

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HM 1047 Nonresident Alien Accounts

**SPONSOR(S):** Diaz and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SM 1344

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee	11 Y, 0 N	Cyphers	Cyphers
2) Economic Affairs Committee	14 Y, 0 N	Barnum	Tinker

### SUMMARY ANALYSIS

All residents of the United States are required to report and pay taxes on interest earned from deposit accounts such as savings accounts and certificates of deposit. However, except for Canadians, residents of foreign countries with deposits in U.S. financial institutions are not subject to the same reporting requirements. The United States Treasury Department has proposed regulations which would extend the earned interest reporting requirements to Nonresident Aliens (NRA) from any foreign country.

This memorial urges the United States Treasury Department to withdraw the proposed Internal Revenue Service Regulation (REG-146097-09). It also calls on Congress to hold hearings in order to examine the potential effects of the proposed regulations on the economies of the U.S. and Florida, as well as their financial institutions.

The House Memorial does not amend, create, or repeal any provisions of the Florida Statutes.

The House Memorial has no fiscal impact on state or local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Federal Regulation 26 C.F.R. 1.6049-4 governs the Internal Revenue Service's (IRS) authority to obtain reports of interest earned from deposit accounts such as savings accounts and certificates of deposit. All residents of the United States earning aggregated interest in excess of \$10 must report that interest to the IRS each year using Form 1099-INT.<sup>1</sup> However, the same requirement for foreign depositors only exists for nonresident aliens (NRAs) from Canada.<sup>2</sup>

In January, 2001, the IRS and the United States Department of the Treasury published proposed rulemaking regarding the reporting of interest paid to NRAs in the Federal Register under Section 6049.<sup>3</sup> The proposal sought to require the reporting of interest earned by all NRAs, but by 2002, the resulting regulation included only NRAs from Canada.<sup>4</sup> Consequently, banks and other U.S. financial institutions that disburse interest earned on the deposit accounts of Canadians must submit form 1042-S, (Foreign Person's U.S. Source Income Subject to Withholding) for each year in which interest is paid to a depositor.<sup>5</sup>

When a 1042-S form is submitted to the IRS, the financial institution is required to send a copy to the Canadian account holder giving notice that the form has been submitted.<sup>6</sup> Even though notice of the interest paid to a nonresident Canadian is filed with the IRS, the interest itself is not subject to federal taxes in the United States under 26 C.F.R. 3406.

After the agency's failed attempts to broadly expand interest reporting in 2001 and 2002, the IRS pursued a limited list of NRA depositors subject to the reporting requirement. This proposal, offered in 2002 as well (August), included 15 countries: Australia, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, and the United Kingdom. In addition to an abbreviated list of countries included in the mandatory reporting scheme, the new proposal also allowed reporting of all NRA interest earnings, regardless of country of origin, if the financial institution desired.<sup>7</sup> After renewed opposition to the reporting expansion, largely from financial institutions, the plan was shelved again until recently.

##### Current Situation

IRS Bulletin 2011-8 describes the official withdrawal of the 2002 proposed regulations and introduces new proposed regulations that require, as with Canada, reporting of bank deposit information for interest paid to individuals who are residents of any foreign country.<sup>8</sup> Consequently, financial institutions in all 50 states will be required to report all interest earned on deposits (over \$10) to the IRS using the 1042-S form. The reporting would be effective for all payments made after December 31<sup>st</sup> of the year of the regulation's enactment.<sup>9</sup>

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<sup>1</sup> 26 C.F.R. § 1.6049-4

<sup>2</sup> *Id.*

<sup>3</sup> REG 126100-00: Federal Register notations – 66 FR 3925, corrected by 66 FR 15820 and 66 FR 16019.

<sup>4</sup> 26 C.F.R. 1.6049-8(a)

<sup>5</sup> 26 C.F.R. § 1.6049-4(b)(5)

<sup>6</sup> 26 C.F.R. 1.6-49-6(e)(4)

<sup>7</sup> Internal Revenue Bulletin: 2011-8, February 22, 2011

<sup>8</sup> Internal Revenue Service Regulation REG-146097-09

<sup>9</sup> Internal Revenue Bulletin: 2011-8, February 22, 2011.

