



IRS Notice: Comments On The Cost Basis Reporting Law – An Update For Brokers & Custodians

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Kirk Laughlin covers the information technology space as a writer, moderator and public speaker. He has served in a variety of editorial leadership roles during his 18 year career in tech journalism. Prior to working with American Banker Group, he was Editorial Director at Ziff Davis Media events which included developing content for leading Ziff brands - EWeek and CIO Insight. At Ziff Davis, Laughlin covered Web 2.0, enterprise mobility, financial industry technologies, storage, security, voice over IP, unified communications and business intelligence.




IRS Notice: Comments On The Cost Basis Reporting Law – An Update For Brokers & Custodians

Stevie D. Conlon

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Cost basis reporting thought leader, Stevie D. Conlon is Tax Director with GainsKeeper[®], a part of Wolters Kluwer Financial Services. Ms. Conlon authored Wolters Kluwer Financial Services' comments on IRS Notice 2009-17, its comments to the Senate Finance Committee staff on an earlier version of cost basis reporting, as well as numerous articles on the law including: "New Cost Basis Reporting Law Creates Challenges for Brokers," *Journal of Taxation of Financial Products*, (Jan. 2009). She is a former Chair of the American Bar Association Tax Section Financial Transactions Committee, a former Tax Section Council Director, former Chair of the Chicago Bar Association Federal Taxation Committee and a Fellow of the American College of Tax Counsel. An author of a tax law treatise and over 35 tax articles, Ms. Conlon has extensive experience regarding the taxation of financial products and corporate actions, was previously a tax partner in national law firms, is a member of the New York and Illinois Bars, and is a Certified Public Accountant (CPA).

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Dale S. Collinson, Esq., is a Director in the Washington National Tax Practice of KPMG. Previously, he was Special Counsel of the Financial Institutions & Products Office of Chief Counsel of the Internal Revenue Service. Mr. Collinson is a member of the American Bar Association, the District of Columbia Bar Association, the New York State Bar Association, the Association of the Bar of the City of New York, and the National Association of Bond Lawyers. Additionally, he is a member ex officio of the Tax Section Executive Committee and a former Vice Chair, Committee on Taxation of Corporations, Association of the Bar of the City of New York. He was also a former chair of the ABA Tax Section subcommittees on Housing and Federally Guaranteed Obligations, Committee on Tax Exempt Financing and was Chair of the Committees on Personal Income and Tax Exempt Bonds, NYSBA Tax Section, and Chair of the Tax Section. He is a Fellow of the American College of Tax Counsel.

