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Basis Reporting by Securities Brokers & Basis Determination for Stock

Comment On: IRS-2009-0037-0001

Basis Reporting by Securities Brokers and Basis Determination for Stock

Document: IRS-2009-0037-0019

Comment on FR Doc # E9-29855

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General Comment

Please see attached comments.

Attachments**IRS-2009-0037-0019.1:** Comment on FR Doc # E9-29855



STATE STREET.

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By Electronic Delivery

February 8, 2010

Mr. Stephen Schaeffer
Office of Associate Chief Counsel (Procedure & Administration)
CC:PA:LPD:PR (REG-101896-09)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C.

Re: Proposed Regulations on Cost Basis Reporting

Dear Mr. Schaeffer:

State Street Bank and Trust Company ("State Street") welcomes the opportunity to submit comments on the proposed regulations on cost basis reporting (REG-101896-09).

State Street wishes to commend the Treasury Department ("Treasury") and the Internal Revenue Service ("IRS") for issuing proposed regulations that are generally workable for brokers for Form 1099-B reporting purposes. However, there are several issues the Treasury and IRS should consider as the process of drafting final regulations moves forward. The following list, which pertains mostly to transfer statements, represents the issues of greatest concern to State Street from its perspective as a provider of financial services to institutional investors:

Transfer Statements for *All* Transfers (Other than in a Sale)

Proposed regulation section 1.6045A-1(a)(1) requires a transfer statement for *all* transfers other than in a sale. "All" captures transfers that would not affect amounts reportable on a Form 1099-B. For example, a transfer statement would appear to be required under the proposed regulations for:

- (1) a transfer of securities by a lender to a borrower pursuant to a loan of securities, and a transfer of securities by a borrower to a lender pursuant to the return of borrowed securities.

- (2) a transfer of securities under a repurchase agreement.
- (3) a transfer of securities by a collateral provider to a secured party when a securities collateral agreement is entered into, and a transfer of securities by a secured party to a collateral provider when a securities collateral agreement is terminated.

These and other similar transactions generally do not trigger tax recognition for U.S. federal income tax purposes and, more to the point, do not effect the amounts reported on a Form 1099-B when the securities involved are ultimately sold by the parties to the transaction. A transfer statement for such transfers would neither provide useful information to the transferee nor contribute to the IRS' tax compliance enforcement objective. Yet, a transfer statement for such transactions would introduce significant development cost for transferors, even if the solution required merely adding a "noncovered security" label to a transfer confirmation.

State Street and other market participants currently use a number of mechanisms to transfer securities depending on, among other factors, whether the securities transferred are U.S. or foreign, whether the transferee is a U.S. or foreign person, the type of property being transferred, the manner in which securities are registered at a depository (for example, by book entry or physically), and the type of transaction that gives rise to the transfer. A requirement to implement a transfer statement solution for *all* transfers around the world would be bewildering to meet. For those reasons, we recommend that the regulations specify that a transfer statement is not required for a transfer pursuant to a transaction that does not effect the Form 1099-B reporting process. If a requirement to provide a transfer statement for such transactions remains in the final regulations, we recommend that the government extend the effective date 2 years to January 1, 2013. That extended effective date would be needed for a custody bank such as State Street to identify all transfer types and develop and test systems to meet the sweeping transfer statement requirement.

Excepted Securities

Proposed regulation section 1.6045A-1(b)(2)(i) requires a transfer statement for all owners of transferred securities, including U.S. exempt recipients and apparently foreign persons. The preamble to the proposed regulations states "the requirement to provide a transfer statement for...excepted securities [i.e., securities of an exempt recipient] solely for the purpose of establishing that the security is a[n]...excepted security will reduce uncertainty for receiving brokers and custodians." We believe that a transfer statement for a U.S. exempt recipient and a foreign person would be of no value to a transferee custodian. A transferee custodian need not be notified that a security is a noncovered security in the case of a U.S. exempt recipient or a foreign person. A transferee custodian will not issue a Form 1099-B to a U.S. exempt recipient or a foreign person regardless of whether it receives a transfer statement and, if it receives a transfer statement, regardless of whether the securities are labeled as covered or noncovered securities. At State Street, the bulk of transfers are for U.S. exempt recipients and foreign persons. Both the cost

and the time that would be necessary to develop and implement a transfer statement for all such owners would be significant for State Street. Further, is it the government's intent to have a custodian provide a transfer statement for a French investment fund that invests in European stocks? An electronic transfer confirmation would look cluttered if every country required a statement similar to the section 6045A statement in the case of a non-resident. Such a confirmation might read "noncovered security within the meaning of United States Internal Revenue Code section 6045A, instrument financier non-couvert dans le sens du [relevant French law], cubrió instrumento financiero dentro del significado [relevant Spanish law]..." For all these reasons, a transfer statement should not be required in the case of securities transferred for an account of a U.S. exempt recipient or a foreign person. Note that a transfer statement for an excepted security should "not be required" as opposed to "must not be provided" so that a transferor may automatically provide a transfer statement should that be preferable operationally or systematically for the transferor.

