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Texas and Florida Bankers Associations file suit against Treasury and IRS challenging Foreign Deposit Reporting Requirement

AUSTIN, April 19, 2013 – The Texas and Florida Bankers Associations filed suit yesterday against the Department of the Treasury and Internal Revenue Service in the U.S. District Court for the District of Columbia challenging a new IRS regulation requiring that U.S. banks report to the IRS annually on interest payments made to non-resident aliens.

The IRS rule, which went into effect in January, requires banks to report the interest payments beginning in 2014 even though interest paid to non-resident aliens is not subject to federal taxation in the U.S.

The Texas and Florida Bankers Associations are seeking a declaratory judgment holding that the amendments are invalid since they were promulgated in violation of the Administrative Procedures Act and Regulatory Flexibility Act, which require new regulations to be based on factual analysis and relevant benefits in relation to costs.

The complaint argues specifically that Treasury and the IRS failed to adequately consider the economic impact stemming from the significant outflow of bank deposits from the United States, which will (and already have) been the result of the new regulation.

Many foreign bank customers would rather withdraw their deposits and close their U.S. accounts than be subject to a rule requiring that their personal accounts and investments be reported to the IRS and shared with their home governments as is specifically planned under the new regulation.

Foreign accountholders place money in U.S. banks for several reasons: fear about crime/security in their home countries; lack of trust in their governments or financial institutions in their home countries; and their view that the U.S. is a reliable place to keep their money. For Mexican nationals, there is a fear of their financial information getting into the wrong hands, resulting in kidnapping, extortion and other crimes.

"For banks, a drain in deposits would significantly reduce funds available for lending and investment," said TBA President and CEO Eric Sandberg. "This reduction in deposits will further weaken the economy by making it difficult for community banks to make loans at a time that our economy can least afford it."

A TBA survey found the outflow in non-resident alien deposits to have already reached approximately $100 million. In addition to significantly decreasing available bank funds, the compliance costs associated with this new rule will be considerable because of the paperwork that has to be filed to stay in compliance with the rule.

The Texas and Florida Bankers Associations are being represented in this case by Jones Walker, LLP.

TBA represents the Texas banking industry—with members ranging from the smallest bank in the nation to the largest bank in the nation. This includes 85 percent of Texas banks, 5,200 bank branches and 95 percent of Texas deposits.

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