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Congress of the United States
House of Representatives
Washington, DC 20515

July 1, 2013

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The Honorable Jack Lew
Secretary of the Treasury
1500 Pennsylvania Avenue
Washington, D.C. 20220

Dear Secretary Lew:

I am writing to express my deep concerns with the Treasury Department's promulgation of regulations to require U.S. banks and credit unions to collect and report information on interest paid to nonresident aliens [26 C.F.R. §§ 1.6049-4(b)(5) and 1.6049-8]. While these mandates would not themselves bring one penny into the U.S. Treasury, they would discourage investment in the United States. They would further impose costly compliance costs on American banks and credit unions, and their depositors and members. For these reasons, I have recently introduced bipartisan legislation, H.R. 2299, to abolish these rules and prohibit the Department from issuing similar interest income reporting rules involving nonresident aliens.

My concerns are compounded by Treasury's actions to implement the Foreign Account Tax Compliance Act (FATCA) by negotiating "intergovernmental agreements" (IGAs) with foreign nations that would require these countries to enforce FATCA requirements on their own financial institutions.

Nonresident alien bank and credit union interest reporting is not the only commitment the Treasury Department is making to non-U.S. governments during FATCA IGA negotiations. Under Section 6(1) of the "reciprocal" IGAs signed with the United Kingdom, Mexico, and several other nations, the Department commits the United States to even more sweeping domestic mandates on U.S. banks and credit unions. For example, the agreement with the United Kingdom states:

Reciprocity. The Government of the United States acknowledges the need to achieve equivalent levels of reciprocal automatic information exchange with the United Kingdom. The Government of the United States is committed to further improve transparency and enhance the exchange relationship with the United Kingdom by pursuing the adoption of regulations and advocating **and supporting relevant legislation to achieve**

such equivalent levels of reciprocal automatic exchange. [emphasis added]

Of further concern, a request for new legislation to allow the Department to issue additional reporting requirements beyond those previously published was included in summary form in the administration's *Analytical Perspectives* to the Fiscal Year 2014 Budget, page 202, as follows:

Provide for reciprocal reporting of information in connection with the implementation of the Foreign Account Tax Compliance Act (FATCA).—In many cases, foreign law would prevent foreign financial institutions from complying with the FATCA provisions of the Hiring Incentives to Restore Employment Act of 2010 by reporting to the IRS information about U.S. accounts. Such legal impediments can be addressed through intergovernmental agreements under which the foreign government agrees to provide the information required by FATCA to the IRS. Requiring U.S. financial institutions to report similar information to the IRS with respect to nonresident accounts would facilitate such intergovernmental cooperation by enabling the IRS to reciprocate in appropriate circumstances by exchanging similar information with cooperative foreign governments to support their efforts to address tax evasion by their residents. The proposal would provide the Secretary of the Treasury with authority to prescribe regulations that would require reporting of information with respect to nonresident alien individuals, entities that are not U.S. persons, and certain U.S. entities held in substantial part by non-U.S. owners, including information regarding account balances and payments made with respect to accounts held by such persons and entities.

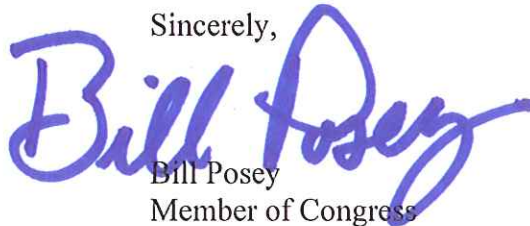
I have shared my concerns with my fellow members of the House Financial Services Committee. Given the evidence above, it is difficult to conceive of any circumstance that would justify imposing such an expensive and counterproductive domestic mandate.

I further note that the IGAs that are being entered into are not authorized, or even mentioned, in FATCA. Despite the absence of any specific legislative authorization, these IGAs are not being submitted to the Senate as treaties or treaty amendments for its advice and consent, nor – apart from the enhanced reporting authority described above – is any request being made to Congress for the statutory authority to implement these IGA. If such authority exists, please provide a citation to the specific relevant statute.

Finally, it is difficult to avoid the conclusion that the flaws evident in the IGAs being negotiated to implement FATCA reflect flaws in the Act itself. It is clear that FATCA must be either substantially amended or repealed, and replaced with a cooperative scheme that penalizes actual tax evasion without harming the innocent. Legislation to repeal FATCA was recently introduced in the Senate, and I expect a companion bill will soon be introduced in the House of Representatives.

I expect these broader questions to be more fully aired by the Financial Services Committee in its anticipated review of the administration's request for enhanced legislative authority. In the meantime, I believe a moratorium on FATCA enforcement and negotiation of additional IGAs is in order.

Sincerely,

A handwritten signature in blue ink that reads "Bill Posey". The signature is stylized with a large, looping "B" and a long, sweeping underline that extends to the right.

Bill Posey
Member of Congress