

MEMO# 28405

September 25, 2014

Draft ICI Comment Letter on Proposed Money Market Fund Tax Guidance - Comments Requested

[28405]

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TO: ACCOUNTING/TREASURERS COMMITTEE No. 24-14
BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 41-14
BROKER/DEALER ADVISORY COMMITTEE No. 46-14
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 25-14
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 21-14
OPERATIONS COMMITTEE No. 41-14
SEC RULES COMMITTEE No. 35-14
SMALL FUNDS COMMITTEE No. 22-14
TAX COMMITTEE No. 29-14
TRANSFER AGENT ADVISORY COMMITTEE No. 61-14
VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 5-14 RE: DRAFT ICI COMMENT LETTER ON PROPOSED MONEY MARKET FUND TAX GUIDANCE - COMMENTS REQUESTED

Attached is a draft letter to the Treasury Department and the Internal Revenue Service (“IRS”) regarding the proposed regulations and revenue procedure recently released in connection with the Securities and Exchange Commission (“SEC”) rule release on money market funds. [\[1\]](#) The Institute’s letter commends the Treasury Department and the IRS for addressing, in a timely fashion, many of the industry’s concerns raised by the new floating net asset value (“NAV”) requirement. We also offer several recommendations.

Specifically, the draft comment letter recommends three changes to the NAV method set forth in the proposed regulations. First, the NAV method election should be applied on an account-by-account basis. Second, the NAV method should be available for shareholders in stable NAV money market funds that charge a liquidity fee, if such funds are subject to the wash sale rules. Third, the IRS and Treasury should confirm that the “computation period” ends on October 31 for purposes of the excise tax applicable to regulated investment companies (“RICs”).

The Institute also asks the IRS to apply the wash sale exemption in Rev. Proc. 2014-45 to stable NAV funds that impose a liquidity fee.

In addition to the guidance already released, the Institute asks the IRS and Treasury Department to provide guidance regarding the tax implications to funds and shareholders if a stable NAV fund imposes a liquidity fee. First, the government should clarify that the liquidity fee is treated as “paid-in capital” to the money market fund, resulting in no gain or income, and as a reduction in the shareholder’s gross proceeds. We also ask the government to provide that a stable NAV RIC that must pay out excess liquidity fees to avoid “breaking the buck” on the upside will be deemed to have sufficient earnings and profits to make the distribution, to the extent the distribution otherwise would have to be characterized as a return of capital.

Finally, the Institute asks the Treasury Department and the IRS to provide an exception to the diversification requirements under section 817(h) for variable insurance products, so that these funds can continue to invest in RICs that qualify as “government funds” permitted to use a stable NAV under the SEC rules. If the Treasury Department and the IRS do not have the authority to provide such an exception, we ask that the Treasury Department and the IRS consult with the SEC on how to change the SEC rule so that segregated asset accounts of variable insurance products may continue to invest in stable NAV money market funds.

The draft letter also expresses the Institute’s intent to speak at the public hearing on the proposed regulations scheduled for November 19, 2014. A draft outline of the topics to be discussed at the hearing is attached.

Comments on the proposed regulations are due by Monday, October 27, 2014. Therefore, please provide any comments on the draft letter to me (kgibian@ici.org or 202-371-5432) by the close of business on Tuesday, October 14, 2014.

Karen Lau Gibian
Associate Counsel

[Attachment](#)

endnotes

[1] See Institute [Memorandum](#) (28281) dated July 24, 2014.