Statement by

Rebecca J. Wilkins

Senior Counsel, Federal Tax Policy

Citizens for Tax Justice

on Proposed Regulations to Require

Reporting of Interest Earned by Nonresident Aliens

before the

House Committee on Financial Services

Subcommittee on Financial Institutions and Consumer Credit

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Madame Chairwoman and Members of the Committee:

Thank you for the opportunity to testify today. My name is Rebecca Wilkins. I am Senior Counsel for Federal Tax Policy at Citizens for Tax Justice (CTJ). Citizens for Tax Justice has been working for over thirty years to promote a fair and sustainable tax system.

We fully support the rules proposed by the Internal Revenue Service to require financial institutions to report interest earned on deposits of nonresident aliens.[1] We hope that it is only one step in the ongoing improvement of the type and quality of information collected by the IRS that can be shared with other governments pursuant to tax treaties and tax information exchange agreements (TIEAs).

Governments around the world are facing budget crises and this is due, in no small part, to the massive amounts of revenue that are lost to the shadow financial system. It is estimated that

[1] Internal Revenue Service, Guidance on Reporting Deposit Interest Paid to Nonresident Aliens, Reg-146097-09, January 7, 2011.

the U.S. Treasury loses in excess of $100 billion annually to tax haven abuses.[2] Secrecy in the financial system facilitates corruption, tax evasion, and money laundering. Shell corporations, anonymous trusts, and bank secrecy in both the United States and abroad make it easy for criminals, terrorists, government officials and even otherwise legitimate multinational companies to hide their money and make it difficult for law enforcement and tax authorities to do their jobs.

CTJ believes it is critical to debunk the myths and false claims of those who want to keep the status quo under the guise of promoting competition and protecting businesses. The status quo, with shadow banking systems, shell companies and widespread secrecy severely damages both the developed and developing worlds.

America should not be a haven for international tax evaders. We do not believe that the United States should be a tax haven for citizens of other countries who wish to evade their tax obligations to their home country. Regardless of the economic benefit from inflows of capital, the United States should not engage in practices that make it easier for the laws of other countries to be broken or evaded.

The international community demands action. As the IRS noted in its preamble to the proposed rules, the international landscape has changed dramatically in the past few years. There is a growing global consensus that responsible governments must cooperate in exchanging tax information about their citizens in order to combat the rampant tax evasion that is facilitated by offshore tax havens. And make no mistake, in this area the U.S. functions as an offshore tax haven for some citizens of other countries.

The scope and content of tax treaties is changing. Recent agreements between governments have acknowledged the importance of cooperation and have removed obstacles such as bank secrecy rules as grounds for refusing requests for information.

The proposed rule will greatly improve the U.S.'s ability to respond to requests from other governments. We have a major stake in assisting other countries to stop tax cheating by their own citizens. Not only is it the moral and ethical thing to do, but we need the help of those other countries in protecting our own tax system. We cannot expect their cooperation if we are not willing to give ours. This regulation is especially important in light of the recently enacted Foreign Account Tax Compliance Act which requires foreign financial institutions to file information reports with respect to accounts owned by U.S. taxpayers. In order to encourage foreign

[2] Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, "Tax Haven Banks and U. S. Tax Compliance," Staff Report, July 17, 2008.

governments to share information, we must be willing to collect and exchange information about their taxpayers. We cannot meet our obligations under tax exchange information agreements if we do not create a process that allows us to do that. These rules are an important step in that direction.

The proposed rules will help the IRS catch cheating by U.S. taxpayers. This type of third-party reporting is critical to our own tax system. A November 2007 report by the Government Accountability Office found that when income is subject to a high level of third-party reporting, such as wages, the income is reported correctly on the recipients' tax returns 98.8 percent of the time.[3] When the amount of third-party reporting on income is low, such as rents, the income is reported correctly only 46 percent of the time. We know that some U.S. taxpayers evade tax on this type of interest income by opening accounts with U.S. financial institutions using a foreign name or foreign entity. We believe this regulation will improve the IRS's ability to catch these tax evaders. Any action that reduces tax cheating not only brings much-needed revenue into the treasury, but also furthers two other important goals: ensuring compliance by other taxpayers and restoring Americans' faith in the equity of the tax system.

