

Federal Reserve Bank of San Francisco
101 Market Street, San Francisco, California 94105

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To State Member Banks, Bank
Holding Companies, Financial Holding
Companies, Savings and Loan Holding Companies,
and Foreign Banking Offices
in the Twelfth Federal Reserve District

Federal Banking Regulators Seek Comment on Joint Supplemental Guidance on Income Tax Allocation Agreements

Federal banking regulators are seeking comment on supplemental guidance on income tax allocation agreements involving holding companies and insured depository institutions. An aim of the proposed guidance is to reduce confusion regarding ownership of any tax refunds.

In 1998, federal banking regulators issued an interagency policy statement on income tax allocation, which stated that a holding company that receives a tax refund from a taxing authority obtains these funds as agent for its subsidiary insured depository institutions and other affiliates. The proposed guidance would supplement the 1998 policy statement by instructing insured depository institutions and their holding companies to review their tax allocation agreements to ensure the agreements expressly acknowledge that the holding company receives any tax refunds as an agent. In addition, all banking organizations would be asked to insert specific language in their tax allocation agreements to further clarify tax refund ownership.

The proposed addendum would also clarify how sections 23A and 23B of the Federal Reserve Act, which establish certain restrictions on and requirements for transactions between depository institutions and their affiliates, apply to tax allocation agreements.

The federal banking regulators are proposing the guidance in response to disputes between holding companies in bankruptcy and failed depository institutions regarding ownership of tax refunds. Courts have come to differing conclusions regarding the ownership of tax refunds between holding companies and depository institutions based on their interpretation of language in tax allocation agreements.

The Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure can be found at www.gpo.gov/fdsys/pkg/FR-1998-11-23/pdf/98-31179.pdf. Comments on the proposed guidance should be provided on or before January 21, 2014.

Additional Information

All circulars and documents are available on the Internet through the Federal Reserve Bank of San Francisco's website, at <http://www.frbsf.org/banking-supervision/publications/district-circular-letters/>.

For additional information, please contact:

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Attachment: [Proposed Addendum to the Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure](#)