

September 27, 2011

The Honorable Timothy Geithner  
Secretary  
United States Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

Dear Secretary Geithner:

As the Chairman of the Ways and Means Subcommittee on Oversight, I am writing regarding the Internal Revenue Service's ("IRS") efforts to require banks to disclose interest paid to nonresident aliens, IRS Notice of Proposed Rulemaking REG-146097-09 ("proposed regulation"). If the regulation were to take effect, it would not only run counter to the will of the Congress, but would potentially drive foreign investments out of our economy, hurting individuals and small businesses by reducing access to capital. I write to request that IRS suspend the proposed regulation.

The proposed regulation requires U.S. banks to collect and report information on interest paid to nonresident aliens who deposit funds in U.S. financial institutions. As the Internal Revenue Code imposes no taxation or reporting requirements on this deposit interest, the proposed regulation serves no compelling tax collection purpose. Instead, it is my understanding that the IRS seeks this new authority to help foreign governments collect their own taxes abroad. While the United States continues to be a leader in efforts to fight international tax evasion, imposing unnecessary burdens on U.S. banks is the wrong way to address the problem.

Congress has long had the opportunity to legislate reporting requirements on deposit interest, and has declined to do so. In the waning days of the Clinton Administration, the IRS attempted to put in place similar reporting requirements. After Congress, the Federal Deposit Insurance Corporation, and the U.S. Small Business Administration raised strong concerns, the proposal was eventually withdrawn. It is disappointing to see the IRS once again try to impose unnecessary regulations and costs on U.S. banks.

To attract investment of foreign dollars into the U.S. economy, the Internal Revenue Code generally exempts these deposits from taxation and reporting requirements. These foreign investments in turn help to finance a variety of products essential to economic growth, such as small business loans and home mortgages. Imposing reporting requirements on these deposits

through regulatory fiat threatens to drive significant investments out of our economy by undermining the rules Congress has set in place specifically to attract it, and at exactly the time when our economy can least afford it.

I ask that further action on this regulation be suspended until the Subcommittee has a better understanding of IRS's authority, policy objectives, and intentions with regard to this matter. To assist me in that effort, please provide the following information by no later than October 11, 2011:

- 1) Has the IRS considered the administrative burden of this proposed regulation on U.S. banks? If so, how is this burden outweighed by the IRS's policy goals;
- 2) The proposed regulation states that neither Executive Order 12866 nor section 553(b) of the Administrative Procedure Act applies to it. Provide all correspondence and other documents relating to the formation of this opinion;
- 3) Agencies must conduct a cost-benefit analysis of all "significant regulatory action" under Executive Order 12866, which include regulations that have "an annual effect on the economy of \$100 million or more or adversely affect in a material way... a sector of the economy." Provide all correspondence and other documents relating to the proposed regulation and its "significant regulatory action" status;
- 4) Provide a thorough cost-benefit analysis of the proposed regulation; and
- 5) How does IRS plan to implement this regulation? In your answer, please include:
  - a. How the IRS plans to share information collected under this regulation with foreign countries; and
  - b. The annual costs to IRS both in dollars and full-time employees of this new regulation.

Thank you for your prompt attention to this matter.

Sincerely,

Charles Boustany, Jr., MD  
Chairman  
Subcommittee on Oversight

cc: Commissioner Douglas H. Shulman, Internal Revenue Service  
Administrator Cass R. Sunstein, Office of Information and Regulatory Affairs, Office of Management and Budget