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## Tracking Tax News, You Need to Know



### IRS Issues Guidance on Application of Wash Sale Rules to MMFs in Light of SEC Changes to MMF Rules

The IRS issued [Revenue Procedure 2023-35](#) (the 2023 Revenue Procedure) to exempt a redemption of money market fund (MMF) shares from being treated as part of a wash sale under Section 1091. The wash sale rules disallow a loss realized from a sale of shares of stock or securities if the taxpayer acquires substantially identical stock or securities within a period beginning 30 days before and ending 30 days after such sale. Many MMF shareholders engage in frequent redemptions and purchases of MMF shares, and a shareholder that realizes a loss on redemption of MMF shares will often acquire shares in that same MMF within 30 days before or after the redemption.

The 2023 Revenue Procedure expands the scope of Revenue Procedure 2014-45 (the 2014 Revenue Procedure), which is now superseded and amplified by the 2023 Revenue Procedure. The IRS issued the 2014 Revenue Procedure in response to changes made to Rule 2a-7 by the U.S. Securities and Exchange Commission (SEC) in 2014. The 2014 changes to Rule 2a-7 required certain MMFs to “float” their net asset value (NAV) (i.e., value their portfolio securities using market-based factors and compute their price per share by rounding the fund’s NAV to a minimum of the fourth decimal place in the case of a fund with a \$1.0000 share price). The 2014 Revenue Procedure provided relief from the application of the wash sale rules for shareholders in floating NAV MMFs not using the “NAV method” of accounting (described below), but it did not extend the relief to stable NAV MMFs (retail and government MMFs). Effective Oct. 2, 2023, the SEC eliminated the link between weekly liquid asset levels and the ability to impose a liquidity fee. As a result, any non-government MMF may impose a liquidity fee based solely on a determination of its board of directors (and government MMFs may opt in to the ability to impose liquidity fees). Issuance of the 2023 Revenue Procedure was important because for a redeeming shareholder of a stable NAV MMF that had not adopted the NAV method, the fee would result in a loss on the redemption, thereby potentially implicating the wash sale rules.

The Treasury Department and the IRS published two sets of guidance in 2014 to mitigate the administrative burdens associated with the application of the wash sale rules to MMF shares. Regulations were issued to allow for a simplified method of accounting for gain or loss on MMF shares (the NAV method). Under the NAV method (applicable to both floating NAV MMFs and stable NAV MMFs), a taxpayer’s gain or loss on shares in an MMF is based on the change in the aggregate value of the taxpayer’s shares during a computation period and the net amount of purchases and redemptions during such period. Because no gain or loss is determined for particular redemptions

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under the NAV method, no redemption implicates the wash sale rules. Additionally, the IRS issued the 2014 Revenue Procedure to provide relief from the wash sale rules for shareholders in floating NAV MMFs not using the NAV method. Because stable NAV MMFs were outside the scope of the 2014 Revenue Procedure, there was no impediment to the application of the wash sale rules to any loss that could result in the redemption of stable NAV MMF shares (such as a loss resulting from the imposition of a liquidity fee). The Treasury Department and the IRS intend the 2023 Revenue Procedure to reduce undue tax compliance burdens resulting from the 2023 changes to Rule 2a-7. Because of the constant value of shares in stable NAV MMFs, the frequency with which many taxpayers continuously acquire and redeem shares in these MMFs, and the administrative and compliance burdens that would flow from applying the sale rules to these transactions, the Treasury Department and the IRS found that it was in the interest of sound tax administration to extend to these shares the relief that the 2014 Revenue Procedure already provided to shares in floating NAV MMFs. As a result, the IRS will not treat as part of a wash sale a redemption of a share in any MMF. The 2023 Revenue Procedure became effective for redemptions of shares in MMFs after Oct. 2, 2023.

### IRS Can Consider Late Requests

The U.S. Tax Court [ruled](#) that the IRS Appeals Office has the authority to grant a collection due process hearing request after a 30-day statutory window. The Tax Court found that the tax code does not treat the deadline as fixed. The U.S. Tax Court's ruling overturned an IRS decision that a California cannabis company was too late to request a hearing on a tax lien because the tax code authorizing the hearings did not expressly prohibit the agency's ability to review a late request.



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