Congress of the United States
Washington, DC 20515

May 16, 2003

The Honorable John Snow
Secretary of the Treasury
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Snow,

We are writing to express our concern about a proposed IRS regulation (REG-133254-02) that would force banks to report deposit interest paid to nonresident aliens. This rule would impose a harsh paperwork burden on American banks and undermine the competitiveness of U.S. financial institutions. Simply stated, international investors surely will move their funds – potentially more than $100 billion – to banks in London, Zurich, Hong Kong, and elsewhere if the regulation is finalized.

This regulation is particularly misguided since there is no need for the IRS to collect this information. For more than 80 years, Congress deliberately has chosen not to tax nonresident alien bank accounts and not to require reporting of this information. The proposed regulation is therefore not only unnecessary, but also a clear violation of congressional intent. We have no objection to government agencies making legislative recommendations, but we are deeply troubled when those agencies unilaterally change the law and undermine the democratic process.

This regulation has attracted widespread opposition, and for good reason. The Federal Deposit Insurance Corporation is worried it could undermine the safety and soundness of our banking system. Taxpayer groups and think tanks fear it will undermine tax reform. The financial services industry does not want a costly regulatory burden that will make them less competitive. And the Small Business Administration is concerned that important regulatory procedures have been ignored.

These are all valid points, but the biggest drawback is that the regulation will hurt our economy. When this regulation was first proposed at the end of the previous administration, foreigners responded in the first quarter of 2001 by withdrawing more than $40 billion (on an annualized basis) from U.S. savings accounts. We do not know how much money will leave the U.S. banking system if the regulation actually is implemented, in part because the IRS ignored the law and failed to conduct a cost/benefit analysis. But we do know that American consumers and businesses will have less access to affordable credit. We urge you to permanently withdraw this regulation.

Sincerely,

Mark Foley
Member of Congress

Walter Jones
Member of Congress

Philip Crane
Member of Congress
Cliff Scragg  
Member of Congress

Randy Forbes  
Member of Congress

Christopher Shays  
Member of Congress

Allen Boyd  
Member of Congress

Randall "Duke" Cunningham  
Member of Congress

Michael Burgess  
Member of Congress

Lincoln Diaz-Balart  
Member of Congress

James Saxton  
Member of Congress

Ron Paul  
Member of Congress

John Carter  
Member of Congress

Jim DeMint  
Member of Congress

Rick Renzi  
Member of Congress

Dan Burton  
Member of Congress

Scott Garrett  
Member of Congress

Frank Lucas  
Member of Congress

Patrick Toomey  
Member of Congress

Pete Sessions  
Member of Congress

Jon Porter  
Member of Congress

Jack Kingston  
Member of Congress

Peter Hoekstra  
Member of Congress

Richard Baker  
Member of Congress

Cc:  Vice President Richard Cheney  
CEA Chairman Glenn Hubbard  
NEC Chairman Steve Friedman  
Deputy Chief of Staff Josh Bolten
May 1, 2003

The Honorable John Snow
Secretary of the Treasury
Department of Treasury
1500 Pennsylvania Avenue
Washington, DC 20220

Dear Secretary Snow,

We want to express our strong opposition to an IRS regulation (REG-133254-02) to require the reporting of deposit interest paid to foreigners who invest their money in U.S. banks. This proposal contravenes existing law and would harm the competitiveness of American financial institutions. Capital will flee the U.S. economy if the regulation is implemented, and millions of American borrowers – including homebuyers and small businesses – could be adversely affected.

Unfortunately, we do not have an official estimate of the amount of deposits that might flee because the IRS did not perform a cost-benefit analysis. But we do know that more than $40 billion of savings deposits (on an annualized basis) left the U.S. banking system in the first quarter of 2001, almost surely in response to the original version of the regulation, which the Clinton Administration proposed on January 17, 2001. We also know that both the American Bankers Association and the Federal Deposit Insurance Corporation think the threat of capital flight is real. Both have warned that the proposed regulation could undermine the safety and soundness of the financial services industry.

We also are very concerned that the IRS is abusing the regulatory process by blatantly ignoring the will of Congress. For more than 80 years, lawmakers have sought to attract these deposits to the U.S. banking system. This is why Congress decided not to tax this income or require it to be reported. Yet the IRS unilaterally wants to replace this outcome of the democratic process with a bureaucratic edict.

We hope that this misguided regulation will be permanently withdrawn. We also look forward to an explanation of why the IRS did not perform the required cost-benefit analysis for this regulation.

Sincerely,

[Signatures]

[Signature]

[Signature]
Quayle
Chris Chen
Bob Bumphy
Sam Nunn
Michael Deaver
Stevan Roose

Co: Vice President Richard Cheney
Stephhen Friedman, Director of National Economic Council
Josh Bolten, Deputy Chief of Staff for Policy to the President
United States Senate  
WASHINGTON, DC 20510

March 11, 2003

The Honorable John W. Snow  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

Dear Secretary Snow:

As members of the Senate Banking, Housing and Urban Affairs Committee, we are writing to express our concerns over a proposed IRS regulation (REG 133254-02) that would compel U.S. banks to report the deposit interest paid to non-resident aliens. This new proposal is not needed to enforce any U.S. tax law, and we are concerned that it will put our financial markets at a competitive disadvantage and harm our economy by driving much needed capital elsewhere.

It is important to note that Congress has examined the tax treatment of indirect foreign investment in our domestic economy on several occasions. On each occasion, it was determined that the substantial benefits from attracting capital to the U.S. far exceeded any revenue that would be derived from taxing that income in the U.S. or requiring it to be reported so that foreign governments could tax it. For this reason, Congress has repeatedly rejected proposals to tax or report the income.

Furthermore, you may recall that when this committee and the Congress passed the money-laundering bill in the 107th Congress, Congress specifically rejected the use of money-laundering powers to enforce the tax laws of foreign governments. The IRS rule clearly outlines a distinct reporting role for U.S. financial institutions, and we continue to believe that it is not the responsibility of either the U.S. Government or U.S. financial institutions to enforce the tax laws of other nations.

