



August 27, 2018

Ms. Carol Weiser  
Deputy Benefits Tax Counsel  
U.S. Department of the Treasury  
1500 Pennsylvania Ave, NW  
Washington, DC 20220

Mr. William Evans  
Attorney-Advisor, Office of Benefits Tax Counsel  
U.S. Department of the Treasury  
1500 Pennsylvania Ave, NW  
Washington, DC 20220

Ms. Victoria Judson  
Associate Chief Counsel  
Tax Exempt and Government Entities  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Ms. Cynthia Van Bogaert  
Associate Chief Counsel  
Tax Exempt and Government Entities  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Mr. Stephen Tackney  
Deputy Associate Chief Counsel  
Employee Benefits  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

**Re: Revenue Ruling 2018-17 Withholding and Reporting with Respect to Payments from IRAs to State Unclaimed Property Funds**

Ladies and Gentlemen,

The Securities Industry and Financial Markets Association ("SIFMA")<sup>1</sup> and the Investment Company Institute ("ICI")<sup>2</sup> appreciate your willingness to meet with us to discuss Revenue Ruling 2018-17 (the "Ruling"), which will impose withholding and reporting requirements on our members, among

---

<sup>1</sup> SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

<sup>2</sup> ICI is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of \$22.0 trillion in the United States, and more than 100 million US shareholders.

others, when they transfer a shareholder's Individual Retirement Account ("IRA") to a state, pursuant to that state's unclaimed property law. Members of SIFMA and ICI are concerned about the impact and unintended consequences that this Ruling will have on savers, broker dealers, and investment companies (mutual funds). In anticipation of this meeting, we are submitting this letter to highlight some of these concerns.

According to the Ruling, when the account of an IRA owner is transferred to a state under that state's abandoned property law, the account becomes subject to federal income tax withholding under §3405 of the Internal Revenue Code ("IRC") and Form 1099-R reporting under §408 of the IRC. Absent further guidance from the Treasury and Internal Revenue Service ("IRS"), this interpretation raises several concerns for our member firms that maintain IRAs on behalf of their clients and shareholders who are saving for retirement. These include the Ruling's interaction with federal securities laws, the harm inflicted on IRA owners who may be victims of the states' aggressive escheatment practices, and operational implementation.

The main concern for broker dealers and investment companies in seeking to comply with the Ruling is that, when an IRA consists of securities rather than cash, as is often the case, compliance with the Ruling would require the mutual fund or broker dealer that maintains the IRA to liquidate some of the securities in the IRA to satisfy the withholding requirement. However, this very likely would run afoul of federal securities laws that are designed to protect investors. These laws generally preclude holders of securities accounts from liquidating a customer's securities – including those in an IRA – without either prior authorization from the owner or pursuant to a court order where the account holder has been provided due process. The states' abandoned property laws are not an impediment to our members compliance with the federal securities laws because, when an IRA is deemed abandoned, the entirety of the account (i.e., the securities therein) is transferred to the state pursuant to the state's abandoned property law. Typically, the transferred account is held in trust by the state for the owner for a period of time (as provided for in the state's law) and then liquidated *by the state*. When the state liquidates the securities contained in an IRA, it then holds the proceeds in trust for the owner – or the owner's beneficiary if the owner is deceased – should the owner ever claim the property.

In other words, our members currently do not liquidate securities in these accounts prior to their escheatment. Aside from our legal concerns with the Ruling requiring liquidation of securities in these accounts *prior* to escheating them under state law, we are very concerned that such liquidation will exacerbate the harm inflicted on the owners of these accounts under the states' escheatment laws. Specifically, states generally return only the liquidated value of securities on the date sold. Often, the owner or their estate loses any investment value in the securities between the date of liquidation and when the property is claimed from the state. In some cases, this investment value can be substantial.

This adverse harm should not be underestimated. This is because, over the past few years, states have been revising their laws to escheat assets based on an "no contact" trigger for deeming the account abandoned. Under this trigger, the owner of the account can be alive and well and living and receiving mail at the address of record on the account but, because the owner has not affirmatively contacted the institution holding the account for a period typically as short as three years, the state deems the account abandoned and requires its escheatment. These laws, coupled with the aggressive tactics used by the contingent-fee auditors the states retain to audit for compliance with their laws, adversely impact the property rights of all shareholders – including those with IRAs – without providing such shareholders due process to protect their property.

While SIFMA and ICI and other institutions subject to the IRC and the federal securities laws are concerned with how we can satisfy our legal obligations under both laws, we are also concerned with the Ruling exacerbating the harm to IRA holders when an account prematurely escheats to a state without due process to the owner of the account. Even assuming *arguendo* that compliance with the IRC and the federal securities laws is possible, which we question, the Ruling's fast-approaching compliance date of January 1, 2019 seems wholly unrealistic. This is because the Ruling will significantly alter the long-standing systems our members currently have in place to process the transfer of these accounts under the states' laws and comply with tax withholding requirements. We note, for example, that the current Form 1099-R does not appear to accommodate compliance with the Ruling. This is but one of the many significant procedural and operational challenges that will impact our members' compliance with the Ruling.

SIFMA and ICI are not alone in our concerns with the Ruling. Other institutions and firms that maintain IRAs and assist holders of these in complying with the states' laws share our concerns. We have encouraged them, under the auspices of the Holders Coalition, which represents the interests of these institutions and firms, to share their concerns with you as well and to join us in working with you on these issues.

SIFMA and ICI, and our colleagues in the Holders Coalition, very much appreciate your consideration of our collective concerns. We look forward to meeting with you to discuss these issues in more detail.

Please do not hesitate to contact Lisa Bleier at (202) 962-7329 or [lbleier@sifma.org](mailto:lbleier@sifma.org), Tamara Salmon at (202) 326-5825 or [tamara@ici.org](mailto:tamara@ici.org), or Jillian Enoch at (202) 962-7339 or [jenoeh@sifma.org](mailto:jenoeh@sifma.org).

Sincerely,



Lisa J. Bleier  
Managing Director and Associate General Counsel  
SIFMA



Tamara Salmon  
Senior Associate Counsel  
ICI