

MEMO# 21044

April 9, 2007

Institute Submission to IRS Regarding Bifurcation, Post-October Short-Term Losses, and Related Issues

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TO: TAX COMMITTEE No. 14-07 RE: INSTITUTE SUBMISSION TO IRS REGARDING BIFURCATION, POST-OCTOBER SHORT-TERM LOSSES, AND RELATED ISSUES

The Institute submitted to the Internal Revenue Service the attached draft guidance regarding bifurcation, post-October short-term losses, and related issues. [\[1\]](#) This submission is a draft notice providing rules that regulated investment companies (“RICs”) may rely upon until the IRS issues regulations on these issues. The guidance in the draft notice adopts recommendations made by the Institute in prior submissions to the IRS and Treasury Department. [\[2\]](#)

Specifically, the Institute’s submission provides that:

- Bifurcation is required only if a RIC has a post-October loss in some category.
- Bifurcation is permissible for both designation and taxable income purposes.
- For purposes of determining whether a RIC has a net capital gain or net short-term capital gain for the pre-November period, capital loss carryovers are deemed to arise on the first day of the taxable year to which they are carried.
- RICs may defer for taxable income purposes post-October losses attributable to stock in passive foreign investment companies (PFICs).
- Ordinary losses falling in one calendar year will not reduce the earnings and profits of a RIC created by ordinary income or net short-term capital gain that arises in the same taxable year but in a different calendar year.
- RICs exempt from section 4982 under section 4982(f) may make the election under

section 4982(e)(4), thereby permitting such RICs to avoid application of the post-October loss rules of section 852 and the bifurcation adjustment.

- Regulations similar to those in Treas. Reg. § 1.852-11 with respect to post-October net capital losses and net long-term capital losses will be issued under section 871(k)(2)(D) and will apply to any net short-term capital loss attributable to a RIC's post-October period.

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[Attachment](#)

endnotes

[\[1\]](#) See Institute [Memorandum](#) (20941) to Tax Committee No. 7-07, dated March 12, 2007.

[\[2\]](#) See Institute [Memorandum](#) (20097) to Tax Members No. 22-06, dated June 9, 2006.

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