We urge you to withdraw this rule and appreciate your consideration of our views.

Sincerely,

Robert F. Bennett  
Wayne Allard

Robert F. Bennett  
Wayne Allard
March 11, 2003

The Honorable John Snow
Secretary
Department of the Treasury
1500 Pennsylvania Avenue
Washington, D.C. 20220

Dear Secretary Snow:

I trust you are enjoying the rough and tumble action as Secretary of the Treasury. You are doing a great job during these trying times. Your leadership at the Department of the Treasury will be crucial to help the President’s pro-growth tax package. I hope we will have many opportunities to work together in the coming years.

As part of your efforts to help boost economic growth and job creation, I respectfully ask you to withdraw a Clinton-era Internal Revenue Service (IRS) regulation (REG-133254-02) that would require U.S. banks to report deposit interest paid to nonresident aliens. This initiative is bad regulatory policy and it is bad economic policy.

It is bad regulatory policy because the IRS is supposed to enforce the law, not undermine the law. For more than eighty years, Congress has chosen not to tax nonresident bank deposit interest. This long-standing policy exists to help bring capital to the U.S. economy, where it will be used to finance home mortgages, car loans, and small business expansion. Yet the IRS now wants to collect information on nonresident alien bank deposit interest so foreign governments can tax the income. This is completely inconsistent with legislative intent. Needless to say, the IRS should not be trying to undermine the democratic process through regulatory edict.
The Honorable John Snow  
March 11, 2003  
Page Two

It is bad economic policy because foreigners have more than $1 trillion in U.S. banks, and this money easily can shift to Zurich, Hong Kong, London, and the Caribbean if U.S. policy becomes inhospitable. We do not know how much money will leave U.S. banks if the regulation is implemented, but it is worth noting that $40 billion of savings deposits fled the country in the first quarter of 2001 after the Clinton Administration first announced the regulation. Indeed, this probably explains why the Federal Deposit Insurance Corporation and American Bankers Association are both opposed to the regulation.

Nonresident alien bank accounts provide affordable credit for American businesses and consumers. This means jobs for American workers. The IRS should not be allowed to unilaterally change the law and hurt our economy. I urge you to permanently withdraw the proposed regulation. Please treat this letter in conformance with all applicable procedural rules and ethical guidelines.

With kind personal regards, I remain

Sincerely,

George Allen
March 6, 2003

The Honorable John Snow
Secretary of the Treasury
Department of Treasury
1500 Pennsylvania Avenue
Washington, DC 20220

Dear Secretary Snow,

Congratulations on your confirmation as our nation’s Treasury Secretary. I look forward to working with you.

I want to take this opportunity to ask you to withdraw a proposed IRS regulation (REG-133254-02) that would compel American banks to report the deposit interest paid to nonresident aliens. This burdensome new proposal – a legacy of the previous Administration – is not needed to enforce U.S. tax law and it will harm financial markets by driving capital out of the American economy. The Chairman of the Federal Deposit Insurance Corporation recently warned that the regulation could undermine the safety and soundness of our banking system by leading to a large loss of deposits.

America has more than $1.7 trillion of foreign money in our banks, funds that have made credit more affordable for businesses and consumers. Only a small part of this is nonresident alien deposits, but economists still fear that the capital flight could be significant if the regulation is implemented. Even if the actual damage to the U.S. banking system is relatively minor, this is too high of a cost to pay for a regulation that would overturn decades of government policy designed to attract capital to the U.S. economy.

I also believe that it is not the responsibility of the U.S. government or U.S. based financial institutions to enforce the tax laws of other nations. Therefore, I respectfully urge you to withdraw this regulation.

Sincerely,

John Ensign
United States Senator

JE/cas
United States Senate
WASHINGTON, DC 20510-2603
(202) 224-3544
March 6, 2003

The Honorable John Snow
Secretary of the Treasury
Department of Treasury
1500 Pennsylvania Avenue
Washington, DC 20220

Dear Secretary Snow,

Congratulations on your confirmation. I look forward to working with you to reform our tax code and make America’s economy more competitive. As part of this effort, I urge you to closely review an IRS regulation (REG-133254-02) that would require banks to report the interest they pay to non-resident aliens. This initiative, originally proposed during the waning days of the Clinton administration, undermines the rule-of-law and is a threat to America’s economic interests.

Beginning in 1921, lawmakers decided not to tax foreign-owned bank deposit interest in order to attract capital to the U.S. economy. This has been a remarkably successful policy. American banks have more than $1.7 trillion of foreign funds, and this money helps fund job creation and economic growth in the United States. Unfortunately, this proposed IRS regulation would use bureaucratic edict to undermine existing law. Requiring the reporting of bank deposit interest will give foreign governments the ability to tax income earned inside U.S. borders. This will cause non-resident aliens to shift a significant share of their deposits to other jurisdictions.

It would be very useful to find out how much money would flee our economy, but this number is not known since the IRS failed to follow the law and perform a required cost-benefit analysis. And even though nonresident alien deposits only account for a portion of the foreign money in American banks, I fear it will be a substantial amount of money. Indeed, it is worth noting that more than $40 billion of savings deposits fled American banks in the first quarter of 2001 (on an annualized basis), almost surely in part because the proposed regulation was first announced January 17, 2001.

I urge you to permanently withdraw the proposed regulation. At the very least, the regulation should be withdrawn until the IRS produces a peer-reviewed, independent analysis of how much capital will leave the U.S. economy if the regulation is implemented.

