

## Legal Alert: IRS Rules on Wash Sales Involving IRAs

January 2, 2008

On January 22, 2008, the Internal Revenue Service will publish a revenue ruling addressing “wash sales” involving IRAs and Roth IRAs. ([Click here for a copy.](#)) Revenue Ruling 2008-5 considers (i) the sale by an individual of stock or securities for a loss, and (ii) the purchase of substantially identical stock or securities in the individual’s IRA or Roth IRA within 30 days before or after the sale. The sale and the purchase are executed with different, unrelated market participants. The Service ruled that Code section 1091 – the “wash sale” provision – applies to disallow a deduction for the loss recognized by the individual on the sale (assuming the individual is not a dealer in stocks or securities) and that the individual’s basis in the IRA or Roth IRA is not increased by reason of section 1091(d). Relying on *Security First National Bank of Los Angeles*, 28 BTA 289 (1933), which considered a wash sale involving a grantor trust controlled by the taxpayer, the Service reasoned that even though the IRA or Roth IRA is a tax-exempt trust, the individual should be treated as having acquired the newly purchased securities in order to prevent “easy evasion” of section 1091. The ruling thus constitutes a significant extension of the holding in *Security First*.

It appears that the tax recordkeeping and reporting responsibilities of IRA trustees and custodians should not be affected by the ruling.



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