Claims of dire economic consequences are completely unfounded. There is no foundation to the argument that billions of dollars of deposits will leave the U.S. if these rules take effect. The regulation only applies to accounts owned by nonresident alien individuals. Much of the foreign capital in the U.S. is, first of all, invested by foreign legal entities (not individuals) that would not be covered by this regulation. Second, the regulations only apply to bank deposits – not stock ownership, not private equity funds, not real estate – not anything else. Of the more than $4 trillion of foreign deposits in U.S. banks, the federal reserve reports that approximately three-fourths of those funds are in accounts held by foreign governments, official institutions, international and regional organizations, and foreign banks.[4] Of the less than $1 trillion left, only the amount held in the name of individuals would be subject to reporting under the new rules. Even for accounts that are covered by these rules, only depositors who are tax evaders, money launderers, drug dealers, human traffickers, and other criminals have an incentive to move their funds. And finally, even in cases where tax evaders and other criminals pull their deposits out of U.S. banks, those funds are likely to wind up back in the U.S. through the depository accounts of

[3] United States Government Accountability Office Report to the Committee on Finance, U.S. Senate, "Tax Administration: Costs and Uses of Third-Party Information Returns," GAO-08-266, November 2007.
[4] Federal Reserve Board, Liabilities to Foreigners Reported by Banks in the United States, available at http://www.federalreserve.gov/econresdata/releases/statbanksus/liabfor20110930.htm.

banks in tax haven jurisdictions. According to Federal Reserve reports, the largest U.S. bank liability to foreigners is to the Cayman Islands.

Objections to these rules on humanitarian grounds are baseless. Opponents argue that providing information about deposits to foreign governments may endanger the lives of people who use U.S. depository institutions to escape problems in their home countries such as crime, persecution, and financial instability. But the proposed rules only give the IRS the ability to collect information on these accounts. They do not require the IRS to turn the information over to foreign governments. Information is not exchanged under a TIEA automatically, but only as a response to a specific, carefully limited request which identifies the nature of the information and the specific evidence being sought. The request must be only for the purposes of tax enforcement. The U.S. government has the ability to refuse to provide the information requested by the foreign jurisdiction in many circumstances. In addition, the U.S. generally does not have TIEAs with rogue governments. The Treasury can add further safeguards it deems necessary to deal with human rights issues.

We do not know of any cases of a protestor, anti-corruption campaigner, trade union official, investigative journalist, or dissident of any kind who has been protected from oppression by virtue of having a secret bank account or offshore trust. On the other hand, we can name any number of their oppressors – for example, Augusto Pinochet, Hosni Mubarak or Muammar Gaddafi – who use and have used secrecy jurisdictions extensively to preserve their power and wealth at the expense of their millions of victims.

We do not believe that the mere collection of interest income information by the IRS poses any security risk to account holders. Residents of developing countries already know who the rich among them are. They don't need any information from the IRS to know who owns the wealth in their country. The reporting of interest income would not change the security concerns of these individuals.

In any case, it is wholly inappropriate to combat unlawful activity in one country through promoting unlawful conduct elsewhere. Problems in the resident country need to be dealt with locally, perhaps with international support. If the elites were subject to the same constraints and laws that ordinary people are under, you could be sure that the elites would soon be pressing for better governance – and because they are the influential players in any developing country, this could be the most powerful pressure of all.

Anti-money laundering, national security, anti-corruption, and anti-terrorism efforts could be enhanced through the implementation of these rules. Unfortunately, financial institutions in the United States have been more than willing to take the deposits of criminals and corrupt government officials, despite extensive anti-money laundering rules. Just this week the Department of Justice unsealed an asset forfeiture claim against a $30 million Malibu house, a $38.5 million Gulfstream jet and other assets owned by the son of the President of Equatorial Guinea, claiming that they were bought with the proceeds of corruption. At least three U.S. financial institutions facilitated the flow of more than $75 million into this country for Mr. Obiang.

The regulation would not overturn any Congressional intent regarding the taxation of this income. Opponents have pointed out that Congress has specifically decided not to tax interest paid to nonresident aliens and claim that the proposed rules would "overturn the outcome of the democratic process." This argument is completely without merit. The mere collection of information about this interest income does not in any way impose tax upon it or conflict with any law enacted by Congress.

The regulation is not overly burdensome on financial institutions. The regulation only applies to accounts owned by nonresident alien individuals, not any foreign entities. Banks, both large and small, are already required to collect this type of information on all their customers. They already must report this information to the IRS for their U.S. and Canadian customers. The new rule only expands the number of customers who are covered by the third-party reporting rules.

Conclusion. Make no mistake—this is about tax evasion. Those who oppose the proposed rules have a vested interest in facilitating tax cheating. The stakes in tax evasion are very high and the forces in favor of maintaining the status quo are well-financed and very politically connected. Corrupt American and international banks have a stake in maintaining tax cheating, since they make money from handling those accounts. Corrupt politicians may appreciate the financial contributions that backing the banks engenders. Wealthy Americans who use tax havens worry that if the U.S. cooperates with other countries, their tax evasion will be discovered. But it's the money of honest, tax-paying citizens of all countries that the tax cheats are stealing.

Thank you. I would be happy to respond to any questions you may have.

United States House of Representatives
Committee on Financial Services

"TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name:	2. Organization or organizations you are representing:
Rebecca J. Wilkins	Citizens for Tax Justice

3. Business Address and telephone number:

[redacted]

4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?
☐ Yes ☑ No	☐ Yes ☑ No

6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.

7. Signature: Rebecca J. Wilkins

Please attach a copy of this form to your written testimony.