Sincerely,

[Signature]

Conrad Burns
United States Senator

Cc: Vice President Richard Cheney
CEA Chairman Glenn Hubbard
NEC Chairman Steve Friedman
Deputy Chief of Staff Josh Bolten
February 28, 2003

The Honorable John Snow
Secretary
Department of the Treasury
1500 Pennsylvania Avenue
Washington, DC 20220

Dear Mr. Secretary,

I am very pleased with your new leadership at the Treasury Department. I am sure we can work closely together to promote good policy that helps the American economy grow. With this in mind, I would like to bring to your attention the concerns I have about a proposed IRS regulation. To help attract capital to the U.S. economy, Congress has repeatedly chosen over the last eighty years not to tax foreign-owned bank accounts and not to require the reporting of interest income paid to these accounts. Unfortunately, the IRS proposed a regulation (REG-133254-02) that would require banks to report interest paid to nonresident aliens. This proposal is very troubling. The IRS is supposed to enforce the law, not create new law.

I urge you to withdraw this regulation. It will impose significant costs on banks if it is implemented. However, these paperwork costs will be trivial compared to the loss of international competitiveness since banks in London, Zurich, and Hong Kong will be delighted to accept deposits that will flee America. Indeed, the Chairman of the Federal Deposit Insurance Corporation has warned that this regulation could undermine the safety and soundness of the U.S. banking system.

Ordinary Americans will be the ones to pay the cost. Mortgages and car loans will be harder to obtain, and businesses will have less access to affordable credit. Unfortunately, the IRS did not perform the required cost-benefit analysis, so we do not have a good estimate of the potential drain of capital. It is worth noting, however, that more than $40 trillion left the U.S. in the first quarter of 2001, immediately after the Clinton Administration first proposed this misguided scheme.

Based on these facts, it is clear that the proposed regulation is not based on sound economic policy and was not created through the standard regulatory process. It will undermine the pro-growth features of the President’s tax plan. In short, it must be withdrawn. Thank you for your consideration.

Sincerely,

Mike Crapo
United States Senator
February 27, 2003

The Honorable John Snow
Secretary of the Treasury
Department of Treasury
1500 Pennsylvania Avenue
Washington, DC 20220

Dear Secretary Snow,

I write to request that you withdraw a proposed IRS regulation (REG-133254-02), which would adversely affect the American economy at a time when we can ill afford it.

While, I am pleased with the President’s economic growth package, this proposed IRS regulation is counter-productive, offsetting pro-growth features of the President’s package. Indeed, implementation of this regulation—which would force American banks to report the deposit interest paid to nonresident aliens—would hurt the American economy by diverting overseas investments away from our economy. While nonresident alien deposits are only a portion of the $1.7 trillion of foreign capital in the U.S. banking system, the capital outflow as a consequence of this regulation’s implementation could be significant.

The proposed IRS regulation reverses long-standing U.S. policy of welcoming foreign capital to our shores, and it encroaches on policy-making territory reserved to Congress. Moreover, this regulation seems to make the United States a collaborator with oppressive tax systems abroad. There seems to be no other reason for collecting this information since our government does not collect taxes on interest paid to nonresident aliens.

I ask that you permanently withdraw this regulation as soon as possible, and I look forward to working with you to see the expeditious enactment of the President’s economic growth package.

Sincerely,

Sam Brownback
United States Senator
The Honorable John W. Snow  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

Dear Secretary Snow,

As you may know, the Internal Revenue Service has proposed a highly contentious regulation that, if implemented, would divert foreign capital from the U.S. economy. Entitled "Guidance on Reporting of Deposit Interest Paid to Non-Resident Aliens," this rule (REG-133254-02) would profoundly change U.S. tax and economic policy by requiring all U.S. financial institutions to report interest paid to non-resident aliens. It would do so in order to make financial information routinely available to foreign tax collectors. In other words, the rule requires U.S. banks to assist foreign tax collectors tax interest on deposits made in the U.S.

The Federal Deposit Insurance Corporation, the Conference on State Bank Supervisors and the American Bankers Association and others have all expressed grave concerns that the rule will drive capital from the U.S. and threaten the soundness and security of the U.S. banking system. The US intentionally does not tax bank deposit interest, capital gains or portfolio interest paid to foreigners precisely because it has instituted a policy of attracting foreign investment. This proposal would reverse that policy by bureaucratic fiat and drive foreign capital from our shores.

How much capital flight would occur is unknown. Despite the serious concern, the Treasury has not conducted the required cost-benefit analysis. Former senior Treasury official Stephen J. Entin testified at the IRS hearing that private foreign investment here is $8 trillion, of which more than $1 trillion is in the U.S. banking system. Entin testified that the rule may entail a flight from the dollar, which would either force the Federal Reserve to raise interest rates to protect the currency, or result in a falling dollar and higher prices for imports and import-competing products. Every witness at the recent administrative hearing on the rule opposed the rule, including the U.S. Small Business Administration and many other groups who unanimously voiced strong concern that the Internal Revenue Service has skirted fundamental procedural requirements.
Weakening the U.S. economy, and providing foreign governments with financial information on U.S. investors, will stymie, not promote, anti-terrorism efforts. Moreover, experts opine the rule will ensure that deposits are diverted from the U.S., where it is monitored and subject to seizure, to Hong Kong and elsewhere, where they cannot be monitored.

I request that you review this misguided regulation and I urge you to officially—and permanently—withdraw the proposed rule.

Sincerely,

[Signature]

Spencer Bachus
Member of Congress

Cc: Vice President Richard Cheney
    CEA Chairman Glenn Hubbard
    NEC Chairman Steve Friedman
    OMB Director Mitch Daniels
    White House Deputy Chief of Staff Josh Bolten
February 14, 2003

The Honorable John Snow
Secretary of the Treasury
Department of Treasury
1500 Pennsylvania Avenue
Washington, DC 20220

Dear Secretary Snow:

I am deeply concerned about the Internal Revenue Service’s consideration of a slightly modified version of a Clinton-era regulation (REG-133254-02) that will require U.S. banks to report the deposit interest they pay to nonresident alien account holders. This regulation would undermine 80 years of existing law and clearly contradicts Congress’ goal of attracting capital to the U.S. economy. Nonresident alien depositors would surely transfer their funds to Zurich, Hong Kong, London, and other jurisdictions if this regulation is finalized. America could suffer a substantial loss of capital, and our banks would be adversely impacted, which is why the Chairman of the Federal Deposit Insurance Corporation has condemned the regulation.

