



Tax Alert

Cost Basis Reporting Legislation: Remains Active in New House & Senate Bills

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U.S. House and Senate Consider New Bills with Cost Basis Reporting

Cost basis reporting remains on the legislative front-burner. On Thursday, July 24, Rep. Walz of Minnesota introduced a tax bill in the U.S. House that included cost basis reporting (the Middle Class Tax Fairness Act of 2008, H.R. 6595). On the same day, Sen. Baucus, Chair of the Senate Finance Committee, introduced a so-called tax extenders bill in the U.S. Senate that included cost basis reporting (the Jobs, Energy, Families, and Disaster Relief Act of 2008, S. 3335).

Cost basis reporting had been included as a revenue raiser in an earlier version of the American Housing Rescue and Foreclosure Prevention Act of 2008 (H.R. 3221), also known as the “Housing Act,” that had been passed by the U.S. House on Thursday, May 8. However, it was not included in the version of the Housing Act that was passed by Congress in late July and signed into law by the president on July 30, 2008.

Because cost basis reporting was not included in the version of the Housing Act enacted into law, it must be considered whether the prospects of cost basis reporting becoming law have dimmed. The introduction of two separate tax bills in the House and Senate contemporaneous with the passage of the final version of the Housing Act strongly suggests that cost basis reporting is still viewed as a highly acceptable revenue raiser and under active consideration for enactment into law.

The inclusion of cost basis reporting in these two new bills is consistent with remarks made on May 9, 2008 by a key legislative staffer, who indicated that the chances for passage of cost basis reporting in 2008 were highly likely and suggested that cost basis reporting could be included in other congressional bills if it was not made law as part of the Housing Act.

Details and Latest Proposed Effective Dates

The details of the July 2008 versions of cost basis reporting generally track the details discussed in our February and May 2008 whitepapers. Cost basis reporting as set forth in both tax bills remains essentially unchanged from the version passed by the U.S. House on May 8, 2008.

Under both bills, cost basis reporting would be effective for stocks acquired on or after Jan. 1, 2010; for shares eligible for averaging (such as open-end mutual fund and dividend reinvestment-plan shares) it would apply to shares acquired on or after Jan. 1, 2011, and for debt, options and other instruments it would apply for such securities acquired on or after Jan. 1, 2012.

These are the same effective dates as set forth in the version of cost basis reporting that was passed by the U.S. House on May 8, 2008.

Conclusion

Given the fact that cost basis reporting was included as a revenue raiser in two separate tax bills introduced in July 2008—and the provisions of the cost basis reporting essentially track the May 2008 version—the likelihood of enactment of cost basis reporting remains strong. It is unclear whether either tax bill will ultimately be passed before the end of this year, and Senate republicans and the president have indicated their objections to various provisions contained in the bills. However, the continued inclusion of cost basis reporting in a number of recent tax bills is significant and could be interpreted as suggesting that if cost basis reporting is not enacted into law this year, it could be enacted sometime next year. Note that the proposed effective dates remain unchanged from the May 2008 version. The effective dates will likely be pushed back if the proposal is not enacted in the next six months. However, given the history of the proposal, brokers are likely to be given less than two years to prepare under any revised effective date.

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