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Tax Transactions Practice

US Tax Guidance Issued on the Temporary Treasury Program to Support Money Market Funds

On September 22, 2008, the Internal Revenue Service (the "Service") issued Notice 2008-81 (the "Notice") regarding the temporary Treasury program to support money market funds that was announced by the United States Department of the Treasury on September 19, 2008 (the "Program"). The Notice provides administrative relief and assurance that participation in the Program will not impair the ability of certain money market funds to pay tax-exempt dividends.

The Program is being offered to money market funds that are regulated under the Security and Exchange Commission's Rule 2a-7, under the Investment Company Act of 1940, in response to credit market instability; it is intended to enable the money market funds to maintain stable \$1.00 per share net asset values by temporarily making available certain funds from the Treasury Department's Exchange Stabilization Fund. The Program is available to money market funds holding taxable assets as well as to money market funds holding assets that include state and local governmental debt obligations the interest on which is excludable from gross income under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code").

Generally, money market funds that hold a sufficient portion of their total assets in tax-exempt bonds are eligible to pay tax-exempt dividends to their shareholders under Section 852(b)(5) of the Code. However, the interest payable on state or local governmental bonds is generally not excludable from gross income, and thus the bonds are not tax-exempt, if they are federally guaranteed. Consequently, a money market fund that holds federally guaranteed bonds may not be eligible to pay tax-exempt dividends. A bond is considered to be federally guaranteed if:

- The payment of principal or interest with respect to such bond is guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof);
- Such bond is issued as part of an issue and 5 percent or more of the proceeds of such issue is to be used in making loans the principal or interest with respect to which are to be guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof), or is to be invested (directly or indirectly) in federally insured deposits or accounts; or
- The payment of principal or interest on such bond is otherwise indirectly guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof).

The Notice states that the Service "will not assert that the Program causes any violation of the restrictions against Federal guarantees of tax-exempt bonds under § 149(b) with respect to any tax-exempt bond assets held by tax-exempt money market funds participating in the Program." It also states that the Service "will not assert that the Program impairs the ability either of a money market fund participating in the Program to designate exempt interest dividends under § 852(b)(5) or of the shareholders of such a fund to claim the benefits of tax exemption with respect to such exempt interest dividends under § 852(b)(5)(B)."

The Notice does not contain any specific rationale for the positions taken by the Service. However, it states that payments under the Program will not be tied to the performance of any particular assets held

by the money market fund. It further states that it provides administrative relief in furtherance of public policy and that no other inferences should be drawn from the Notice.

The Program will be limited to assets in money market funds as of the close of business on September 19, 2008, and to investors of record as of that date. The effective date of the Notice is September 22, 2008.

If you have any questions, or would like additional information about this topic, please contact [Jeff Cantrell](#) (+1 704 444 3513), [Michael Butowsky](#) (+1 212 506 2512), [Russell Nance](#) (+1 212 506 2534), [Daniel Read](#) (+1 212 506 2529) or the Mayer Brown lawyer with whom you regularly work.

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