain or loss reporting, and, when necessary, allowing taxpayers to provide summary information on Forms 1040, Schedule D, the Service will be promoting tax compliance and e-filing at the same time. The critical ingredient to promoting e-file in this context is for the Service to permit the attachment (and thereby, the reporting) of securities transactions detail in a PDF or electronic format. Especially with respect to the Form 1040 e-file platform, we believe more individual taxpayers would become interested in e-filing if the Service would explicitly state that Schedule D reporting is not required or that the agency will accept e-filed returns that contain summary transaction information on Schedule D.

Other Challenging Issues for IRS Regulations

The AICPA commends the IRS for raising pertinent questions within Notice 2009-17 about what the Service calls "special rules and mechanical issues" e.g., the treatment of wash sales and death and gift related adjustments; issues that Congress found particularly difficult to tackle within the context of the basis reporting legislation.

We are concerned about the potential new compliance burdens that may be placed on taxpayers receiving securities by gift, upon death with a stepped-up basis, or through direct purchase from an issuing company, and who later transfer the securities into a brokerage account. Moreover, brokers and taxpayers will have difficulty in tracking the basis of securities involved with corporate spinoffs, recapitalizations, and mergers. Other challenging issues for the IRS regulation drafters include the treatment of short sales, wash sales when the taxpayer has multiple brokerage accounts, dividend reinvestment plans, and securities purchased in foreign currencies. We also hope that the IRS will consider allowing a customer to furnish to their broker basis information for securities purchased prior to January 1, 2011.

The Honorable Douglas H. Shulman

May 5, 2009

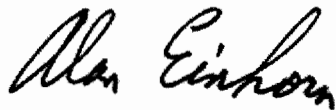
Page 4 of 4

The definition of who constitutes a broker will similarly be challenging to the regulation drafters to develop. For example, AICPA members are asking whether: (1) investment advisers and custodians who issue Forms 1099 to taxpayers will be considered a broker under the regulations; and (2) publicly traded partnerships will be responsible for basis reporting.

* * * * *

The AICPA will offer additional comments on the above issues and others as the IRS moves forward in its drafting of the securities basis reporting regulations. In the mean-time, if you have any questions regarding this letter, please contact Deborah Pflieger, Chair of the Securities Basis Reporting Task Force, at (202) 327-5791, or deborah.pflieger@ey.com; or Benson S. Goldstein, AICPA Senior Manager-Taxation, at (202) 434-9279, or bgoldstein@aicpa.org.

Sincerely,



Alan R. Einhorn
Chair, Tax Executive Committee