Required Information on a Transfer Statement

The regulations should limit the information required on a transfer statement to items that are *needed* for the transferee to identify the correct account and, in the case of a nonexempt recipient, report accurate information on a Form 1099-B. Proposed regulation section 1.6045A-1(b)(1) includes a number of items that are not needed by the transferee. State Street intends to treat existing electronic transfer confirmations as transfer statements where possible. We understand that most other brokers intend to do the same. We wish to minimize the number of [costly] system enhancements necessary to bring existing electronic confirmations into compliance with the transfer statement requirements. Also, requiring only essential items will reduce the number of incomplete transfer statements (statements with missing but unimportant information), which will increase the number of covered securities, which, in turn, will improve basis reporting to customers and the IRS. The following items in section 1.6045A-1(b)(1) are not needed and should not be required on a transfer statement (they should be optional):

- Taxpayer identification number of the owner (-1(b)(1)(iv)). The TIN of the owner of the securities will be collected by a transferee broker from the customer typically during the account opening process and in a certified manner. In taking on a customer, we establish a connection with the predecessor custodian and know that the transfer is for the customer – the TIN would not assist in transferring in securities to the correct customer account. Further, a TIN on a transfer statement would add an instance of possible identity theft, and it is inconsistent with the recent social security number masking pilot program announced by Notice 2009-93.
- Security symbol (-1(b)(1)(v)). The security symbol is readily determinable from the CUSIP number. Brokers need only the CUSIP number (or other security identifier number) to identify a security.
- Classification of the security (-1(b)(1)(v)). The type of security is readily determinable from the CUSIP number or other security identifier number.

Brokers generally have their own security master database that classifies securities. Further, a transferee broker should not rely on a security classification of a transferor broker.

Also, the term “beneficial owner” in -1(b)(1)(iv) should be replaced with the word “owner.” Beneficial owner implies the tax owner. We regularly transfer securities for accounts owned other than by the tax owner of the securities held in the account. For example, we may transfer shares for the account of an agent of an undisclosed principal.

Further, the regulations should specify that lot numbers are not required for noncovered securities. It is not clear whether “(if applicable)” immediately following “lot numbers” in -1(b)(1)(v) means that lot numbers are not required in the case of noncovered securities or, instead, that there would be no lot numbers in the case of a single acquisition by a customer. State Street does not maintain lot numbers for many of its customers (we custody the aggregate position for a security of a customer) and we do not wish to incur cost to develop functionality to do so other than for covered securities.

Finally, the regulations should clarify what information is required on a transfer statement for noncovered securities. -1(b)(2)(i) appears to require that the information in -1(b)(1)(i) through (vi) be provided for noncovered securities. However, the preamble states “[i]n either situation [noncovered securities and excepted securities], the transfer statement is not required to include any other required information provided that the transfer statement indicates that the security transferred is a noncovered security.” If the government accepts the recommendations in the preceding paragraphs of this section to reduce the amount of required information on a transfer statement, State Street recommends that only information in -1(b)(1)(i) through (vi) be required for noncovered securities. That information would consist of the statement date, information to identify the transferor, transferee and owner of the securities, the security identifier, the quantity of shares, and the transfer date.

Issuer Statement

Proposed regulation section 1.6045B-1(a)(3) contains an exception from the requirement of an issuer to file an issuer return with the IRS, and to furnish a written statement to nominees and certificate holders with respect to corporate events that affect basis, if the issuer meets the “public reporting” requirement in the proposed regulations. This exception should be eliminated. Brokers should not be expected to monitor a countless number of issuer websites on an ongoing basis for new or corrected corporate event information. Further, as a result of corporate events, some issuer websites will cease to exist over time. Issuers should be required to furnish written statements to certificate holders, nominees, and clearing organizations that have designated the securities as eligible for clearing. In turn, the clearing organizations would disseminate the relevant corporate event to their participants. This pattern would allow an efficient dissemination of usable information.

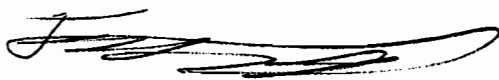
U.S. Payees under Nonqualified Intermediaries

We recommend that the regulations specify that the adjusted basis and the classification of any gain or loss as long-term or short-term not be required on a Form 1099-B for U.S. nonexempt recipient payees under a nonqualified intermediary. Unless the final regulations compel a nonqualified intermediary to provide a U.S. withholding agent with the information necessary to report basis information, the U.S. withholding agent will simply not be able to report accurate basis information, or basis information at all, on a Form 1099-B. Further, a requirement to report basis information on a Form 1099-B would effectively preclude a nonqualified intermediary from using a single account at a U.S. withholding agent that commingles U.S. nonexempt recipients, U.S. exempt recipients and foreign persons. For such an account structure, beneficial ownership is allocated in advance of each payment, and a Form 1099-B is issued only with respect to the portion of the total gross proceeds allocated to U.S. nonexempt recipients. A requirement to report basis information for U.S. nonexempt recipients under such an account structure, which is common at U.S. withholding agents, would necessitate the creation of sub-accounts for each U.S. exempt recipient to maintain lot level basis information using possibly different inventory methods for each underlying U.S. nonexempt recipient taxpayer, which would come at an enormous cost to both nonqualified intermediaries and U.S. withholding agents. If this recommendation is not adopted, we request that the government extend the effective date applicable to providing basis information for such accounts to securities acquired on or after January 1, 2014. That 3 year extended effective date would be needed for a U.S. withholding agent to design a systematic solution to meet the basis information reporting requirement.

Please note that State Street is in the midst of an extensive review of the proposed regulations, which will have widespread systems and operations implications, and may provide additional comments as this review progresses.

I would be happy to discuss these recommendations in more detail. Please feel free to contact me.

Best regards,



Frederic M. Bousquet

cc: Robert J. Foley
State Street
Product Tax Department