Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also: Part I, §§ 1091; 1.446-7.)

Rev. Proc. 2023-35

SECTION 1. PURPOSE

This revenue procedure amplifies and supersedes Rev. Proc. 2014-45, 2014-34 I.R.B. 388, which describes circumstances in which the Internal Revenue Service (IRS) will not treat a redemption of shares in a money market fund (MMF) as part of a wash sale for purposes of section 1091 of the Internal Revenue Code (Code).[1] This revenue procedure expands the scope of Rev. Proc. 2014-45 in response to final rules adopted by the Securities and Exchange Commission (SEC) on July 12, 2023, which amend Rule 2a-7 under the Investment Company Act of 1940 (1940 Act), 17 CFR § 270.2a-7 (2023 Amendments). *See Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N-*

[1] Unless otherwise specified, all “Section” or “§” references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

*CSR and Form N-1A, Investment Company Act Release No. 34959* (July 12, 2023), 88 F.R. 51404 (Aug. 3, 2023) (2023 SEC Release).

SECTION 2. BACKGROUND

.01 *Money Market Funds*

(1) An investment company that is registered under the 1940 Act and that meets the requirements of Rule 2a-7 under the 1940 Act is permitted to hold itself out as an MMF. MMFs have historically sought to keep stable (typically at $1.00) the prices at which their shares are distributed, redeemed, and repurchased. The securities that Rule 2a-7 permits an MMF to hold generally result in no more than minimal fluctuations in the value of an MMF's portfolio as determined on a per-share basis.

(2) Prior to amendments in 2014, Rule 2a-7 generally permitted an MMF to compute its price per share by using either or both of (a) the amortized cost method of valuation, and (b) the penny-rounding method of pricing. Under the amortized cost method of valuation, an MMF's net asset value per share (NAV) was determined by valuing the fund's portfolio securities at their acquisition cost, adjusted for amortization of premium or accretion of discount. Under the penny-rounding method of pricing, an MMF's NAV was rounded to the nearest one percent in computing the MMF's share price. These methods were intended to enable MMFs to maintain stable share prices under most circumstances.

(3) Final rules adopted by the SEC in 2014 generally bar the use of the amortized cost method of valuation and the use of the penny-rounding method of pricing, except by government MMFs and retail MMFs[2] (2014 Amendments). *See Money Market Fund*

[2] A government MMF is an MMF that "invests 99.5 percent or more of its total assets in cash, government

*Reform; Amendments to Form PF*, *Investment Company Act Release No. 31166* (July 23, 2014), 79 F.R. 47735 (Aug. 14, 2014). An MMF that is neither a government MMF nor a retail MMF must value its portfolio securities using market-based factors and compute its price per share by rounding the fund's NAV to a minimum of the fourth decimal place (or, for an MMF with a share price other than $1.0000, an equivalent or greater level of precision). 17 CFR § 270.2a–7(c)(1)(ii). An MMF that uses market factors to value its securities and uses basis point rounding to price its shares for purposes of distribution, redemption, and repurchase (floating-NAV MMF) has a share price that is likely to change frequently, but usually within a narrow range because of the limited types of investments that an MMF may hold. A government MMF or retail MMF that continues to use the amortized cost method and penny rounding (stable-NAV MMF) can maintain a constant share price under most market conditions.

(4) The fact that stable-NAV MMFs maintain a constant share price simplifies the taxation of their shareholders. Because shareholders acquire shares from the fund for $1.00/share, have bases of $1.00/share, and redeem those shares for the same amount, they realize no gain or loss on those redemptions. On the other hand, shareholders in floating-NAV MMFs typically redeem shares for amounts slightly different from the amounts for which those shares were issued to them. Section 2.02(4) and (5) of this revenue procedure describe prior guidance intended to reduce tax compliance burdens associated with gains and losses on shares in floating-NAV MMFs.

(5) The 2014 Amendments also *permitted* an MMF to institute a liquidity fee if

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securities, and/or repurchase agreements that are collateralized fully." 17 CFR § 270.2a–7(a)(14). A retail MMF is an MMF that "has policies and procedures reasonably designed to limit all beneficial owners of the fund to natural persons." 17 CFR § 270.2a–7(a)(21).

certain liquid assets of the MMF fall below a specified percentage of the MMF's total assets. If those liquid assets fall below another (lower) specified percentage, the 2014 Amendments generally *required* the MMF to institute a liquidity fee, unless the MMF's board of directors (including a majority of the directors who are not interested persons of the fund) determines that imposing such a fee is not in the best interests of the MMF. When an MMF has a liquidity fee in effect, the fee reduces the proceeds received by all redeeming shareholders. Government MMFs were generally exempt from the requirements of the liquidity fee provisions but were permitted to institute liquidity fees on the same terms.

.02 *Wash Sale Rules*

(1) Section 1091(a) disallows a loss realized by a taxpayer on a sale or other disposition of shares of stock or securities if, within a period beginning 30 days before and ending 30 days after the date of such sale or disposition, the taxpayer acquires (by purchase or by an exchange on which the entire amount of gain or loss is recognized by law), or enters into a contract or option to so acquire, substantially identical stock or securities (unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business).