I also believe the enactment of this regulation would hinder President Bush’s tax reform agenda. Almost all tax reform plans are based on common principles, including the fact that income should not be taxed more than one time. Another key principle is territorial taxation, the common sense notion that governments do not try to tax income earned in other nations. Yet the IRS regulation is explicitly designed to help foreign governments impose a second layer of tax on income earned in America, and therefore is at odds with the President’s pro-tax reform philosophy.

I believe that this regulation is completely contrary to America’s economic interests, and I urge its immediate withdrawal. Thank you for your time and consideration.

Sincerely,

[Signature]

James M. Inhofe
United States Senate
February 13, 2003

The Honorable John Snow  
Secretary of the Treasury  
1500 Pennsylvania Ave, NW  
Washington, DC 20220

Dear Secretary Snow:

I am writing to express my concern with the Internal Revenue Service's decision to move forward with regulations that would mandate that the U.S. offices of many financial institutions report interest payments made to nonresident aliens. I believe that this ill-conceived regulation would drive investment funds out of our economy.

This regulation could easily drive the savings of foreigners out of bank accounts in the United States and into bank accounts in other nations that better protect financial privacy. Such an exodus of savings would almost certainly lead to higher interest rates and lower availability of bank loans for Americans. Startup businesses, mortgages borrowers, college students, and other who depend on bank lending would all be hurt.

This new proposal is not needed to enforce any U.S. tax law, and it is clear that it will put our financial markets at a competitive disadvantage thereby harming our economy. Further, it is unclear to me why we put the enforcement of other nations' tax laws as a priority at Treasury.

I would be happy to discuss this matter in further detail with you and look forward to your thoughts on these proposed regulations.

Sincerely,

Gordon H. Smith  
United States Senate
January 16, 2003

The Honorable Kenneth W. Dam
Deputy Secretary
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Deputy Secretary Dam:

As you know, the Internal Revenue Service (IRS) has proposed a regulation that would require U.S. depository institutions to report interest income paid to nonresident alien depositors who reside in 15 specified countries (REG 133254-02).

This proposal, which originated in the previous administration, has caused concerns that the U.S. is reversing its long-standing policy of encouraging citizens of other countries to deposit their funds in the U.S. banking system. Moreover, because interest income earned on non-resident alien deposits is exempt from U.S. taxation, it is not readily apparent what enforcement or tax collection objective is served by requiring this income to be reported to the IRS.

From a process standpoint, I believe that it would be ill-advised for Treasury to issue a final rule on this important issue prior to Secretary-Designate Snow's confirmation. Implementation of such a far-reaching change in U.S. tax policy - which seems likely to impose significant new regulatory burdens on U.S. depository institutions - should at the very least await a thorough review by the incoming Secretary.

Thank you for your consideration of my views on this issue.

Sincerely,

Michael G. Oxley
Chairman

MGO/jc

cc: Stephen Friedman
Congress of the United States
Washington, DC 20515

January 10, 2003

The Honorable George W. Bush
President of the United States
The White House
1600 Pennsylvania Avenue Northwest
Washington, DC 20500

Dear Mr. President:

We are writing to applaud your economic growth package. By eliminating the double-taxation of dividends and lowering marginal tax rates on productive behavior, your proposal will boost the economy and make America more competitive. This will mean better jobs and higher wages for American workers. Moreover, we believe your proposal is an important step toward fundamental tax reform. Your proposals to fix the tax code are based on commonsense principles such as taxing economic activity only once, and taxing economic activity at low rates. The core elements of your tax package reflect these important goals.

But we also want to take this opportunity to express our opposition to a proposed IRS regulation (REG-133254-02) that would compel American banks to report the deposit interest paid to nonresident aliens. This burdensome new proposal — a legacy of the previous Administration — is not needed to enforce U.S. tax law or combat illegal money laundering. It will only harm financial markets by driving capital out of the American economy. Indeed, the Chairman of the Federal Deposit Insurance Corporation recently warned that it could undermine the safety and soundness of our banking system by leading to a large loss of deposits.

This regulation could severely undermine the pro-growth provision of your tax package. Some economists believe hundreds of billions of dollars will flee our economy and that gross domestic product will drop by 0.8 percent if the regulation is finalized. Even if the actual damage is just a fraction of these estimates, this is too high of a cost to pay for a regulation that would overturn — by bureaucratic edict — decades of government policy designed to attract capital to the U.S. economy.

This regulation should be withdrawn.

Sincerely,

Pat Toomey

Phil Gramm
December 18, 2002

The Honorable Peter Fisher
Undersecretary for Domestic Finance
Department of the Treasury
1500 Pennsylvania Avenue
Washington, D.C. 20220

Dear Undersecretary Fisher:

I am writing to express my concern regarding a proposed IRS Regulation (REG 133334-02) that would compel U.S. banks to report the deposit interest paid to nonresident aliens. This new proposal is not needed to enforce any U.S. tax law, and I am concerned that it will put our financial markets at a competitive disadvantage and harm our economy by driving much needed capital elsewhere.

It is important to note that Congress has examined the tax treatment of indirect foreign investment in our domestic economy on several occasions. On each occasion, it was determined that the benefit from attracting capital to the U.S. far exceeded any revenue that would be gained from taxing deposit interest paid to nonresident aliens. For that reason Congress has repeatedly decided not to require the reporting of this income.

Furthermore, you may recall that when the money-laundering bill was written, Congress specifically rejected the use of money-laundering powers to enforce the tax laws of foreign governments. I continue to believe that it is not the responsibility of either the U.S. government or U.S.-based financial institutions to enforce the tax laws of other nations. Unless there is some benefit I am unaware of, I urge you to withdraw the proposed regulation at least until Congress has the opportunity to review the issue more directly and completely.

