

Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options

Notice 2012-34

PURPOSE

This notice provides that the Treasury Department and the Internal Revenue Service intend to delay the proposed effective dates for reporting for debt instruments and options by brokers and others under sections 6045(g), 6045(h), 6045A, and 6045B of the Internal Revenue Code from January 1, 2013, to January 1, 2014.

BACKGROUND

Section 403 of the Energy Improvement and Extension Act of 2008, Div. B of Pub. L. No. 110-343, 122 Stat. 3765, enacted on October 3, 2008 (the "Act"), amended the broker reporting rules in section 6045 for certain securities, including debt instruments and options. For a debt instrument acquired on or after January 1, 2013, or such later date determined by the Secretary, section 6045(g) generally requires a broker, when reporting the sale of the debt instrument to the Internal Revenue Service, to report the customer's adjusted basis for the debt instrument and whether any gain or

loss upon the sale of the debt instrument is long-term or short-term. For certain options granted or acquired on or after January 1, 2013, section 6045(h) generally requires a broker to report information similar to that required under section 6045(g), as well as information on gross proceeds. The Act also added two new sections to the Internal Revenue Code: (1) section 6045A, which requires a broker transferring securities subject to basis reporting to report basis and other information to the receiving broker; and (2) section 6045B, which requires an issuer of a security subject to basis reporting to file a return to describe the issuer's actions that affect the basis of the security.

On November 25, 2011, the Treasury Department and the Internal Revenue Service published in the Federal Register a notice of proposed rulemaking relating to the reporting requirements under sections 6045, 6045A, and 6045B for debt instruments and options. See Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options (REG-102988-11), 76 FR 72652 (the "proposed regulations"). A public hearing on the proposed regulations was held on March 16, 2012.

Under the proposed regulations, a broker is required to report the information required under section 6045(g) for certain debt instruments acquired on or after January 1, 2013, and the information required under section 6045(h) for certain options granted or acquired on or after January 1, 2013. The proposed regulations also require a broker to provide the information required under section 6045A for a transfer of certain debt instruments or options that occurs on or after January 1, 2013, and the information required under section 6045B for an organizational action occurring on or after January

1, 2013, that affects a debt instrument or an option.

The Treasury Department and the Internal Revenue Service received numerous requests to delay the proposed effective dates for both debt instruments and options in the proposed regulations. Brokers and other interested parties maintain that the proposed effective date of January 1, 2013, does not provide them sufficient time to build and test the systems required to implement the reporting rules for debt instruments and options.

DELAY OF THE PROPOSED EFFECTIVE DATES

After consideration of the comments and testimony received on the proposed effective dates, the Treasury Department and the Internal Revenue Service intend to provide that the rules in the proposed regulations when finalized will not apply until January 1, 2014. For example, the final regulations under section 6045(g) will not apply to a debt instrument acquired before January 1, 2014, and the final regulations under section 6045 will not apply to an option granted or acquired before January 1, 2014.

DRAFTING INFORMATION

The principal author of this notice is Pamela Lew of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice contact Pamela Lew on (202) 622-3950 (not a toll-free call).