(2) If a taxpayer acquired property and that acquisition resulted in the disallowance of a loss under section 1091(a), then under section 1091(d), the taxpayer's basis in the property so acquired equals the basis of the stock or securities disposed of at a loss, increased or decreased to take into account any difference between the price at which the replacement property was acquired and the price at which the original stock or securities were disposed of.

(3) As mentioned above, a shareholder may realize a loss upon a redemption of shares in an MMF in certain circumstances. For example, the share price of a floating-NAV fund may have declined below the price at which the shareholder acquired shares, or an MMF may impose a liquidity fee on redemptions. Because many MMF shareholders engage in frequent redemptions and purchases of MMF shares (for example, because of sweep arrangements and automatic reinvestments of distributions), a shareholder that realizes a loss on a redemption of MMF shares will often acquire shares in that MMF within 30 days before or after the redemption.

(4) When the 2014 Amendments required certain MMFs to become floating-NAV MMFs, the Department of the Treasury (Treasury Department) and the IRS published guidance to mitigate in two ways the administrative burdens associated with gains and losses on those MMF shares, including those associated with wash sales.

(a) First, § 1.446-7 provides a simplified method of accounting for gain or loss on MMF shares (NAV method). Under the NAV method, 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 on the net amount of purchases and redemptions during the computation period. Because no gain or loss is determined for particular redemptions under the NAV method, no redemption implicates the wash sale rules. The NAV method applies to floating-NAV MMFs and stable-NAV MMFs. *See* § 1.446-7(a).

(b) Second, Rev. Proc. 2014-45 provided that the IRS will not treat a redemption of a share of a floating-NAV MMF as a part of a wash sale. Thus, Rev. Proc. 2014-45 provided relief from the wash sale rules for shareholders in floating-NAV MMFs not using the NAV method, but it did not extend the relief to stable-NAV MMFs.

.03 *2023 Amendments*

(1) The 2023 Amendments eliminate from Rule 2a-7 any link between an MMF's liquid assets and the MMF's ability (or obligation) to institute liquidity fees. Under Rule 2a-7(c)(2)(i), as amended, any MMF other than a government MMF must institute a liquidity fee (not to exceed two percent of the value of the shares redeemed) if the MMF's board of directors, including a majority of the directors who are not interested persons of the MMF, determines that a liquidity fee is in the best interests of the MMF.[3] A government MMF is permitted to impose liquidity fees on the same terms. The SEC intends to increase the resilience of MMFs by providing a mechanism to allocate liquidity costs to redeeming investors in times of stress while avoiding incentives for preemptive redemptions associated with liquidity fee triggers based on liquidity levels or other criteria investors might predict. *See* 2023 SEC Release, 88 F.R. at 51411.

(2) The provisions of the 2023 Amendments relating to liquidity fees are effective on October 2, 2023. These amendments provide a six-month compliance date for the discretionary liquidity fee provisions described in section 2.03(1) of this revenue procedure. Affected MMFs, however, including government MMFs, may begin to rely on those provisions after the October 2, 2023, effective date. *See* 2023 SEC Release, 88 F.R. at 51452.

(3) Thus, after October 2, 2023, *any* MMF may impose a liquidity fee based solely on a determination of its board of directors. Thus, in some situations, the board of a

[3] The 2023 Amendments also require certain MMFs to impose liquidity fees based on levels of net redemptions. The MMFs subject to that rule, institutional prime MMFs and institutional tax-exempt MMFs, are floating-NAV MMFs. Accordingly, Rev. Proc. 2014-45 currently provides wash sale relief for transactions in their shares.

stable-NAV MMF may determine that such a fee is in the best interests of the MMF and so impose it on redemptions of the MMF's shares. For a redeeming shareholder that has not adopted the NAV method (which is the case for almost all shareholders in stable-NAV MMFs), the fee will result in a loss on the redemption. Moreover, because stable-NAV MMFs are outside the scope of Rev. Proc. 2014-45, there is no current impediment to the application of the section 1091 wash sale rules to that loss.

(4) The Treasury Department and the IRS intend this revenue procedure to reduce undue tax compliance burdens resulting from the 2023 Amendments. 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 section 1091 to these transactions, it is in the interest of sound tax administration to extend to these shares the relief that Rev. Proc. 2014-45 already provides to shares in floating-NAV MMFs. Accordingly, the IRS will not treat as part of a wash sale a redemption of a share in *any* MMF.

SECTION 3. SCOPE

This revenue procedure applies to a redemption of one or more shares in an MMF.

SECTION 4. APPLICATION

If a redemption is within the scope of section 3 of this revenue procedure and results in a loss, the IRS will not treat the redemption as part of a wash sale. Therefore, section 1091(a) will not disallow the deduction for the resulting loss in the year realized and section 1091(d) will not cause the basis of any property to be determined by reference to the basis of the redeemed shares.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2014-45 is amplified and superseded for redemptions of shares in MMFs after October 2, 2023.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for redemptions of shares in MMFs after October 2, 2023.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Vanessa Mekpong of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Vanessa Mekpong on (202) 317-6842 (not a toll-free number).