Steven Rosenthal

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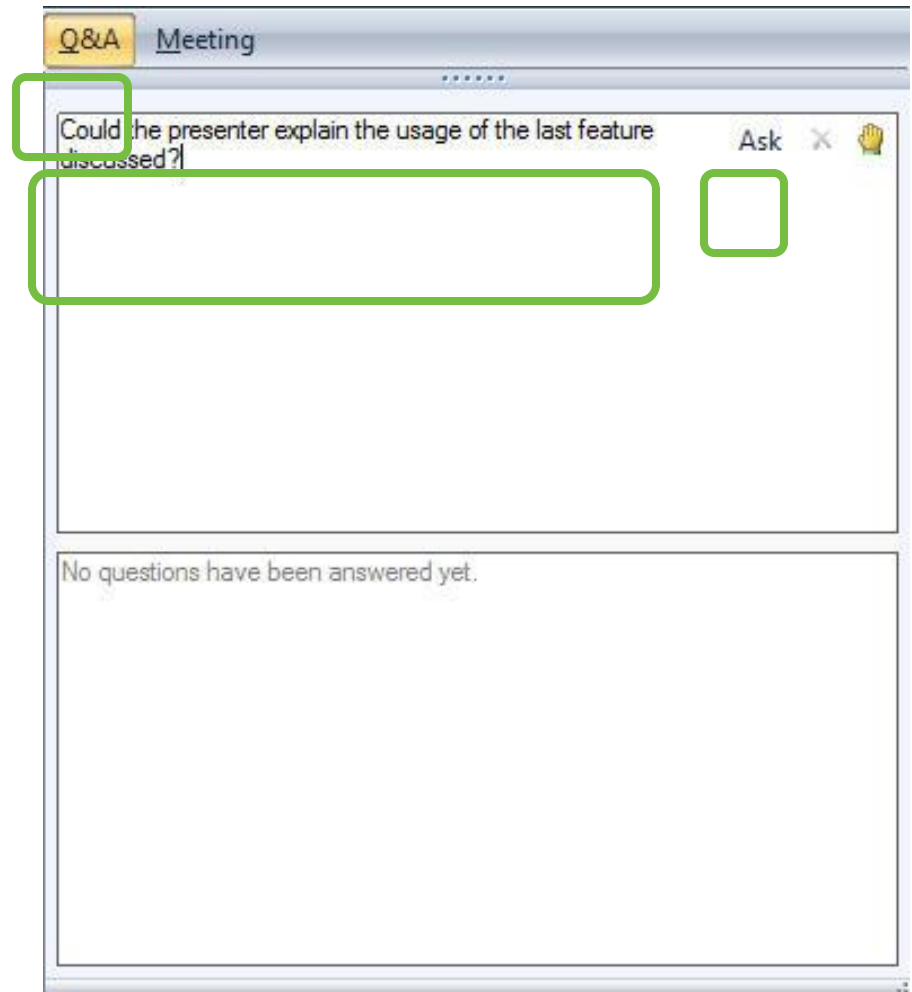
Steven Rosenthal is a partner at Ropes & Gray in the Tax & Benefits department. Steve specializes in the taxation of investments and financial transactions. In the 1990s, Steve was Legislation Counsel with the Joint Committee on Taxation. His work on the Committee included the taxation of financial institutions (including RICs, REITs, and REMICs) and financial products, including derivative contracts, capital gains, and similar subjects. Steve is currently a Steering Committee member and the former Chair of the Taxation Section of the District of Columbia Bar; he is the former Chair of the Investment Committee of the Taxation Section of the American Bar Association; and a member of the Advisory committee for the Investment Company Institute.

Steve is listed as a top tax practitioner in current (and prior) editions of Chambers USA and in the International Tax Review.

To Ask a Question:

1. Click Q&A pane
2. Type question in the *Type a question for the presenter* field
3. Click the Ask button

Use the scroll button to scroll to your answer if necessary





Wolters Kluwer
Financial Services

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Stevie D. Conlon, GainsKeeper
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Gray

May 13, 2009 - U.S.A.

Cost Basis Reporting is Approaching

- Staggered effective dates:
 - Stock—Jan. 1, 2011
 - Mutual fund shares & DRIP shares—Jan. 1, 2012
 - Fixed income & Options—Jan. 1, 2013
- Securities covered in later effective dates require more preparation due to greater tax complexities
- Difficult to delay effective date
 - Unlike WHFIT, deadline is statutory, not regulatory
 - Cost basis scored as a revenue raiser based on 2011 effective date

Important Details Are Needed

- Law more likely to apply due to broad definition of brokers and applicable persons for transfer reporting
- Support for customer selection of multiple lot relief methods
- Information that must be provided when securities are transferred from broker to broker
- Classification of averaging eligible DRIP stock
- Determining who are brokers or transferors obligated to report under Sec. 6045 or Sec. 6045A
- Treatment of hybrid, foreign and privately placed securities
- Corporate action reporting & delivery of info to brokers

IRS Notice 2009-17

- IRS requested public comments on 36 issues relating to cost basis law by March 2, 2009
- Released Feb. 6, 2009
- Indicates that IRS is actively working on guidance
- Indicates that IRS understands that guidance needs to be issued soon in order for systems and software to be updated in time to meet January 1, 2011 deadline
- The request for early comments is unusual

Topics Covered in Notice 2009-17

- Applicability of reporting requirements
- Basis method elections
- Dividend reinvestment plans
- Reconciliation with customer reporting
- Special rules & mechanical issues
- Transfer reporting
- Issuer reporting
- Broker practices & procedures

