

May 31, 2011

Deborah A. Butler, Esq.  
Associate Chief Counsel (Procedure & Administration)  
Office of the Chief Counsel  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224


**Re: Basis Reporting by Securities Brokers and Basis Determination for Stock  
Final Regulations 1.1012-1(c)(10), 1.1012-1(e)(12), 1.6045A-1(d), 1.6045B-1(g)**

Dear Ms. Butler:

The New York State Society of Certified Public Accountants, representing more than 28,000 CPAs in public practice, industry, government and education, wishes to comment on and point out circumstances in which additional guidance might be beneficial with respect to the above captioned regulations concerning basis reporting and basis determination for stock.

The NYSSCPA's Taxation of Individuals Committee reviewed the new reporting requirements and prepared the attached comments. If you would like additional discussion with us, please contact Jonathan M. Horn, Chair of the Taxation of Individuals Committee at (212) 744-1447, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,

  
NYSSCPA NYSSCPA

Margaret A. Wood  
President

Attachment

**NEW YORK STATE SOCIETY OF  
CERTIFIED PUBLIC ACCOUNTANTS**

**COMMENTS ON  
BASIS REPORTING BY SECURITIES BROKERS AND BASIS  
DETERMINATION FOR STOCK  
FINAL REGULATIONS 1.1012-1(c)(10), 1.1012-1(e)(12), 1.6045A-1(d), 1.6045B-1(g)**

**May 31, 2011**

**Principal Drafter**

**Amy M. Vega**

## **NYSSCPA 2010 – 2011 Board of Directors**

Margaret A. Wood, <i>President</i>	John Barone	J. Michael Kirkland
Richard E. Piluso, <i>President-elect</i>	Cynthia D. Barry	Mark G. Leeds
Joseph M. Falbo Jr., <i>Secretary/Treasurer</i>	S. David Belsky	Pei-Cen Lin
Scott M. Adair, <i>Vice President</i>	Ian J. Benjamin	Heather Losi
David R. Herman, <i>Vice President</i>	Robert W. Berliner	Anthony J. Maltese
Martha A. Jaeckle, <i>Vice President</i>	Anthony Cassella	Barbara A. Marino
Gail M. Kinsella, <i>Vice President</i>	Sherry L. DelleBovi	Avery E. Neumark
Joanne S. Barry, <i>ex officio</i>	Adrian P. Fitzsimons	Joel C. Quall
	Stephen E. Franciosa	Robert R. Ritz
	Jennifer R. George	Erin Scanlon
	Rosemarie A. Giovinazzo-	Robert E. Sohr
	Barnickel	George I. Victor
	Mitchell L. Gusler	Charles J. Weintraub
	John B. Huttlinger Jr.	Jesse J. Wheeler
	Nancy A. Kirby	F. Michael Zovistoski

## **NYSSCPA 2010 – 2011 Tax Division Oversight Committee**

Scott M. Cheslowitz, <i>Chair</i>	Adam Lambert	P. Gerard Sokolski
David S. Gibson	Charles N. Morrow	Stephen P. Valenti
Robert L. Goldstein	Jay G. Sanders	Amy M. Vega
Alan D. Kahn	David Sands	Cristina N. Wolff

## **NYSSCPA 2010 – 2011 Taxation of Individuals Committee**

Jonathan M. Horn, <i>Chair</i>	Erik Gary	Yaakov Notinger
Vincent J. Cosenza, <i>Vice Chair</i>	Richard Greenfield	Sooeun Park
Ahmed Abdelhalim	Jonah Gruda	Steven Perrotta
Rafael T. Acevedo	Mark S. Halpern	Karlene Ramsden
Anthony K. Adjei	Donette Harris-Smith	Neal Rifkin
Peter Alizio	Mark A. Hertlein	Erica F. Rubin
June V. Balyk-Martin	Sungjoo Hong	Raymond G. Russolillo
Martin Barajas	Ira H. Inemer	Joseph B. Sesay
Nathan J. Berenholz	Alexander Ishmael	Lawrence Stack
Kenneth J. Burstiner	William H. Jones	Marc J. Strohl
Megan Coyne	Barry S. Kleiman	Robert A. Sussman
Amerigo D'Amelio	Wing Kong	Deborah Todaro
Elysa K. Dauerman	Kevin M. Levine	Stephen P. Valenti
Alan J. Dlugash	T. Bassing Mantenfel	Edmund Viele
Joseph V. Falanga	Jacob Mathews	Wanda Williams
Louis E. Feinstein	Carlos Maysonet	Benjamin Yazersky
Stuart Friedman	John F. McKervey	Steven B. Zelin
Henry A. Garris	Mary C. McLaughlin	Jeffrey Zukoff
	Melvin Meyerson	

## **NYSSCPA Staff**

Ernest J. Markezin  
William R. Lalli

# New York State Society of Certified Public Accountants

## Comments on

### **Basis Reporting by Securities Brokers and Basis Determination for Stock Final Regulations 1.1012-1(c)(10), 1.1012-1(e)(12), 1.6045A-1(d), 1.6045B-1(g)**

The New York State Society of Certified Public Accountants wishes to provide the following comments on the above captioned regulations concerning basis reporting and determination for stock and situations in which additional guidance might be desirable.

