



American Institute of CPAs  
1455 Pennsylvania Avenue, NW  
Washington, DC 20004-1081

July 31, 2012

Ms. Ruth Perez  
Deputy Commissioner  
Small Business/Self-Employed Division  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Room 3406  
Washington, DC 20224

Dear Ms. Perez:

This letter is in response to our conference call with you and other IRS officials on April 5, 2012, regarding Forms 1099-B and the reporting of a customer's basis when a security is sold. Specifically, the American Institute of CPAs (AICPA) is concerned about new administrative burdens placed on taxpayers and tax preparers when reporting the adjusted basis of securities sold on Form 1040, Schedule D (Capital Gains and Losses) and Forms 8949 (Sales and Other Dispositions of Capital Assets). These new reporting requirements, enacted as part of the Energy Improvement and Extension Act of 2008 (the 2008 Act), are contained in sections 6045(g), 6045(h), 6045A, and 6045B of the Internal Revenue Code.

The AICPA is the national association of certified public accountants comprised of approximately 377,000 members. Our members advise clients on federal, state, and international tax matters and prepare income and other tax returns for millions of Americans. They provide services to individuals, not-for-profit organizations, and small and medium-sized businesses, as well as America's largest businesses.

We would like to highlight two critical points made by the AICPA's Schedule D/Form 8949 Task Force during the conference call. First, we generally support the concept of requiring brokers to report to both customers and the IRS a customer's adjusted basis in securities, or "covered securities" within the meaning of the 2008 Act, when the securities are sold because we believe that such reporting could increase tax compliance over the long-term. Second, we urge the IRS not to underestimate the technical problems and uncertainties associated with implementation of basis reporting -- from the perspective of taxpayers, tax preparers and brokers.<sup>1</sup> Moreover, we appreciate that the IRS intends to delay the proposed effective dates for the basis reporting involved with debt instruments and options from January 1, 2013, to January

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<sup>1</sup>For a similar comment, see: (1) AICPA, Comments on the Joint Committee on Taxation Staff options to Close the Tax Gap, January 5, 2007; (2) AICPA, Comments on Notice 2009-17, Information Reporting of Basis in Securities Transactions, May 5, 2009; and (3) AICPA, Comments on Proposed Reg. 101896-09, Information Reporting of Basis in Securities Transactions, May 28, 2010.

1, 2014.<sup>2</sup> However, we think additional delays and changes to the process are necessary to mitigate compliance burdens for individual taxpayers.

### Tax Year 2011 Issues and Challenges

For tax years prior to 2011, taxpayers reported capital gains and losses on Form 1040, Schedules D and D-1 utilizing the following “buckets:” (1) short-term capital gains and losses; and (2) long-term capital gains and losses. Moreover, for tax years prior to 2011, the IRS accepted summary totals in lieu of reporting the details of each transaction on Schedule D and D-1. Taxpayers and their tax return preparers considered this latter reporting method as a balanced tax administration procedure whereby the IRS was provided with the necessary transactional information to conduct a review or examination of the taxpayer’s capital gains and losses and, at the same time, there were no unreasonable compliance burdens placed on taxpayers.

With the introduction of Form 8949, Sales and Other Dispositions of Capital Assets, the preparation of a taxpayer’s Form 1040 (assuming the taxpayer has capital gains and losses) has significantly increased compliance burdens, including the potential cost and time dedicated to preparation of that return. Beginning with 2011 tax returns, a taxpayer might potentially be required to include as many as six Forms 8949 with the Schedule D included with his or her individual tax return:

- Short-term transactions reported on Forms 1099-B showing an amount for cost or other basis (“short-term covered”).
- Short-term transactions reported on Forms 1099-B which did not show an amount for cost or other basis (“short-term non-covered”).
- Short-term transactions for which the taxpayer did not receive Forms 1099-B.
- Long-term transactions reported on Forms 1099-B showing an amount for cost or other basis (“long-term covered”).
- Long-term transactions reported on Forms 1099-B which did not show an amount for cost or other basis (“long-term non-covered”).
- Long-term transactions for which the taxpayer did not receive Forms 1099-B.

We recognize the extreme challenges brokerage firms have faced and continue to face with implementation of the basis reporting requirements of the 2008 Act. As a result, there are large variations in how brokers have reported 2011 tax year transactions on capital gains/loss statements and Forms 1099-B. In some situations, brokers have continued to list individual transactions on their capital gains/loss statements and Forms 1099-B in the former format involving two “buckets” (i.e., short-term capital gains and losses, and long-term capital gains and losses).

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<sup>2</sup>See Notice 2012-34, Internal Revenue Bulletin 2012-21, May 21, 2012; URL: [http://www.irs.gov/irb/2012-21\\_IRB/ar06.html](http://www.irs.gov/irb/2012-21_IRB/ar06.html).