The IRS offers three reasons for the regulatory change. First, the agency points to a growing global consensus among countries regarding a cooperative exchange of information for tax purposes. The regulations are intended to signify agreement that information exchanges between countries will not be limited by bank secrecy or the absence of domestic tax interest. Second, requiring routine reporting of NRA interest payouts will strengthen the United States program regarding information exchange. Lastly, the extension of the reporting requirements will help voluntary tax compliance in the United States by making it more difficult to avoid reporting through false claims of foreign residency.<sup>10</sup>

Each member of Florida's delegation in the United States House of Representatives, led by Congressman Bill Posey, has signed onto a letter articulating opposition to the proposed information reporting regulations.<sup>11</sup> The most prominent concern of the delegation is the loss of foreign deposits. According to a 2001 report by the Washington Economics Group, Inc., the total amount of NRA deposits in Florida banks at the time was approximately \$48.8 billion. Based on a survey of financial institutions in Florida, the estimated loss of deposits due to the new regulations is over \$18.4 billion.<sup>12</sup> While the data regarding total deposits is dated, the potential for heavy withdrawals of foreign-based deposits remains.

According to the arguments made in the delegation's letter and the Washington Economics Group report, the withdrawal of funds by multiple investors in short succession will adversely affect the solvency of financial institutions that rely heavily on NRA depositors. As a state with significant quantities of foreign deposits<sup>13</sup>, Florida (especially Miami-Dade and Broward Counties) is likely to bear a greater burden than nearly every other state. The estimated job loss predicted by the Washington Economics Group's study in a "worst-case scenario" is 14,300 banking industry jobs.<sup>14</sup> The study also predicts "economic multiplier effects" for non-banking employment as well. Specifically, the study claims that for every 100 banking jobs lost, there will be a loss of total business output of \$28.6 million and a total decline in employment of 219 jobs.

### Effect of Proposed Changes

This memorial urges the United States Treasury Department to withdraw the proposed Internal Revenue Service Regulation REG-146097-09. If the Treasury Department acts to halt the new regulations, reporting interest earned by NRAs would continue only for Canadian depositors. The memorial also calls on Congress to hold hearings in order to examine the potential effects of the proposed regulations on the economies of the U.S. and Florida, as well as their financial institutions.

Copies of the memorial are to be sent to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives and to each member of the Florida delegation to the United States Congress.

The legislation also includes whereas clauses in order to support the memorial. The whereas clauses include:

WHEREAS, Florida is the gateway to the Americas and, as such, has promoted international trade and finance, and

WHEREAS, the United States has had a long policy to encourage nonresident aliens to deposit their funds into financial institutions in the United States so that these funds can be used to foster growth, encourage economic development, and create jobs in Florida and the United States, and,

WHEREAS, the federal law does not permit the taxation of the deposit account of a nonresident alien, and

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<sup>10</sup> *Id.*

<sup>11</sup> <http://posey.house.gov/UploadedFiles/IRS-DelegationLetter-March3-2011.pdf> (Last visited on April 13, 2011)

<sup>12</sup> The Economic Impact on Florida's Economy of Proposed Regulations Requiring the Disclosure of Non-Resident Alien Interest Paid on Bank Deposits, by The Washington Economics Group, Inc.; September 13, 2001.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

WHEREAS, the United States Commerce Department has stated that foreigners have deposited nearly \$3 trillion in United States banks and with securities brokers, and

WHEREAS, this policy has led to the influx of tens of billions of nonresident alien dollars being deposited in Florida banks, and

WHEREAS, the Treasury Department has issued proposed Internal Revenue Service regulation REG-146097-09 that will require United States and Florida financial institutions to report interest earned on the nonresident alien deposits so that this information can be reported to the nonresident alien's home country, and

WHEREAS, many nonresident alien accounts were established in Florida by individuals from Latin America because many nonresident aliens do not trust the privacy of the financial institutions in their home countries, fear kidnappings and extortion when such financial information is revealed, and are concerned about the viability of their home country's economy and thus have transferred their money to the safety and soundness of the United States' financial system, and

WHEREAS, the adoption of the rule will place United States' and Florida's financial institutions at a competitive disadvantage relative to the banks of foreign countries and will result in significant withdrawals of foreign deposits from our financial institutions, and

WHEREAS, the withdrawal of these nonresident alien deposits from Florida's financial institutions will drive job-creating capital out of Florida and cause a further, deepening banking and economic crisis in Florida and the United States.

**B. SECTION DIRECTORY:**

None

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None

2. Expenditures:

None

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

**D. FISCAL COMMENTS:**

None

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable

2. Other:

None

#### **B. RULE-MAKING AUTHORITY:**

Not Applicable

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**