Given the final regulations issued in 2010, our concerns are:

1. That paid tax return preparers will not have appropriate information at their disposal as they are preparing their clients' tax returns.
2. That multiple instances will arise in which cost basis will be inadequately disclosed on Form 1099-B, and that those instances could potentially lead to inaccurate tax return filings.
3. That a delay will be created in the brokers' abilities to furnish certain information statements to their clients by the designated February 15<sup>th</sup> deadline.

## **Background**

The final regulations relate to the reporting and determination of basis of securities by brokers. They reflect amendments under the "Energy Improvement and Extension Act of 2008," and require brokers to report a client's adjusted basis in sold securities and to classify the gain or loss as long-term or short-term.

The intent of these comments is to provide commentary on situations in which it might prove difficult for the cost basis to be accurately determined, and to request that the Service provide guidance on how tax practitioners are to respond to these issues when encountered. Our overall concern as members of the tax practitioner community is: Who will be held accountable should there be discrepancies on the reporting statements issued by brokers?

- Will the *client* be responsible for not having provided accurate information to the broker?
- Will the *broker* be responsible for not having gathered such information from the client?
- Will the *tax return preparer* be responsible because he or she will be signing the tax return?

## Comments

Below are the situations we have identified where there might be difficulty in accurately determining cost basis. We offer these examples along with questions that might be useful in analyzing the situation and determining appropriate guidance.

### Issue #1

The final regulations provide that account statements or other documents a broker or agent periodically provides to a taxpayer may serve as written confirmation if provided to the taxpayer within a reasonable time after the sale or transfer.

Situations sometimes arise in which clients are not fully aware of the content of their statements, perhaps due to voluminous transactions, complexity or lack of financial acumen on their part. This could lead to an issue in which the cost basis of a security or item sold within the taxpayer's account is overlooked and the requisite time to properly adjust the cost basis has elapsed. The CPA, as trusted advisor, does due diligence in selecting and retaining clients, apprises clients of their responsibilities as taxpayers and meets regulatory standards as tax preparer, but, of course, is not auditing the information.

### *Question*

How will these matters be addressed? Will the broker be responsible and held accountable for ensuring that each transaction reported on the client's reporting statement has an associated cost basis? Or, will such responsibility fall upon the tax return preparer in conjunction with their preparation of the client's income tax return?

### Issue #2

The final regulations indicate that corrected reporting is required whenever an issuer determines additional facts that result in a different quantitative effect on basis from what the issuer previously reported.

### *Question*

Our concern is that in certain cases, an issuer might not be able to determine, in a timely manner, whether the reporting statement being issued to the client is true and correct. Where will this burden lie? Will each individual broker be responsible for ensuring that their clients' Forms 1099 are accurate? This could be a massive undertaking. And, if not the broker, will that responsibility fall to the tax return preparer?

Additionally, should there be a discrepancy on the reporting statement and it is discovered after the due date of February 15, please provide guidance as to how such a discrepancy will need to be remedied. Will there be a cut-off period for correcting the reporting statements, and after such time, the correcting will then be forced to occur on the income tax return?

### Issue #3

The final regulations indicate that taxpayers are expected to report the correct basis on Schedule D regardless of the amount reported on Form 1099-B. The final regulations also

indicate that the IRS is currently revising Schedule D and the related instructions/publications to facilitate reconciliation.

*Question*

Will penalties be applied, if for example, something which does require a correction on the Form 1099-B, and is known to the client and broker as such, is not corrected before the February 15<sup>th</sup> distribution date? Will the instructions include guidance to ensure that the reporting statements were issued properly?

Issue #4

In the case of securities that are inherited or gifted, for example, the broker might not necessarily have the appropriate cost basis to report on the reporting statement.

*Question*

In this scenario, the clients and their tax return preparer will be responsible for ensuring that the tax return properly reflects the appropriate basis, but what will be the due diligence requirement on the part of the tax return preparer? What will they be required to do, if anything, before accepting information from the broker and/or the client?

Additionally, please provide guidance as to what the tax return preparer should do, when they are ready to sign the return, and there is a discrepancy in the information reported by the broker and/or client. Will such discrepancies be tracked, wherein it might subject a client's tax return to an additional review, or audit, by the Service?