Comments Received

- IRS releases comments received to the public
- 25 letters received so far
- Tracking down all the letters might require a tax publishing service
 - All comment letters released are available at www.costbasisreporting.com
- Comments received from industry associations, vendors, CPAs, enrolled IRS agents and individuals
- Wolters Kluwer submitted a detailed comment letter on March 16, 2009
 - A copy of our comment letter is available to participants at www.costbasisreporting.com or upon request

Key Comments

- Comments from IRPAC (Information Reporting Program Advisory Committee)
- Comments from Industry Associations
 - Securities Industry and Financial Markets Association
 - Investment Company Institute
 - Securities Transfer Association
 - Financial Information Forum
- Comments from Vendors
 - Wolters Kluwer Financial Services
 - Broadridge
 - SunGard
- Comments from Brokers, Individuals & Other Interested Persons
 - Wells Fargo

Applicability of Reporting Req'mts

- Who is a “broker” subject to reporting should be broad and based on current standards
- An “applicable person” subject to transfer reporting should be broadly defined to provide brokers with needed cost basis information
- Security classification should be based on issuer’s classification
- Hybrid security reporting should be deferred

Basis Method Elections

- Customer selection before first trade
- Does broker select averaging method; can a customer elect out? Restatement of lots concern
- Double category averaging should be eliminated
- Inclusion of pre-effective date cost basis data if single account election is made; can only some of the data be included; should a lower standard apply to pre-effective date data

DRIP Plans

- Broker offered DRIP plans versus issuer offered DRIP plans
- STA concerns regarding the exclusion of physical shares from eligibility for averaging
- What if a customer has some eligible shares in a DRIP plan and holds other shares that are not in the plan
- Plans other than DRIP plans (IRPAC)

Reconciliation of Customer/Broker Reporting

- Benefit of reconciliation
- Reasons for differences
- Need for increased detail and better explanations to understand the differences
- Revisions on Schedule D
- Likely difficulties with options reporting

Special Rules & Mechanical Issues

- *De minimis* for DRIP triggered wash sales (SIFMA)
- *De minimis* for post year-end share purchase triggering wash sales (ICI)
- Options & debt- later effective date and comments deferred
- Short sales - not a lot of comments
- Gift & death not included but comments on optional inclusion
- Concerns regarding return of capital

Transfer Reporting

- Varied lists of info that should be included
- Concerns regarding pending corporate actions
- Whether information should be provided if non-covered securities are transferred

Issuer Reporting

- Need for tax opinion and details
- Website and corporate action provider dissemination of info
- Concerns regarding foreign securities
- Concerns regarding privately-placed securities

Broker Practices & Procedures

- Concerns regarding brokers obligations to review data received
- Concerns regarding missing or corrected data
- Concerns regarding data for non-covered securities (including data received from individuals)
- Request for penalty relief

IRPAC Comment Letter - Add'l Items

- Focus on 1099-B form design - particularly relevant because the purpose of IRPAC is to provide a forum for discussion of information reporting issues between IRS & public
- Focus on problems with identifying S corporations for issuing 1099s to S corps
- Concerns regarding IRS Reg - 14386-07 and the computation of basis of corporate stock under Sections 301, 302, 304, etc.
- Focus on guidelines for filing corrected 1099s

Potential Compliance Impact and Conclusion

- New law is complex and there is a lot of work to do — valuable comments have been submitted that indicate brokers are already assessing the complexities of complying with the new law
- 2011 effective date is for real and not likely to be delayed by regulation
- IRS has indicated that they are meeting weekly to develop guidance
- Hope that guidance issued quickly but likely piecemeal with revisions due to complexity

Additional Resources

- Visit www.costbasisreporting.com to:
 - Review public comments to the IRS
 - Read the whitepaper, “The New Cost Basis Reporting Law: An Overview”
 - Read the law

Q&A

- Answers to some of the additional questions from today's event will be posted at www.costbasisreporting.com

Considerations

- GainsKeeper does not provide tax advice. You should consult your own tax advisers and they (and not GainsKeeper) are solely responsible for any tax, tax penalties or interest related to their tax returns
- GainsKeeper is a tool to assist taxpayers but does not cover a variety of specific tax rules or taxpayer circumstances and facts