INVESTMENT COMPANY INSTITUTE

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Jeanne Ross
Attorney Adviser (Tax Policy)
U.S. Department of the Treasury
1500 Pennsylvania Avenue. N.W.
Room 1041B
Washington, DC 20220

RE: *Reporting Holding Period for Gifted Shares that Previously were Inherited*

Dear Jeanne:

Thank you again for the time that you and your colleagues spent yesterday with the Investment Company Institute[1] discussing the transfer statement reporting requirements, under the proposed cost basis reporting regulations, for gifted shares that previously were inherited. Based upon conversations with estate and gift tax experts, the industry understands that the beneficiary's holding period in inherited shares – which is long-term under Code section 1223(9) – carries over in all cases if the beneficiary transfers the shares by gift. Thus, the donee's holding period in the gifted shares that previously were inherited in all cases will be long-term regardless, among other things, of the period between the decedent's death and the donee's sale of the securities.

One approach that the industry contemplates for ensuring that holding periods are reported accurately will be to provide separate transfer reporting codes for shares that are (1) inherited; (2) gifted; and (3) inherited and then gifted. This coding will ensure that transfer statement recipients of gifted shares that previously were inherited will report the holding period on a subsequent disposition as long-term in all cases rather than determine the holding period based upon the date that the decedent died.

To simplify transfer statement reporting, we suggest one clarification to the requirements in Proposed Treas. Reg. section 1.6045A-1(b)(1)(vii). This section, as you know, requires the transfer statement to include: (1) the security's total adjusted basis; (2) the security's original acquisition date;

[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $11.42 trillion and serve almost 90 million shareholders.

and (3) the date for computing whether any gain or loss with respect to the security is long-term or short-term upon the subsequent sale. In the case of both inherited shares and gifted shares that previously were inherited, the date provided by this third requirement must be more than one year before the decedent's death. Transferors could meet this requirement, for example, by hard-coding for all inherited shares a date that is one year and one day before the date of death. An alternative approach, which may not be permitted expressly by the proposed regulations, would be to meet the third requirement by noting in the transfer statement that the shares were inherited (whether received directly from the decedent or by gift from the beneficiary). This alternative approach would prevent transferors from calculating a "manufactured" year-and-a-day date.

Please feel free to contact me at your convenience if you would like to discuss this matter further. Once again, Jeanne, we appreciate the attention that you, Steve, and your many colleagues have dedicated to maximizing the administrability of the cost basis reporting requirements. The gifted and inherited share default rules that we have suggested in our comment letters,[2] as we mentioned yesterday, are essential for cost basis reporting systems to be built and maintained efficiently and effectively.

Sincerely,

/s/ Keith Lawson

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Senior Counsel – Tax Law

cc: Donna Crisalli
Christopher Kane
Stephen Schaeffer

[2] *See, e.g.,* footnote 39 of the Institute's February 8, 2010, in which we urged a default rule that would permit half of the shares in each lot held jointly to receive a basis equal to fair market value upon the death of the first joint owner; the alternative approach – under which the cost basis of *each* share would be the sum of half of the date-of-death fair market value of each share and half of the original (purchase price) of each share – would require extensive systems integration and programming.