Sincerely,

Robert Bennett
United States Senator

Cc: Joshua Bolten, Deputy Chief of Staff for Policy
    Pam Olson, Assistant Secretary of Treasury for Tax Policy
The Honorable Paul H. O'Neill
Secretary of the Treasury
Washington, D.C. 20220

Dear Mr. Secretary:

I am writing to express my deep concern with the Internal Revenue Service’s decision to move forward with regulations that would drive much-needed investment funds out of our economy. In particular, I am referring to proposed regulation 133254-02, which would mandate that U.S. offices of certain financial institutions report to the IRS the interest payments they make to nonresident aliens.

My concern is that these regulations appear to impose large, visible costs on our economy with no corresponding benefits. If finalized and enforced, these proposed regulations could drive the savings of foreigners out of bank accounts in the United States and into bank accounts in other nations that better protect financial privacy. Such an exodus of savings would almost certainly lead to higher interest rates and lower availability of bank loans for Americans. Startup businesses, mortgage borrowers, college students, and other who depend on bank lending would all be hurt.

The current scaled-back proposed regulations, which apply only to nonresident aliens in fifteen European countries, would be somewhat less damaging to our economy than the original proposal. But even this could cause serious damage to our economy with little or no apparent benefit.

I would be happy to discuss this matter in further detail with you. In particular, if there are benefits to this proposal that are not readily apparent, I would welcome any information you could provide that would document them.

Sincerely,

Orrin G. Hatch
United States Senator

OGH: gij
December 18, 2002

The Honorable Paul A. O'Neill
Secretary of Treasury
U.S. Department of Treasury
15th and Pennsylvania avenues
Washington, D.C. 20005

Dear Secretary O'Neill:

I am writing to ask the Department of Treasury to postpone finalization of a proposed IRS regulation which would require U.S. financial institutions to report interest income they pay to non-resident alien account holders until such time as the Subcommittee on Oversight has considered the many consequences of the proposed changes.

As you know, the proposed rulemaking would require U.S. financial institutions to report interest paid to non-resident aliens of certain enumerated nations. While the ostensible rationale of the rule is to enforce U.S. tax law, since no U.S. taxes will be collected by this rule, the real motive seems to be to assist Europe in the collection of foreign taxes on savings invested in the United States.

This rulemaking raises many serious policy issues properly reserved to Congress. For example, the rule appears to effectively reject long-standing U.S. policy to attract capital to our shores. It also appears to reject by bureaucratic fiat a recently announced Administration policy against the proposed EU Savings Directive. The U.S. has endeavored, through exemptions provided for portfolio interest and on interest paid with respect to U.S. bank deposits, to attract foreign capital investment. In addition to deviating from U.S. economic policy, the proposed rule does not appear to be based on the need to collect U.S. taxes since the U.S. does not tax interest paid to non-resident aliens.

In addition to these economic considerations, my Subcommittee would like to explore the compliance and interpretation of the Service of the recent changes to the Regulatory Flexibility Act (RFA). The RFA requires the Service to consider the impact of the rule on small firms or to certify
that it has no such impact. It is hard to understand how the Service could exempt themselves from the purview of the RFA in this rulemaking when the RFA applies specifically to collection of information requirements.

Therefore, I respectfully request the Treasury Department exercise its authority to postpone this rule until such time as these policy implications have been fully explored.

Sincerely,

[Signature]

DON NICKLES
U.S. Senator

DN/1m
Congress of the United States
House of Representatives
Washington, DC 20515

December 3, 2002

The Honorable Paul O'Neill
Secretary of the Treasury
Department of Treasury
1500 Pennsylvania Avenue
Washington, DC 20220

Dear Secretary O'Neill,

We want to express our concerns about the Internal Revenue Service's proposed bank deposit interest reporting regulation (REG-133254-02). Based on a proposal that originally was put forth in the final days of the previous Administration, this regulation would force banks to tell the IRS the amount of interest paid to non-resident aliens even though the information is not needed to enforce U.S. tax law.

We are troubled about the policy implications of this proposal, and we also have serious reservations about the IRS's potential misuse of the regulatory process. To address these concerns, we ask that the regulation be withdrawn and subjected to further review and analysis.

From a policy perspective, we are concerned that the regulation will undermine the competitiveness of U.S. financial institutions and drive capital out of the American economy. This might be a worthwhile price to pay in the pursuit of good policy, but this regulation undermines the long-run tax reform goals that we all share. More specifically:

- The regulation is inconsistent with good tax policy and will hinder the President's tax reform agenda. Good tax policy must encourage investment in capital markets—particularly American capital markets. This regulation, by contrast, seeks to help foreign governments double-tax income that is earned inside America's national borders, thus discouraging foreign investors from investing in the U.S. market.

- The proposed rule will drive capital to other jurisdictions. American financial institutions have attracted approximately one trillion dollars from overseas, and a substantial share of that job-creating capital will leave our economy if the Service compels U.S. banks to compromise the interests of their depositors. This means less money available for car loans, home mortgages, and small business expansion. A regulation of this type is particularly damaging to a financial system recovering from an economic downturn.
We are equally concerned that the IRS has not followed proper procedures. In their zeal to pursue a proposal developed at the behest of foreign governments, it appears that the Service is abusing the regulatory process by flouting legal and procedural requirements. More specifically:

- Executive branch agencies and departments are supposed to issue regulations that implement the laws enacted by Congress. But since the United States government does not tax bank deposit interest paid to nonresident aliens, there is no need to collect this information. Indeed, the IRS even admits that the purpose of the proposed regulation is to help foreign governments tax U.S.-source income. It is not the purpose of the U.S. tax structure to promote the taxation interests of foreign governments over investment in American markets and American businesses.

- On several occasions, the U.S. Congress has examined the tax treatment of indirect foreign investment in the American economy. In every instance, the desire to attract capital has led lawmakers to decide not to tax bank deposit interest paid to nonresident aliens. Congress also has repeatedly decided not to require the reporting of this income. The proposed IRS regulation, however, seeks to overturn this outcome of the democratic process.

