

Client Alert

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Non-Securities Dealer Corporations Have Until September 30, 2015 to Comply with Investment Capital Identification Procedures for New York Corporate Tax Purposes

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This is an important reminder that non-securities dealer corporations subject to New York State and City corporate tax have until September 30, 2015 to identify stock as investment capital in order for the stock to qualify as investment capital and the income to qualify as exempt investment income.

Under recent New York State and City corporate tax reform legislation — effective for tax years beginning on or after January 1, 2015 — the definition of investment capital was narrowed, but for the first time investment income was made entirely exempt from corporate tax. This past Spring, further legislation was enacted imposing a new five-part test for stock to qualify as investment capital. One of the new criteria for qualification is that the stock must be “clearly identified” in the taxpayer’s records as being held for investment.

For all corporations subject to New York State and City corporate tax other than securities dealers — which have their own separate rules for identifying stock — transition rules have been implemented for identifying items of investment capital *before* October 1, 2015. This identification can be done either by recording the stock in a separate account in the taxpayer’s records maintained solely for investment capital purposes, or by holding the stock in a separate depository account maintained by a clearing company. See *Technical Memorandum*, TSB-M-15(4)C, (5)I, “Investment Capital Identification Requirements for Article 9-A Taxpayers” (N.Y.S. Dep’t of Taxation & Fin., July 7, 2015); *Finance Memorandum*, No. 15-3, “Investment Capital Identification Requirements for the Corporate Tax of 2015” (N.Y.C. Dep’t of Fin., July 17, 2015).

For tax years beginning after 2014, non-dealer corporations subject to New York State and City corporate tax that seek investment capital treatment for stock acquired before October 1, 2015, must comply with the new identification procedures for that stock by the close of September 30, 2015, or else risk foregoing the exemption for investment income with respect to that stock. For stock acquired on or after October 1, 2015, such identification will need to be made before the close of the day on which the stock is acquired.

Please contact Irwin M. Slomka or Kara M. Kraman if you have any questions.

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