

MEMO# 24417

July 14, 2010

ICI Letter to Treasury Department and IRS on Reporting Holding Period for Gifted Shares that Previously Were Inherited

[24417]

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TO: TAX MEMBERS No. 18-10
OPERATIONS MEMBERS No. 7-10
BROKER/DEALER ADVISORY COMMITTEE No. 26-10
TRANSFER AGENT ADVISORY COMMITTEE No. 34-10
BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 19-10 RE: ICI LETTER TO
TREASURY DEPARTMENT AND IRS ON REPORTING HOLDING PERIOD FOR GIFTED SHARES
THAT PREVIOUSLY WERE INHERITED

The ICI submitted the attached letter to the Treasury Department and the IRS requesting guidance clarifying acceptable methods for reporting on transfer statements the holding period of securities that are gifted after being inherited. The letter results from discussions with Government officials concerning the precise interaction between the holding period rules for inherited [\[1\]](#) and gifted [\[2\]](#) shares. The specific question is whether (1) gifted shares that previously were inherited always are treated as held for the long-term holding period or (2) the holding period for the gifted shares begins, in some or all cases, on the date that the decedent dies (and the beneficiary inherits the shares that later are gifted).

The letter reiterates our understanding that inherited shares that later are gifted in all cases are treated by the donee as held for the long-term holding period. The letter then describes industry coding methodologies that will be implemented to ensure that brokers receiving cost basis transfer statements will be able easily to ascertain whether the transferred shares have been (1) inherited, (2) gifted, or (3) gifted following inheritance. To simplify the transfer statement reporting, the letter recommends that transferors be

permitted to code inherited shares, and gifted shares that previously were inherited, as “long-term.” An alternate approach, which may be contemplated by the proposed regulations, might require a transferor to manufacture an acquisition date that is more than one year and a day before the decedent’s death.

Finally, the letter re-emphasizes the industry’s strong support for the default rules for gifted and inherited shares that were proposed in the ICI’s earlier submissions. [3] These default rules are essential for cost basis reporting systems to be built and maintained efficiently and effectively.

Keith Lawson
Senior Counsel - Tax Law

[Attachment](#)

endnotes

[1] Code section 1223(9), which applies to inherited securities, provides that the beneficiary of inherited shares in all cases acquires them with a long-term holding period. The statute, however, applies expressly only to the beneficiary.

[2] Code section 1223(2), which applies among other things to gifted securities, provides that the donor’s holding period carries over to the donee if the basis of the property, for purposes of determining the donee’s gain or loss, is determined in whole or in part by reference to the donor’s basis. Under Code section 1015(a), the donor’s basis generally carries over to the donee. This general rule may not apply, however, if the fair market value of the securities exceeds the shares’ adjusted cost basis on the date the shares are gifted. This exception to the general rule created some ambiguity regarding the holding period to the donee of gifted shares that previously were inherited by the donor.

[3] See, e.g., Institute [Memorandum](#) (24133) to Broker/Dealer Advisory Committee No. 6-10, Bank, Trust and Recordkeeper Advisory Committee No. 5-10, Operations Members No. 1-10, Small Funds Members No. 11-10, Tax Members No. 4-10, and Transfer Agent Advisory Committee No. 9-10, dated February 12, 2010. The default rule example from the February letter provided in this latest (July 14) letter involves the cost basis of shares held jointly prior to the death of one of two joint owners. In its February 8, 2010 letter, the ICI proposed a default rule that would treat half of the shares in each lot held jointly as having a cost basis equal to the fair market value upon the death of the first joint owner; the remaining shares would retain the surviving joint owner’s original (purchase price) cost basis. The alternative approach – under which the cost basis of each share would be the sum of half of the date-of-death fair market value of each share and half of the original (purchase price) of each share – would require extensive systems integration and programming.