- The IRS is ignoring laws requiring cost benefit analysis. By incorrectly 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. Yet many IRS regulations – particularly the proposed bank deposit interest reporting rule – impose a significant cost on the economy and should be subject to the regulatory review process.

We have been very generous in response to IRS budget requests, but these additional resources were supposed to help the Service enforce U.S. tax law, not to promulgate regulations that disregard the law and hinder the effort to reform the tax code. We believe that American homebuyers, small business owners, and families should have access to capital, and therefore request that this misguided regulation be withdrawn for further review and analysis.

Sincerely,

[Signatures]
cc: Glenn Hubbard, Chairman of the Council of Economic Advisers  
Larry Lindsey, Chairman of the National Economic Council
Congress of the United States  
House of Representatives  
Washington, DC 20515  

December 20, 2002  

The Honorable Mitchell E. Daniels  
Director of the Office of Management and Budget  
EOOB  
17th Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20503  

Dear Director Daniels:  

We are writing to strongly urge you to delay Proposed Regulation 133254-02, a rule proposed by the Internal Revenue Service (IRS) concerning guidance on the reporting of deposit interest paid to nonresident aliens. This regulation should be delayed until the IRS complies with the Regulatory Flexibility Act and certifies that the regulation will not have a significant economic impact on a substantial number of small entities, or the rule is withdrawn.  

The Regulatory Flexibility Act clearly applies to this situation where the IRS will require all financial institutions, both large and small, to collect information on interest paid to nonresident aliens. The Office of Advocacy of the U.S. Small Business Administration testified on December 5, 2002, in response to the notice of proposed rulemaking that they believe that there is ample evidence that the impact of the regulation is significant and that a substantial number of small businesses will be impacted.  

Due to the high likelihood that Proposed Regulation 133254-02 will have a substantial impact on Small Business entities within the United States, it is imperative that the IRS conducts a Flexibility Analysis reflecting the impact, or refuting the ample evidence that there will be an impact to a substantial number of small businesses. Pursuant to the Regulatory Flexibility Act, we urge that this proposed regulation be either withdrawn or postponed until the proper analysis can be conducted.  

We are outraged by the attempt of the IRS and U.S. Treasury Department to push through such a controversial and costly regulation, particularly in such haste during the holiday season. We urge you to delay this legislation until the requirements of the Regulatory Flexibility Act are met or the regulation is withdrawn.  

Sincerely,  

Bob Ney, Member of Congress  
Melvin L. Watt, Member of Congress
Pete Sessions, Member of Congress

Ron Paul, Member of Congress

Ileana Ros-Lehtinen, Member of Congress

Butch Otter, Member of Congress

Greg Walden, Member of Congress

Joshua Bolten, Deputy Chief of Staff for Policy to the President

Kenneth W. Dam, Deputy Secretary of Treasury

Peter Fisher, Undersecretary for Domestic Finance

Pam Olsen, Assistant Secretary of Treasury for Tax Policy
Alexandra K. Helou  
Office of Associate Chief Counsel (International)  
Internal Revenue Service  
CC: DOM:ITA:RU (REG-133254-02)  
Room 5226  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

October 16, 2002

Dear Ms. Helou:

I want to express my strong opposition to the IRS's recent effort to resuscitate a Clinton-era proposal to require the reporting of deposit interest paid to foreigners who invest their money in U.S. banks. Such a scheme would contravene existing law and harm the competitiveness of American financial institutions. More importantly, it would put downward pressure on U.S. markets, threatening the well being of small investors. In addition, millions of American borrowers – including homeowners and small businesses – would be adversely affected as capital leaves the U.S. economy.

I am particularly distressed that the IRS is abusing the regulatory process by blatantly ignoring the will of Congress. Existing law – and legislative history – clearly shows that lawmakers did not wish this income to be taxed or reported. Yet, the IRS wants to overturn the outcome of the democratic process.

Finally, let me be clear that the “new and improved” version of the regulation is just as flawed as the initial proposal. The IRS’s decision to temporarily exempt certain deposits from the reporting requirement is a transparent effort to divide-and-conquer, one that assumes that lawmakers, and the banking industry, are too foolish to realize the depositors from all nations will be added to the list in a couple of years.

I trust this misguided regulation will be withdrawn, and I look forward to an explanation of why the IRS did not perform the required cost-benefit analysis for this regulation.

Sincerely,

W. Todd Akin  
Member of Congress

** TOTAL PAGE .02 **
October 1, 2002

Charles O. Rossotti
Commissioner of Internal Revenue
Internal Revenue Service
Room 5226
P. O. Box 7604, Ben Franklin Station
Washington, DC 20044

Dear Commissioner Rossotti,

I am writing to express our deep concern about the re-release of the regulation that would require the reporting of bank deposit interest paid to nonresident aliens. If this regulation is implemented, it will drive hundreds of billions of dollars of capital out of the American economy — with no increase in revenue to the U.S. Treasury — putting further downward pressure on financial markets.

Perhaps more importantly, it will make it harder for consumer, homebuyers, and small business owners to obtain loans. This surely will happen if investors decide that America’s financial system no longer has a necessary level of personal privacy. Money that would have been put to work in America instead will be deposited in Switzerland, Hong Kong, and many other financial centers around the world.

The Internal Revenue Service is supposed to enforce the tax laws approved by Congress. It is with some dismay, therefore, that I see that the Service has issued a regulation designed to overturn existing Congressional intent. On many occasions, Congress has visited this issue, and in every instance has chosen not to tax this income and not to require its reporting. The goal, clearly seen in legislative discussion, is to attract capital to the American economy where it will be used to create jobs and boost growth.

I urge you to withdraw this misguided regulation. It is not needed to enforce US tax law and it will drive capital from our economy.

