

MEMO# 24298

May 13, 2010

Draft Comment Letter on Proposed Cost Basis Reporting Regulations; Comments Requested by May 20

[24298]

May 13, 2010

TO: BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 10-10
BROKER/DEALER ADVISORY COMMITTEE No. 13-10
SMALL FUNDS COMMITTEE No. 5-10
TAX COMMITTEE No. 16-10
TRANSFER AGENT ADVISORY COMMITTEE No. 23-10
OPERATIONS COMMITTEE No. 9-10 RE: DRAFT COMMENT LETTER ON PROPOSED COST
BASIS REPORTING REGULATIONS; COMMENTS REQUESTED BY MAY 20

Attached for your review is a draft letter to the Internal Revenue Service (the “IRS”) and Treasury Department providing additional comments on the proposed cost basis reporting regulations. [\[1\]](#) Specifically, this letter makes the following recommendations:

- The final regulations should provide a default rule for transfers of inherited securities, as suggested in our February 8 comment letter. Pursuant to this default rule, brokers would, upon notification of a death, step up the basis of the securities to the fair market value on the date of death. The default holding period would be long-term. Brokers could accept information from the shareholder or a third party if the default basis is incorrect. The Institute also recommends that the IRS limit required amendments with respect to inherited securities to transfer statements and Forms 1099 sent within the three years prior to the receipt of any corrected information.
- The final regulations also should provide a default rule for transfers of gifted securities, as suggested in our February 8 comment letter. Pursuant to this default rule, brokers would carry over the donor’s basis and holding period for gifted securities. Brokers could accept information from the shareholder or a third party if the default basis is incorrect. Brokers also would flag on the Form 1099 any

subsequent sale by the donee of gifted securities, to alert the IRS that additional scrutiny may be warranted, if the IRS has concerns about the accuracy of the reported cost basis.

- The final regulations should exempt from the transfer reporting requirements any sales that are excepted from gross proceeds reporting under section 6045, including sales of shares in money market funds.
- The IRS should clarify whether an in-kind distribution from an individual retirement account (an “IRA”) constitutes an “acquisition” for purposes of the cost basis reporting rules, such that the distributed shares become covered securities upon transfer to a taxable account. If such shares do become covered securities for purposes of the cost basis rules, the final regulations should not treat IRA custodians as “applicable persons” who must send a transfer reporting statement upon an in-kind distribution, as was recommended by another commenter.

Please provide any comments to me (202/371-5432 or kgibian@ici.org) no later than the close of business on Thursday, May 20, 2010.

Karen Lau Gibian
Associate Counsel – Tax Law

[Attachment](#)

endnotes

[\[1\]](#) For the Institute’s initial comment letter on the proposed regulations, see 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.

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