

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Banking and Insurance Committee

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BILL: SM 1344

INTRODUCER: Senator Flores

SUBJECT: U.S. Treasury/Deposits by Nonresident Aliens

DATE: March 10, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arzillo	Burgess	BI	<b>Favorable</b>
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The memorial urges the United States Congress to direct the Department of Treasury to withdraw proposed Internal Revenue Service (IRS) regulation REG-146097-09, and to hold hearings to examine the possible negative effects and the costs of the proposed regulation on United States and Florida’s financial institutions.

**II. Present Situation:**

**Current Federal Regulation of Nonresident Alien Deposits**

Regulation 26 C.F.R. 1.6049-4 governs the IRS authority to obtain reports of interest earned on bank deposits. Currently, the only nonresident aliens subject to reporting interest earned on deposit accounts held in the U.S. are Canadians.<sup>1</sup> The report requires the U.S. financial institution disbursing the interest earned on the deposit account to submit a 1042-S, “Foreign Person’s U.S. Source Income Subject to Withholding” form each year interest is paid.<sup>2</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 to the IRS.<sup>3</sup> The interest paid to a Canadian nonresident alien is not subject to tax under 26 C.F.R. 3406.<sup>4</sup>

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<sup>1</sup> See 26 C.F.R. 1.6049-8(a) (“Interest means interest paid to a Canadian nonresident alien individual . . . with respect to a deposit maintained at an office within the United States.”)

<sup>2</sup> See 26 C.F.R. 1.6049-4(b)(5).

<sup>3</sup> See 26 C.F.R. 1.6-49-6(e)(4).

<sup>4</sup> See 26 C.F.R. 31.3406(g)-1(d) (“A payment of interest that is reported on Form 1042-S . . . is not subject to withholding under section 3406.”)

In 2002, the IRS attempted to broaden the nonresident alien depositors subject to the reporting requirement to 15 countries.<sup>5</sup> The 2002 regulation also allowed for the reporting of all nonresident alien interest earnings, regardless of country of origin, if the financial institution desired.<sup>6</sup> This change in the regulations met with considerable opposition. Studies showed that \$88 billion would be removed from U.S. financial institutions upon the approval of this regulation.<sup>7</sup> Nevertheless, the IRS did not make any changes to the regulation.

### **Proposed Changes to Regulations of Nonresident Alien Deposits**

The IRS has submitted a new set of changes to the regulations, which withdraws the proposed regulation made in 2002. The proposed regulation, instead of only applying to Canada or a select number of countries, would apply to all foreign countries. Therefore, the financial institutions in all 50 states would be required to report all the interest earned on deposits, more than \$10, to the IRS using the 1042-S form, effective December 31 of the year of enactment.<sup>8</sup> Therefore, the same requirements for filing with the IRS for Canadian nonresident aliens would be applied to all nonresident aliens, regardless of country of origin.<sup>9</sup>

The IRS has presented several reasons for the regulatory change. First, a growing consensus has been established between foreign countries to cooperate in information sharing for tax purposes, including entering into agreements. This proposed regulation signals to other countries that the U.S. will not protect this information through bank secrecy or due to an absence of taxable incentives. The new requirement will also limit U.S. taxpayer evasion of taxes by making false claims of foreign status.<sup>10</sup>

These changes have been met with opposition. Congressman Bill Posey has collected the signatures of the entire Florida Delegation of U.S. Congressmen on a letter stating that the Delegation is opposed to the change in the regulatory scheme. The most prominent concern of the delegation is the loss of foreign deposits. The proposed regulation may lead to an exodus of nonresident alien depositors, which create several economic hardships. The withdrawal of funds by multiple investors at once will affect the solvency of financial institutions that rely heavily on these nonresident alien depositors.<sup>11</sup> Florida, being proclaimed as the “gateway to the Americas,” will experience a greater level of withdrawals compared to other States.

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<sup>5</sup>The countries subject to the 2002 regulation were Australia, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, and the United Kingdom. KPMG, Tax News Flash, Proposed Regulations on Reporting of Deposit Interest Paid to Nonresident Aliens; Prior Proposed Regulations are Withdrawn—Again, January 6, 2011, No. 2011-12.

<sup>6</sup> See note 5

<sup>7</sup> See Ward, Kenric, Florida Bankers Assail IRS Reporting Rule for Nonresident Aliens, [www.sunshinestateneews.com](http://www.sunshinestateneews.com) (As of March 10, 2011)

<sup>8</sup> See Internal Revenue Bulletin: 2011-8, REG-146097-09, Notice of Proposed Rulemaking; Notice of Public Hearing; and Withdrawal of Previously Proposed Rulemaking Guidance on Reporting Interest Paid to Nonresident Aliens, February 22, 2011.

<sup>9</sup> See note 8.

<sup>10</sup> See note 8.

<sup>11</sup> Letter sent to President Obama from the Florida Delegation in Washington, D.C. March 2, 2011. [www.posey.house.gov/News/DocumentPring.aspx?DocumentID=227141](http://www.posey.house.gov/News/DocumentPring.aspx?DocumentID=227141). (As of March 10, 2011)

Additionally, the removal of nonresident alien deposits will decrease the amount of capital that could be invested through loans by financial institutions.<sup>12</sup> The withdrawal of funds weakens competition because nonresident aliens that remove their investments from U.S. financial institutions will redeposit them into foreign financial institutions. Furthermore, while the funds remain in the U.S., the money in the deposit accounts may be spent in the U.S. on goods and services. If the deposit accounts are transferred to foreign financial institutions, it is likely that that money will be spent on goods and services in the foreign country, rather than in the U.S. To the extent that reduces spending in the U.S., the proposed regulation would affect other industries as well as the financial system.<sup>13</sup>

### III. **Effect of Proposed Changes:**

The memorial would urge the United States Congress to direct the Department of Treasury to withdraw proposed Internal Revenue Service (IRS) regulation REG-146097-09, and to hold hearings to examine the possible negative effects and the costs of the proposed regulation on United States and Florida's financial institutions. The memorial would also require that it be sent to the President of the United States, to the President of the U.S. Senate, to the Speaker of the U.S. House of Representatives, and to each member of the Florida delegation to the U.S. Congress. By sending the memorial to each of the identified recipients, the recipients would be informed of the underlying rationale of SM 1344 through its "whereas" clauses, including:

- Florida is the "gateway to the Americas," and has promoted international trade and finance;
- The United States has a longstanding policy of encouraging nonresident aliens to deposit their funds in U.S. financial institutions, which fosters economic development in the United States and Florida;
- Federal law does not permit taxation of nonresident alien deposits;
- Nonresident aliens have deposited nearly \$3 trillion in banks and with securities brokers in the United States;
- Nonresident aliens have deposited tens of billions of dollars in financial institutions in Florida;
- Many of the nonresident aliens who have deposited funds in Florida financial institutions are Latin Americans who do not trust the privacy of the institutions in their home country, and fear kidnapping, extortion and financial instability when their funds are domestically deposited;
- The proposed Treasury rule would place U.S. and Florida financial institutions at a competitive disadvantage; and
- Removal of nonresident alien deposits would drive job-creating capital out of Florida.

#### **Other Potential Implications:**

None.

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<sup>12</sup> See note 7.

<sup>13</sup> See note 7.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

## A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

## B. Amendments:

None.