Sincerely,

Phil Crane
Member of Congress
October 1, 2002

Alexandra K. Helou
Office of Associate Chief Counsel (International).
Internal Revenue Service
CC: DOM: ITA: RU (REG-133254-02)
Room 5226
P. O. Box 7604, Ben Franklin Station
Washington, DC 20044

Dear Ms. Helou,

Deposits from overseas are a critical source of funds for United States financial institutions and these monies benefit the American economy. This is one of the reasons why I am greatly troubled by the Internal Revenue Service's recent proposal to require the reporting of interest paid to nonresident aliens. This information is not needed to enforce U.S. tax law. Indeed, Congress specifically has exempted this income from tax and chosen not to require reporting in order to make America a more attractive destination for global capital.

I realize that the IRS already has withdrawn this regulation one time, but the decision to only apply the reporting requirement to citizens of 15 specific countries is not an acceptable compromise. First, it is obvious that the IRS intends to add other nations to the list in the near future. This will be harmful to Florida banks because of our competitiveness for Latin American investors. Second, the IRS should never overturn existing laws, and Congress has spoken clearly on this issue a number of times. I would hope that the IRS would never pursue an agenda that puts the interests of foreign governments ahead of the interests of homebuyers, small businesses and other Americans who benefit from a larger capital stock.

Sincerely,

Mark Foley
Member of Congress
Alexandera K. Helou  
Office of Associate Chief Counsel (International)  
Internal Revenue Service  
PO Box 7604, Ben Franklin Station  
Washington, D.C. 20044

Dear Alexandra:

Congress has provided the IRS with significant budgetary increases in recent years in the hope that this would improve enforcement of existing law and create a more customer-friendly agency. Unfortunately, it appears that these additional resources are being misused. More specifically, the IRS’s recent re-release of a Clinton-era regulation governing deposit interest paid to foreign owners of America bank accounts is a major lapse in judgment.

Simply stated, the IRS is supposed to enforce the law, not create new law to satisfy an ideological agenda. To help attract capital to the U.S. economy, Congress has chosen not to tax foreign-owned bank accounts and not to require the reporting of interest income paid to these accounts. It is therefore quite disturbing that the IRS is trying to unilaterally overturn this policy – particularly since the agency openly admits that it is pursuing this policy to help foreign governments tax U.S.-source income.

I strongly urge the IRS to withdraw this regulation. This proposed rule is a misallocation of IRS resources, and it will impose significant costs on banks if it is implemented. But these paperwork costs will be trivial compared to the loss of international competitiveness since banks in London, Zurich, and Hong Kong will be delighted to accept deposits that will flee America if this regulation is finalized.

Sincerely,

Jack Kingston  
Member of Congress

JK:leq
Congress of the United States
House of Representatives
Washington, DC 20515-1316
November 6, 2002

Alexandra K. Helou
Office of Associate Chief Counsel (International)
Internal Revenue Service
CC:DOM:ITA:RU (REG-133254-02)
Room 5226
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Dear Ms. Helou:

I am writing to express my strong opposition to the IRS's recently reissued regulation that would require the reporting of bank deposit interest paid to nonresident aliens. This regulation would significantly harm the competitiveness of America's financial institutions, which would directly harm millions of America’s borrowers. As Chairman of the House Small Business Committee, I am concerned that U.S. small businesses, typically those most in need of financial backing, will have their access to growth capital evaporate during these difficult economic times. This hardly seems the ideal time to promulgate a regulation that will drive more capital out of the American economy.

I find it troubling that you chose to reissue an old proposal that Congress has already determined to be bad for America and in conflict with Congressional intent. Congress has discussed this issue on many occasions in the past, and in every instance has chosen not to require the reporting of this income paid to nonresident aliens. In April of 2002, I joined nearly 50 of my colleagues in opposition to this regulation the last time you proposed it. That letter urged the President to permanently withdraw the proposed IRS regulation. The regulation was withdrawn, but then re-released to only apply the reporting requirement to citizens of 15 specific countries. You may have modified the focus of the regulation, but you did nothing to mitigate the damage this regulation will assuredly cause to America.

I urge the IRS to withdraw this regulation. It is a misuse of the regulatory process and is in direct conflict with America’s economic interests.

Sincerely,

Donald A. Manzullo
Member of Congress

Cc: Treasury Secretary Paul O'Neill
CEA Chairman Glenn Hubbard
Economic Advisor Larry Lindsey
Commissioner Charles Rossotti
Congress of the United States
House of Representatives
107th Congress
Committee on Small Business
2501 Rayburn House Office Building
Washington, DC 20515–6515

December 18, 2002

The Honorable Pamela Olson
Assistant Secretary for Tax Policy
Department of Treasury
1500 Pennsylvania Avenue, N.W., Room 3112
Washington, DC 20220


Dear Assistant Secretary Olson:

The Internal Revenue Service is considering an amendment to its rules that would require financial institutions to file a Form 1042-S with the Service when interest is paid to any nonresident alien in 15 designated countries with a separate copy to the payee. My objection to this proposal already is on record as part of a joint letter from members to the Department. I am now writing individually to explain my concerns that the regulation may have unintended and unexamined consequences on small businesses.

The record in this rulemaking reveals that non-resident aliens have deposits of approximately $1 trillion in United States banks and other financial institutions. Many bankers expect that at least one-third of the foreign deposits (presumably those from the 15 countries for which the depositary institution must file a Form 1042-S) or more than $300 billion dollars will be shifted to banks in London, Hong Kong and other overseas venues that do not require the reporting of interest of non-resident aliens to a governmental entity.

This transfer of capital out of the United States could not come at a worse time. Small businesses play a vital role in the American economy and are poised to create the majority of new jobs in the upcoming economic recovery. However, small businesses will not be able to play a role in any expansion if they are starved for capital. Taking hundreds of billions of dollars out of United States depositary institutions only will exacerbate the difficulties that small businesses face in obtaining funds to finance growth and expansion.
The Department and the Service should examine the consequences of making this change on the economy and particularly on the ability of small businesses to obtain necessary capital. I firmly believe that, after due consideration of the impact on the economy, the Department and Service will find that this minor "policy" change is ill-conceived and should be tabled.

