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Notice 2009-17

From: Glenn Walberg [gwalberg@techtaxpro.com]
Sent: Monday, March 02, 2009 9:19 PM
To: Notice Comments
Subject: Notice 2009-17

Attachments: Notice 2009-17 Comments.doc

LEGAL PROCESSING DIVISION
PUBLICATION & REGULATIONS
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Technical Tax Programming, LLC, respectfully submits the attached comments in response to Notice 2009-17, 2009-8 I.R.B. 575.

March 2, 2009

Internal Revenue Service
CC:PA:LPD:PR (Notice 2009-17)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Sir or Madam:

Technical Tax Programming, LLC, respectfully submits the following comments in response to Notice 2009-17, 2009-8 I.R.B. 575. In particular, these comments respond to the new basis reporting requirements for debt securities and primarily address request number 19 in the Notice, about how future guidance should address mechanical issues relating to the computation of basis for debt securities.

The Treasury Department and IRS should develop future reporting guidance that fundamentally promotes accurate computations of adjusted bases for debt securities. Simplified methods and assumptions are neither necessary nor desired for the reporting requirements insofar as they produce results inconsistent with Code and Regulation provisions that govern holdings of debt securities. Existing technology¹ can facilitate accurate computations based on non-elective provisions (e.g., determinations and allocations of original issue discount and acquisition premium) and elective provisions (e.g., allocations of market discount (under pro rata and constant yield methods) and bond premium amortization, as well as the all-OID election). Brokers already possess much of the necessary information and can obtain additional information about taxpayer-specific elections to perform accurate basis computations with this technology. Therefore, few mechanical issues arise in computing required adjustments to basis with respect to a particular holding of debt securities.

A broker's accurate computation of basis would further the objectives of section 6045(g). Unless the broker reports an adjusted basis that takes into account a customer's elections, the customer would need to re-determine basis and thereby create an inconsistency between the basis reported on Form 1099-B and the basis reported on Schedule D of Form 1040 (in opposition to request number 12 in the Notice). There is no point in reporting basis if a customer will not use it to report gain or loss. Moreover, without accurate adjustments to basis, a broker could not accurately report the character of any

¹ For example, Technical Tax Programming has developed an automated process for determining tax attributes for portfolios of debt securities, including interest accruals and basis adjustments for each investment in a wide variety of debt securities. This process accounts for individual taxpayer elections relative to an entire portfolio, a particular security, and a specific lot of a security.

resulting gain or loss on a sale as required by section 6045(g), such as the ordinary amount with respect to market discount or contingent payment debt instruments.

It seems desirable, therefore, to require that brokers perform basis computations for debt securities that take into account customer elections. Those computations would naturally maximize the customers' flexibility (consistent with request number 5 in the Notice) in complying with the Code. In the event that a customer fails to notify a broker of any elections (as suggested by request number 4 in the Notice), a broker's computations should default to the methods required by the Code and Regulations, which would avoid a need for further disclosure by the broker. For example, a broker would make no adjustments for market discount unless a customer notifies the broker of an election to currently accrue market discount. The broker would then accrue any market discount under a ratable method unless the customer further notifies the broker of an election to use a constant yield method.

The IRS could assume part of the burden imposed on brokers in performing accurate computations. A computation of basis, determined in part from customer-supplied information, would enable brokers to provide a desirable, single adjusted basis figure on a Form 1099-B that would correspond to the amount reported on a Form 1040. However, that approach would obligate brokers to maintain databases about customers' tax elections and rely on customers' abilities and willingness to provide the information. Alternatively, brokers could report several adjusted basis figures on a Form 1099-B, and a customer could select the appropriate figure depending on the customer's elections. For example, a broker could report adjusted bases determined without a market discount election, with a market discount election under a ratable method, and with a market discount under a constant yield method. The IRS would then need to match the amount reported on a Form 1040 with any amount reported on a Form 1099-B. The additional information provided to customers might create confusion, but it could avoid placing burdens on brokers to handle taxpayer information.

Please let me know if I can provide additional information related to Notice 2009-17 or these comments.

Sincerely,

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