



TAX ALERT

IRS Releases New Ruling on Wash Sales

The IRS recently issued guidance on a particular type of transaction that results in a “wash sale.” Active investors in securities are probably aware of the rules surrounding wash sales. These rules prevent the investor from realizing a tax loss on a security by selling it and buying back the same (or substantially similar) security within a window of time which begins 30 days prior to the sale date and ends 30 days after the sale date. If a repurchase occurs, the loss is not deductible in that year, but is instead added to the basis of the repurchased shares. Ultimately, the loss generally becomes realized in the year the reacquired shares are sold.

There has long been an unresolved question as to whether a wash sale has occurred if an individual sells a security at loss from a directly held account and within 30 days purchases the same security in his or her Individual Retirement Account (IRA). Some advisors relied on the fact that since the IRA is a separate taxpayer, typically a trust, the transaction should not fall within the scope of wash sales rules.

The IRS recently put an end to any doubt with the release of Revenue Ruling 2008-5. The IRS held that this type of transaction does fall under the wash sale rules since the shares acquired in the IRA were constructively acquired for the benefit of the IRA holder. It further holds that the reacquired stock held in the IRA is not eligible for any increase to its basis related to the wash sale loss.

As a result, in this fact pattern, the disallowed wash sale loss, which is usually temporary in nature, becomes permanent. There is no mechanism to obtain any tax benefit for the wash sale loss in either account once the required shares are sold.

While investors may not be purposefully trying to avoid the wash sales rules by using this strategy, given the popularity of managed investments accounts and multiple investment accounts held at the same or different financial intuitions, the possibility of an inadvertent wash sale is something that account holders and financial advisors should keep in mind.

Please feel free to contact your W&G advisor at 732-846-3000 if you have any questions regarding the new guidance on wash sales.

Any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

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