From: Christopher L. Williston VI [mailto:clwilliston@subsbanks.org]
Sent: Wednesday, October 28, 2009 5:40 PM
To: Comments
Subject: Prepaid Assessments, Proposed Rule - AD49

Dear Mr. Feldman:

On behalf of the Subchapter S Bank Association and the almost 2,500 banks that have elected to be taxed as S corporations, thank you for the opportunity to comment on the Board's proposal to restore liquidity to the Deposit Insurance Fund by collecting a multi-year prepaid insurance assessment.

Upon hearing of the Board's proposal, we began consulting with a number of accounting firms in an effort to ascertain the potential impact this assessment might have on Subchapter S banks, due to their unique tax treatment. Our question was simply: Will Subchapter S banks be allowed to deduct this prepaid multi-year assessment incrementally over the life of the assessment? In response, we received no clear consensus on the answer to this question; however, everyone with whom we spoke agreed that current tax rules would without question preclude Sub S banks from deducting the full amount of the assessment in 2009.

In this current economic environment, which has unquestionably taken a heavy toll on the financial services industry, one principle has become resoundingly clear: Capital is king. To that end, so too is the *preservation* of capital. We therefore submit that the tax treatment of the Board's proposal should be such that the capital impact of the assessment is minimized for all financial institutions, including those organized as S corporations.

We would first ask the Board to provide clarity as to the tax treatment of the proposed assessment under existing tax laws. Particularly, will Subchapter S banks be permitted to incrementally deduct the expense over the life of the assessment, much in the same manner as their C corporation counterparts? At a minimum, we feel that such tax treatment would be appropriate.

Second, in the interest of capital preservation, we believe Subchapter S institutions should be afforded the opportunity to choose to deduct the entire amount of the prepaid assessment in 2009 if doing so would minimize the impact the assessment would have on the bank's capital resources.

Our primary concern is the impact this multi-year prepaid assessment could potentially have on banks' capital levels if it can only be deducted incrementally over the life of the assessment. While a number of Subchapter S institutions would undoubtedly prefer this tax treatment (*i.e*. institutions whose taxable earnings may have suffered as of late) and should be allowed to deduct the expense accordingly, we respectfully submit that there are also a significant number of Sub S institutions for whom it would be substantially more beneficial were they able to deduct the entire amount of the assessment in the taxable year in which it was paid. Doing so would, in effect, reduce the taxable earnings of these institutions in the current year, thus reducing the amount of dividends they would be required to pay out to their shareholders to cover the shareholders' tax liabilities. This would allow these institutions to maintain a higher level of capital in the current year, when it likely will be needed most.

As to the second point, we recognize that this proposed tax treatment is not presently allowed under current tax rules. However, there is strong precedent for amending federal tax laws in order to soften the impact those laws would otherwise have on banks. In particular, provisions in the Emergency

Economic Stabilization Act of 2008 amended certain sections of the Tax Code to change the treatment of the sale of preferred stock issued by the Federal National Mortgage Corporation (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) from capital gains or losses to ordinary gains or losses. It is without question that such measures should be reserved only for times of severe economic distress, but given the alarming number of bank failures that have occurred over the preceding 18 months, such measures appear warranted at this time.

We strongly urge the Board to consider these issues. We are confident that the Board will seek equity for all banks in making its final ruling on this issue, including those that have elected Subchapter S taxation. Thank you for considering our concerns and for the opportunity to submit this comment.

Respectfully submitted,

Bruce E. Toppin, III
Executive Director
Subchapter S Bank Association