

September 23, 2013

Internal Revenue Service  
Room 5203  
PO Box 7604  
Ben Franklin Station  
Washington, DC 20044

Re: Conclusive Presumption of Worthlessness of Debts (Notice 2013-35)

Dear Ladies and Gentlemen:

The Independent Community Bankers of America (ICBA)<sup>1</sup> appreciates the opportunity to comment on the notice requesting public comment on Treasury Reg. § 1.166-2(d)(1) and (3) (the “Conclusive Presumption Regulations”). The Internal Revenue Service (IRS) is seeking comment on whether changes that have occurred in bank regulatory standards and processes since the adoption of the conclusive presumption regulations require amendment of those regulations and whether the application of the conclusive presumption regulations continues to be consistent with the principles of section 166.

ICBA recognizes that Treasury regulations provide banks with a conclusive presumption that a debt is worthless under two alternatives. One alternative, the specific order method, is provided when a federal or state regulator orders the bank to charge off a debt as worthless or concludes that a charge off was recorded in accordance with regulatory policy. This alternative is permitted only if the regulatory agency provides confirmation in writing. The second alternative, the book conformity method, is provided when a bank makes a conformity election and the bank regulator issues an express determination letter stating that the bank electing the conformity election maintains and applies loan loss classification standards that are consistent with the regulatory loan loss classification standards of the bank regulator.

These two alternatives create a burden for community banks that wish to take bad debts deductions as permitted under section 166. The specific order method is essentially

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<sup>1</sup> The Independent Community Bankers of America®, the nation’s voice for more than 7,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services.

With nearly 5,000 members, representing more than 24,000 locations nationwide and employing more than 300,000 Americans, ICBA members hold more than \$1.2 trillion in assets, \$1 trillion in deposits, and \$750 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA’s website at [www.icba.org](http://www.icba.org).

unusable by community banks because prudential regulators will not issue written correspondence confirming that a charge-off is being made pursuant to a specific order or in accordance with the established policies of the authoritative body. The only document available to substantiate evidence of worthlessness under the specific order method is the regulator's examination report, which is a confidential document that the banking regulator does not permit to be shared with the IRS. The book conformity method is equally problematic because, while the bank can provide evidence of a charge-off through a regulator-issued express determination letter, this letter will not be accepted by the IRS as sufficient evidence to allow the deduction if the bank has not already made a conformity election. The end result of these difficult alternatives is an unworkable situation where banks are unable to take tax deductions for otherwise valid claims of worthless debts.

ICBA requests that the IRS work diligently with prudential banking regulators to develop a simple, straight forward methodology for banks to support bad debt deductions without requiring complex election requirements or requests for confidential documents that cannot be shared. The easiest solution for all parties involved is for the IRS to develop with the banking regulators a process whereby the regulator releases to the IRS certain sections of the examination report when requested by a member bank. Or the IRS could request that each examination report be accompanied by a blanket certification on the bank's charge off processes.

ICBA appreciates the opportunity to comment on this proposal. If you have any questions or would like additional information, please do not hesitate to contact me at (202) 659-8111 or [james.kendrick@icba.org](mailto:james.kendrick@icba.org).

Sincerely,

/s/

James Kendrick  
Vice President, Accounting & Capital Policy