

May 24, 2011

Tammie A Geier
CC:PA:LPD:PR (Notice 2011-38)
Room 5203
P.O. Box 7604
Ben Franklin Station, N.W.
Washington, D.C. 20044.

RE: *IRS Notice 2011-38: Truncating Social Security Numbers on Paper Payee Statements*

Dear Ms. Geier:

The American Bankers Association (ABA) is pleased to submit comments on Notice 2011-38 (Truncating Social Security Numbers (SSNs) on paper Payee Statements) (the "Second Notice") issued by the Internal Revenue Service (the IRS or "Service") on April 14, 2011 relating to the masking of taxpayer identification numbers (TINs) on payee statements. *The ABA represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its two million employees.*

In April 2010, the ABA provided comments to the Service regarding the first notice that was issued announcing the creation of the TIN truncation pilot program (Notice 2009-93). The ABA continues to support the Service's efforts to address the issues and concerns that have been raised regarding the display of SSNs or other personal information on statements or forms provided to taxpayers. While we applaud the creation of the TIN truncation pilot program and appreciate its extension as we had requested, we believe that the Service still needs to do a lot more in this area. This letter reiterates some of the previous comments already provided to the Service in relation to Notice 2009-93 and also provides new comments in response to the request for specific comments contained in the Second Notice.

Comments requested in the Second Notice:

1. *Whether payors should be allowed to truncate a payee's EIN*

We reiterate the following comments provided in our previous letter, which answers this question affirmatively:

We request that payors be allowed to truncate all TIN types, not just SSNs. Permitting truncation of some types of TINs (e.g., SSNs) and not others (e.g., EINs) will create unnecessary administrative and systemic burdens for filers. Current IRS filing specifications for information returns require filers to format TINs on information returns as nine-digit, non-hyphenated numbers. As a result, filers generally enter TINs in their systems simply as a nine-digit identifying number without any hyphens with no reliable way to distinguish between the different TIN types in the system, i.e., whether a

particular nine-digit number is an EIN or an SSN. A rule that permits truncation of SSNs and not other TIN types (such as EINs) would require filers to distinguish SSNs from other types of TINs. Filers are currently not required to distinguish between SSNs and other types of TINs on information returns filed with the IRS – a copy of which is provided to their customers. Thus, they are not compelled to use systems that are able to differentiate between different TIN types. While the concern about identity theft and privacy is considerably less with respect to the display of EINs, there is no compelling reason why the Service should prohibit EINs from being truncated. The need to distinguish SSNs for purposes of this rule is an unnecessary impediment for many firms, and will create an uneven playing field because entities whose systems can distinguish EINs from SSNs will be able to protect their customers' privacy by truncating their SSNs, whereas entities whose systems are not designed to distinguish between different TIN types will be unable to truncate a taxpayer's nine-digit number and, therefore, will be unable to help protect their clients from potential identity theft.

If the Service permits truncation of SSNs only and not EINs, many filers would have to incur significant costs to acquire systems that can distinguish between the different types of identifying numbers (assuming that such systems even exist; the IRS has not issued any published guidance on how to recognize an EIN) in order to accomplish truncation as well as establish and validate millions of TIN type codes for existing accounts.

2. Whether truncation should be permitted on additional types of payee statements

We reiterate the following comments provided in our previous letter, which answers this question affirmatively:

We request that the Service permit truncation for all paper payee statements, including those that are beyond the scope of the 2009 Notice and the Second Notice. ABA represents numerous banks and trust companies that provide both trust and investment services. In addition to producing Forms 1099 for investment management and custodial accounts, bank trust departments often produce as many trust Schedule K-1s and Grantor tax information letters to report income to trust or estate beneficiaries. These tax statements typically contain customer TINs, and thus, carry the same risks of identity theft and privacy issues as other IRS forms and statements. As a matter of fact, bank customers concerned over identity theft and privacy issues would want to know why the IRS is permitting truncation only for their Forms 1099 but not on other types of statements they receive.

Moreover, a provision that would permit truncation on some types of statements and not others would be very costly and administratively burdensome for filers. This is because many filers currently use systems that can either truncate TINs or not – regardless of whether the document is a Form 1099, trust Schedule K-1, Grantor tax information letter or other IRS information reporting form or statement. Thus, a filer that elects to truncate TINs under the IRS's TIN Truncation program would need to develop a system that can truncate TINs on some documents and not on others. Therefore, we suggest that for a filer that elects to truncate, the IRS should permit truncation across the board.

3. *Whether payors should be allowed to truncate a payee's identifying number on electronically furnished payee statements*

We reiterate the following comments provided in our previous letter, which answers this question affirmatively:

We request that the same TIN truncation requirements apply to all statements and documents provided to customers, whether on paper or electronically. In addition to the fact that it would create an undue burden for many filers to program their systems to truncate TINs on paper statements but not on electronic statements, statements furnished electronically carry the same risk of identity theft as those provided through the mail. For instance:

- A customer prints the electronic statement and disposes of it without shredding it.
- A customer uses a public computer to view an electronic statement and does not log off properly. A subsequent user of the same computer could easily access the customer's information and obtain any fully displayed personal information.
- Someone looking over a taxpayer's shoulder while the taxpayer accesses a document with a displayed SSN might be able copy the SSN and other information off the screen.

If truncation is not permitted for electronic statements, clients who are concerned about identity theft and privacy will have a bias towards paper statements, and this will impede the IRS's efforts to encourage filers to furnish statements electronically.

Other comments that should be considered:

1. Whether truncation of an individual's identifying number on paper payee statements should be required, rather than permitted.