The time and cost incurred for taxpayers and their tax preparers to convert capital asset transactions data into the proper format for IRS reporting on Forms 8949 has proven significantly greater than Congress or Treasury originally anticipated. This issue will be further exacerbated for 2012 tax filings since the rules will also apply to mutual fund transactions. We estimate the time associated with preparing Forms 8949 as currently instructed will substantially increase if the taxpayer has significant holdings to report. Because many professionals charge professional fees at an hourly rate, this translates into a significant increase to the taxpayer in the cost of return preparation.

In addition, we believe that it is inevitable that unintentional errors have been made (or are being made) on many 2011 individual tax returns in separating covered and uncovered securities on Forms 8949, a situation which is due to both the complexity of the law itself and the wide variances in the reporting methods used by brokers on the capital gains/loss statements and Forms 1099-B.

Differences between the basis reported by a broker on a Form 1099-B and the basis reported by their customer on the tax return occur for a number of reasons. First, differences may result when a taxpayer uses 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 complexities that may result from brokers’ reporting “covered securities” (securities generally purchased after January 1, 2011) in one way and non-covered securities in a different way, customer reporting on Form 1040, Schedule D may differ from the Form 1099-B issued by the broker. Third, the reporting of wash sales, securities received through inheritance or by gift, and information relating to certain corporate actions add to the challenges in the accuracy of basis reporting.

Of the many challenges basis reporting creates, the AICPA believes the complexities involved in preparing and reporting wash sales are the most difficult, due in part to the way in which the Treasury Regulations were drafted as to how and when to calculate the wash sales figures reported to the IRS and taxpayers on Forms 1099-B, which is not necessarily the same manner in which taxpayers must report wash sales on their income tax returns. Tracking back to the correct figures is often challenging.

#### AICPA Recommendations

Due to the above reporting complexities involved with basis reporting, the AICPA makes the following recommendations for improving the process:

1. **Delay the Matching of Basis Reporting Information.** The AICPA strongly recommends that the IRS take steps to -- minimize any “mismatches” resulting in compliance notices generated by the IRS for tax year 2011 due to differences between what the brokers report on Forms 1099-B and what a taxpayer reports on Schedule D. Otherwise, if the IRS initiates a matching program for 2011, we believe it will result in a waste of time, money, and resources

for the IRS, taxpayers, and the tax preparer community. We believe that cost basis matching should be delayed until such time as there is more consistency and reliability in the process.

2. **Utilization of Summary Totals.** To the extent a taxpayer must complete Schedule D and Forms 8949, we believe the basis reporting requirements should not impact in any way the IRS's long-standing practice of permitting tax preparers (on behalf of their clients) to report the summary totals found on a year-end brokerage (capital gains/loss) statement directly onto the taxpayer's Schedule D and/or Forms 8949, with an attachment detailing each transaction in a substantially similar format to what is otherwise required on the taxpayer's return. In the case of a paper-filed Form 1040, the taxpayer should be permitted to provide such attachment on paper and directly with the paper-filed Form 1040. Similarly, we support the IRS's current procedures which permit taxpayers to provide the attachment to the Service in a PDF or electronic format with respect to tax returns filed electronically via the IRS's Modernized E-file (MeF) platform.
3. **Communicating Basis Method to Taxpayers.** The AICPA is sensitive to the expense and complexity of increased information reporting on taxpayers, tax preparers, and the brokerage community. In this context, we recommend that the IRS open a dialogue with these three constituencies for the purpose of seeking greater standardization of the format and the data detailed on the Forms 1099-B submitted to the IRS and the capital gains/loss statements sent by brokers to taxpayers, and to assist these constituencies address the technical uncertainties that exist.
4. **Forms and Instructions.** We believe the IRS needs to review and, as necessary, revise Forms 8949 and 1099-B for tax year 2012 (along with the accompanying instructions) to provide greater clarity in: (a) the tax information that must be reported by taxpayers; (b) the format for reporting such information; and (c) the procedures for resolving and disclosing discrepancies between a taxpayer's records and broker supplied information.

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If you would like to discuss specific examples of taxpayer problems with basis reporting for capital gains transactions, we will be pleased to provide them. Moreover, should you have any other questions regarding this letter, please contact me at (401) 831-0200, or patt@pgco.com; Jonathan Horn, Chair of the AICPA Schedule D/Form 8949 Task Force, at (212) 744-1447, or jmhcpa@verizon.net; Abraham Schneier, AICPA Senior Technical Manager-Taxation, at (202) 434-9229, or aschneier@aicpa.org; or Benson Goldstein, AICPA Senior Technical Manager-Taxation, at (202) 434-9279, or bgoldstein@aicpa.org.

Sincerely,



Patricia Thompson, CPA  
Chair, AICPA Tax Executive Committee