

December 19, 2001

Mitchell E. Daniels, Jr.
Director
Office of Management and Budget
Old Executive Office Building
725 17th Street, NW
Washington, DC 20503

Dear Mr. Daniels,

By declaring most of its regulations either “interpretative” within the meaning of the Administrative Procedure Act or not “major” within the meaning of Executive Order 12866, the Internal Revenue Service has effectively exempted itself from regulatory oversight. This is bad economic policy and bad regulatory policy. Many IRS regulations impose a significant cost on the economy and should be subject to the regulatory review process. We, the undersigned, strongly encourage the Office of Management and Budget to take this long-overdue step.

The need to subject the IRS to the rule-of-law is particularly important because of a regulation proposed on January 17, 2001, in the waning days of the Clinton Administration. Regulation 126100-00, which would require the reporting of bank deposit interest paid to nonresident aliens, is a flagrant abuse of the regulatory process. If approved, it would impose significant damage on the U.S. economy by driving capital overseas. Our specific concerns include:

- The proposed regulation flouts statutory language and congressional intent. On several occasions, lawmakers have visited the issue of how to treat the interest income earned by nonresident aliens. In every case, the desire to attract capital to the American economy led legislators to decide not to tax the income and not to require that the income be reported to foreign tax authorities.
- The proposed regulation is not required to administer U.S. law. Interest income paid to nonresident aliens is not subject to tax. Other regulations and forms already ensure that citizens and/or resident aliens are not able to falsely claim nonresident alien status to benefit from this preferential tax status.
- The proposed regulation is not required by tax treaties. The IRS openly admits that it wants to collect this data in order to provide the information to nations that have signed tax treaties with America. Tax treaties, however, only require the exchanging of information that is collected for purposes of domestic law enforcement. There is no obligation to impose additional regulatory burdens solely for the purpose of enforcing other nation’s laws.

- The proposed regulation would impose significant damage on the U.S. economy, but the IRS failed to perform any economic analysis or conduct any cost/benefit analysis. According to the universally negative public comment and testimony of the financial services industry, individual nonresident aliens have about \$1 trillion deposited in U.S. financial institutions. Yet if this regulation is approved, a substantial portion of this money will flee to competing institutions in other jurisdictions.

The Internal Revenue Service should not be above the law. The Office of Management and Budget has been given the responsibility to oversee regulations to ensure that the economy is not unduly harmed. The proposed regulation discussed above presents an ideal opportunity to restore necessary balance and oversight to the IRS.

But this is not just a management issue. The proposed regulation has important budget implications. The likely withdrawal of several hundred billion dollars from the U.S. economy would have a deleterious impact on many financial institutions. Borrowers also would suffer. Families seeking mortgages, consumers seeking car loans, and businesses seeking money to create jobs and expand operations all would be adversely affected. This means less economic growth, which will reduce tax revenues and create additional demand for government programs.

Thank you for your attention to this important issue. The undersigned individuals stand ready to work with you to help advance sound economic policy.

Sincerely,

Andrew F. Quinlan, Center for Freedom and Prosperity Foundation
Daniel Mitchell, The Heritage Foundation
Veronique de Rugy, Cato Institute
Paul Beckner, Citizens for a Sound Economy
David Burton, The Prosperity Institute
Steve Dasbach, Libertarian Party
Stephen J. Entin, Institute for Research on the Economics of Taxation
Tom Giovanetti, Institute for Policy Innovation
Kevin Hassett, American Enterprise Institute
Lawrence Hunter, Empower America
J. Bradley Jansen, Free Congress Foundation
Charles W. Jarvis, United Seniors Association
Gordon S. Jones, Association of Concerned Taxpayers
David Keene, The American Conservative Union
Karen Kerrigan, Small Business Survival Committee

James Landrith, The Multiracial Activist
Jim Martin, 60 Plus Association
Steve Moore, The Club for Growth
Grover Norquist, Americans for Tax Reform
Duane Parde, American Legislative Exchange Council
John A. Pugsley, The Sovereign Society Ltd
Richard Rahn, The Discovery Institute
Terrence Scanlon, Capital Research Center
Tom Schatz, Council for Citizens Against Government Waste
Eric Schlecht, National Taxpayer Union
Solveig Singleton, Competitive Enterprise Institute
Lew Uhler, National Tax Limitation Committee
Christopher Whalen, The Whalen Consulting Group

* Organizational affiliations are included for identification purposes only.