Sincerely,

Donald A. Manzullo

Donald A. Manzullo
Chairman
Ms. Alexandra K. Helou  
Internal Revenue Service  
Office of Associate Chief Counsel International  
Room 5226  
PO Box 7604, Ben Franklin Station  
Washington, DC 20044

Dear Ms. Helou:

I am writing to urge the Internal Revenue Service (IRS) to officially withdraw the proposed regulation compelling US financial institutions to report bank deposit interest paid to foreign account holders. As you know, this regulation initially was proposed in 2001 but subsequently was withdrawn. Unfortunately, the regulation has been reissued with some cosmetic changes.

These cosmetic changes in no way alter the regulation's destructive nature. This proposed regulation contradicts the long-standing desire of Congress to ensure that tax policies will attract low-cost funds to America's financial system. Instead of attracting capital into the financial system, this regulation could drive billions of capital out of the US economy. Finally, the proposed regulation is bad tax policy since it is based on the assumption that saved income should be subject to double-taxation, and because it assumes that other countries should be able to tax income earned in America.

If this regulation is not withdrawn, it will create uncertainty among international investors. Many of them will react by placing their funds in foreign institutions, thus undermining the competitiveness of US banks. This regulation is particularly ill-timed given the recent downturn in the US economy. Therefore, I once again respectfully urge you to officially withdraw the proposed regulation requiring US financial institutions to report bank deposit interest paid to foreign account holders. Thank you for your consideration of my views.

Sincerely,

Ron Paul
October 18, 2002

Alexandra K. Helou  
Office of Associate Chief Counsel (International)  
Internal Revenue Service  
Room 5226  
P. O. Box 7604, Ben Franklin Station  
Washington, DC 20044

Dear Ms. Helou,

I am deeply concerned that the IRS is allowing personal ideology to interfere with the lawful conduct of its regulatory responsibilities. Specifically, the Service recently re-issued a slightly modified version of a Clinton-era regulation that will require U.S. banks to report the deposit interest they pay to nonresident alien account holders.

This proposal is an abuse of the regulatory process. The IRS is supposed to promulgate regulations to help enforce the laws approved by Congress and signed by the President. But this regulation overturns existing law and clearly flouts Congress’ goal of attracting capital to the U.S. economy. Moreover, the IRS failed to perform a legally required cost/benefit analysis. Indeed, the Service actually had the nerve to claim that this rule is an interpretive regulation and thus exempt from important parts of the law governing regulatory review.

Equally important, I am worried that this regulation will create a roadblock for the President’s tax reform agenda. Almost all tax reform plans are based on key principles, including the fact that income should not be taxed more than one time. Another key principle is territorial taxation, the common sense notion that governments do not try to tax income earned in other nations. Yet the IRS regulation is explicitly designed to help foreign governments impose a second layer of tax on U.S.-source income.

There is no way to fix this regulation. It is completely contrary to existing law and it would adversely impact America’s economic interests. I urge its immediate withdrawal.
Sincerely,

[Signature]

Pete Sessions

Cc: Treasury Secretary Paul O'Neill
    CEA Chairman Glenn Hubbard
    Economic Advisor Larry Lindsey
April 5, 2002

The Honorable George W. Bush
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. President,

America's financial institutions benefit greatly from deposits of foreigners in U.S. banks. These deposits help finance jobs and generate economic growth mainly benefiting local communities, consumers, families, and small businesses. For more than 80 years, the United States has recognized the importance of foreign deposits and has refrained from taxing the interest earned by them or requiring their reporting.

Unfortunately, a rule proposed by the Internal Revenue Service would overturn this practice and would likely result in the flight of hundreds of billions of dollars from U.S. financial institutions. A regulation proposed in the waning hours of the previous administration requires the reporting of bank deposit interest paid to foreign account holders so that this information can be made available to the countries of origin of the nonresident alien account holders.

Mr. President we appreciate all that you have done to prevent the finalization of this proposed rule. We have several objections to this initiative, and strongly urge you to permanently withdraw the proposed regulation. Specifically:

The regulation will cause serious irreparable harm to the U.S. economy. Because of the attractive tax and privacy laws of the United States, nonresident aliens are estimated to have deposited over $1 trillion in U.S. financial institutions. Should this regulation be finalized, economic and academic sources indicate that a substantial portion of that capital will be withdrawn from the U.S. economy. Some deposits have started leaving U.S. financial institutions already. During this time of economic concern, we urge that every effort be made to keep capital within the borders of the United States.

The regulation flagrantly violates the intent of Congress. On several occasions, lawmakers have chosen to refrain from taxing the deposit interest paid to nonresident aliens. These actions were made for the explicit purpose of attracting and keeping capital in the U.S. economy. We feel the IRS is abusing its regulatory authority and doing so in a manner that is contrary to Congress' intent and the last eighty years of legislative history.

The regulation will weaken the competitiveness of U.S. financial institutions. Should the proposed rule take affect, American companies will lose hundreds of billions of dollars in deposits to institutions in competing jurisdictions that maintain privacy.
protections. The purported goal of the regulation will not be achieved, but will instead disadvantage American businesses and communities.

This proposal may be good news for high-tax governments, but it is contrary to American economic interest. The jobs of American workers and the competitiveness of U.S. companies should be our top priorities. This regulation works against both. It will put Americans out of work and it will force dollars out of U.S. financial institutions and into foreign financial institutions.

It has now been longer than one year since the IRS proposed this rule. We urge that you withdraw this proposed regulation and send a clear message to existing and potential depositors that the U.S. encourages such deposits and believes America's best interest is served by maintaining current policy.

Sincerely,

Dave Wallah
Spit Baker
Jim Ryan
Charles Segal
Donald A. Murzillo
Jim Ovi
Amber

Walt Walch
Jim DeMint
Niki Ferguson
Marc Sanders
Daniel Dreier
Phil Crane

Jeff Miller
Mark Foley