We request that the IRS issue guidance providing that truncation be permitted, rather than required. We have made it clear to the IRS that because financial institutions are required annually to mail billions of customer statements and forms that display sensitive taxpayer identification information, serious risks of identity theft are created with every mailing of such statements, especially when the outside envelope must display the legend "important tax return document enclosed". Thus, we continue to advocate that the Service permit filers to truncate sensitive taxpayer information on documents provided to customers in order to reduce or eliminate the risk of identity theft. The Service should make TIN truncation optional, rather than required, as there may be other ways for filers to address the issue of identity theft or privacy other than truncating the TIN on documents mailed to customers. While we support a provision that would allow truncation of TIN on taxpayer documents, we do not support mandatory TIN truncation or imposition of penalties for failure to truncate taxpayers' TINs on such documents.

In addition, the ABA requests that the Service provide a standard and uniform method of displaying taxpayer information on documents for entities/filers that elect to mask taxpayer identifying

information on documents. In effect, we suggest that the method for truncation provided in the Notice - displaying only the last four digits – be adopted as the format for all information returns for which the filer has elected to apply TIN truncation.

II. Whether a filer should be required to include the complete identifying number on the payee statement if requested by the payee.

As noted in I above, filers should not be required to truncate TINs (including SSNs), but rather, they should be permitted to do so at their election. Even if the payee or customer requests display of the entire TIN, the filer should have the option of either truncating or granting the customer's request to include the full identifying number on the payee statement. To allow payees to individually mandate the display of their full SSNs would create an enormous burden on filers because filers would have to program their systems to be able to handle such requests on a case by case basis.

We understand that some customers may use their payee statements to verify or confirm that the filer has the customer's correct TIN, and receiving statements that do not display the complete SSN could result in such customers trying to figure out other ways of obtaining such confirmation, which could create some confusion and customer relations issues. However, the costs and administrative burdens involved in programming systems that will truncate in some cases and not in others (for the same TIN type) far outweighs any costs or burdens that may be created by trying to find other ways to verify or confirm customers' SSNs. Moreover, the instances of customers using these statements to verify the accuracy of their SSNs are very small – the majority of customers prefer that the filer truncate their SSNs to protect against identity theft reasons and use other methods to confirm or verify their TINs. Therefore, if the IRS's guidance permits rather than requires truncation, filers would have the option of truncating for payees that are concerned with identity theft and privacy issues and the option (if available) of displaying full numbers for payees that make such a request.

III. Whether truncation creates difficulties for filers and/or payees.

One difficulty created by truncation is that the filer and the payee may miss the chance to spot any inaccuracies in the payee's identifying number when statements with truncated TINs are provided to the payee. This could potentially lead to increased B-Notice volume and ultimately, to an increase in civil penalties to the filer for filing incorrect information returns under Internal Revenue Code Sections 6721 and 6722. To solve this problem, payees concerned about this issue may request that the filer display their full TIN on the statement (if the filer offers this option) as a way for such payees to confirm that the TIN is accurate. Also, filers that do not offer the option of displaying the full TIN at the request of the customer might be able to create or develop other ways of ensuring that they have payees' correct TINs without having to display such numbers on statements provided to payees. For instance, filers can use the IRS TIN matching program to detect name/TIN mismatches on new accounts, and solicit the customer's correct name/TIN combination prior to year-end. Nevertheless, we believe that the risks and costs of identity theft from displaying taxpayers' full nine-digit numbers would outweigh any costs that may be associated with creating other means of verifying the accuracy of a taxpayer identifying number.

IV. Others

A member bank manager overseeing a large bank's Forms 1098, 1099, 5498, and 1042-S information return filing process and the content of related paper payee statements provided the following regarding the pilot program created in 2009:

The biggest obstacle to participation in the original pilot program was that Notice 2009-93 did not allow truncation of business entities' TINs (EINs), only individuals' TINs (SSNs, ITINs, and ATINs). As a result, the bank's consumer banking business did not participate, because its deposit account system cannot reliably distinguish SSNs, ITINs, and ATINs from EINs. Because the deposit account system did not capture the customer's TIN type, strict compliance with the pilot program could not be assured. We strongly believe that if the original pilot program had allowed EIN truncation, there would have been increased participation by the bank and the banking industry as a whole.

Furthermore, it should be noted that there is some question about whether there will be significant industry participation in the extended pilot program for Tax Year 2011. This is mainly due to the fact that the filer instructions for 2011 information returns were published prior to the release of the Second Notice, and the instructions specifically include a statement under "What's New" that the pilot program has ended and payee statements must now show the payee's complete TIN.

Unless the IRS permits any of the suggestions below, it is possible that truncating payees' TINs on 2011 paper payee statements (as permitted under the Second Notice) would generate significant customer confusion (and more questions and complaints to the filer's call center), because payees might think their statements were not prepared in compliance with IRS requirements. Thus, we suggest that the IRS address this issue by announcing immediately that a filer has the option to either add a sentence about the continued existence of the truncation program to either a facsimile version of the 'official' form or to the instructions on a substitute form; or provide an insert with the Form 1099 mailed to the payee that would include such information.

Another member bank that implemented the initial pilot program noted that it received only positive customer feedback. The bank found that implementing SSN truncation was a favorable step toward greater data security and therefore, strongly supports its expansion to other TIN types.

Please feel free to contact me at any time to discuss these comments further or answer any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Fran Mordi". The signature is written in a cursive, slightly slanted style.

Francisca N. Mordi