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United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510–6200

October 28, 2026

The Honorable Scott Bessent
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Frank J. Bisignano
Chief Executive Officer
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Secretary Bessent and Mr. Bisignano:

I write regarding the recent issuance of Revenue Ruling 2026-20 (the "Ruling") and IRS Notice 2026-62 (the "Notice"). I commend these initial efforts, as this guidance package suggests a willingness to address a few of the many abusive investment strategies that the rich use to avoid paying their fair share of taxes. I am concerned with the growing prevalence of these tricks that wealthy, sophisticated investors are using to inappropriately slash their tax rates, and I support the use of existing agency authority to crack down on these abuses.

However, I do not believe these initial actions go far enough. Despite public statements that Treasury has no intention of "let[ting] sophisticated abusive tax structuring become a runaway train,"[1] the proliferating long-short strategies in the "tax-aware" investing space appeared nowhere in the recent Ruling or Notice. I am disappointed that you failed to question this activity, given that this abusive tax structuring has been widely reported and is certainly approaching runaway-train status.[2]

[1] Statement of Kevin Salinger at the July 21, 2026 Wall Street Tax Association seminar, "Developments in Tax Aware Financial Product Strategies," at 04:25, https://www.taxalphainsider.com/wsta-treasury-transcript/.
[2] *See*, *e.g.*, Loukia Gyftopoulou et al., "AQR's Tax-Loss Harvesting Strategy Shows Wealthy How to Cut Taxes to Zero," *Bloomberg*, August 3, 2026, https://www.bloomberg.com/features/2026-aqr-tax-loss-harvesting-billionaires/; Robert Frank, "Wealthy Investors Are Pouring Billions Into This New Tax Strategy Despite Risks," *CNBC*, September 11, 2026, https://www.cnbc.com/2026/09/11/wealthy-investors-tax-aware-long-short-strategies.html.

In the Notice's request for comments, you ask if there are other investment fund strategies being pursued that produce unintended federal income tax results. I would like to highlight the explosion of tax loss harvesting through the use of these long-short strategies and urge you to use your existing authority to target this abusive behavior.

Tax-aware long-short strategies represent aggressive, abusive tax avoidance

Evidently popularized by AQR Capital Management ("AQR"), tax-aware long-short investing has taken the market by storm, with an estimated $190 billion invested in this strategy as of October 2026.[3] That is up from just $1 billion five years ago, or a whopping 18,900 percent increase.[4] And while AQR may have popularized the leverage-heavy loss-generation technique, the growing prevalence of the strategy has made clear that it is not limited to a single firm.[5]

AQR reportedly markets its long-short "flex" strategy using the following example: (1) invest $100 million today; (2) in ten years, the value of the investment will have tripled to $300 million; and (3) during those ten years, sit back and benefit from more than $580 million of taxable losses that you can use to offset taxable gains from wholly separate investments.[6] Other reports state that these "flex" accounts project cumulative net capital losses of 723 percent of invested capital.[7] This type of marketing is telling: the point of the strategy is the tax losses. And the promise to produce tax losses that far eclipse the actual losses suffered on net is indicative that those losses are not the result of true economic risk. This is hallmark abusive tax sheltering, plain and simple.

To be clear, basic tax loss harvesting—that is, the act of selling losing investments and getting a tax break for the resulting loss—is not abusive on its own when it represents a true economic risk taken by a taxpayer. But the tax-aware long-short strategy does not represent basic tax loss harvesting. Rather, this strategy of manufacturing loss opportunities while apparently escaping any serious risk of loss is a tax-motivated sham of conjuring losses that are divorced from economic reality.

I am alarmed by the exponential growth of these long-short accounts and the blatant tax-motivated nature of the strategy. Something must be done to protect the integrity of our federal income tax system and stop wealthy Americans from treating their tax bills as optional.

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[3] *See* Hannah Erin Lang and Miriam Gottfried, "A Popular Tax-Saving Trade is Juicing Wall Street's Borrowing Binge," *Wall Street Journal*, October 16, 2026, https://www.wsj.com/finance/investing/a-popular-tax-minimizing-trade-is-juicing-wall-streets-borrowing-binge-6d81eac2.

[4] *Id*.

[5] *See*, *e.g.*, Robert Frank, "Wealthy Investors Are Pouring Billions Into This New Tax Strategy Despite Risks," *CNBC*, September 11, 2026, https://www.cnbc.com/2026/09/11/wealthy-investors-tax-aware-long-short-strategies.html; Eric Rosenbaum, "Schwab to create 'tax aware' strategy that's been attracting billions from wealthy investors," *CNBC*, October 16, 2026. https://www.cnbc.com/2026/10/16/tax-strategies-capital-gains-wealthy-investors-schwab.html.

[6] *See* Gyftopoulou et al. "AQR's Tax-Loss Harvesting Strategy Shows Wealthy How to Cut Taxes to Zero," *Bloomberg*, August 3, 2026, https://www.bloomberg.com/features/2026-aqr-tax-loss-harvesting-billionaires/.

[7] Michelle Celarier, "Will the Booming 'Tax Aware' Hedge Fund Business End in Tears?," *Institutional Investor*, June 3, 2026, https://www.institutionalinvestor.com/article/will-booming-tax-aware-hedge-fund-business-end-tears.

Treasury and the IRS already have the tools to stop this abusive tax avoidance

I believe Treasury and the IRS have the authority and tools at their disposal to address this abusive behavior, and I urge you to propose solutions in forthcoming guidance.

First, as an interim step, consider identifying long-short strategies as a listed transaction using your authority under sections 6011 and 6111. Given their potential for tax avoidance and evasion, the long-short strategies merit this designation, which would put taxpayers on notice that the blatant tax-motivated strategy may not withstand regulatory scrutiny. Such reporting would allow the IRS to collect information about the nature and scope of the abusive activities, identify taxpayers and material advisors that are benefitting from the loss generation technique, and impose penalties on taxpayers and material advisors for failure to disclose.

Next, consider using authority granted to you in the straddle rules—specifically, section 1092(c)(3)(A)(vi)—to characterize the long-short strategy as a presumed offsetting position.

The straddle rules of section 1092 prevent taxpayers from benefitting from a loss with respect to personal property to the extent there is unrecognized gain in an offsetting position.[8] An offsetting position generally exists when there is "a substantial diminution of the taxpayer's risk of loss" with respect to one position by reason of holding one or more other positions.[9] The policy underlying these rules is that a tax loss is not appropriate when there is an offset that minimizes or negates the actual economic risk that tax loss represents.

The clearest case of offsets appears when a taxpayer owns directly opposing positions with respect to identical underlying property—for example, owning a share of stock directly (i.e., a long position) and simultaneously owning a short position with respect to that same stock. However, the definition of offsetting position is written broadly and is by no means limited to only the clearest-cut case. Acknowledging that there will be gray areas to navigate, the statute creates a framework that presumes two or more positions are offsetting if certain factors are met.[10] As part of this presumption framework, the Treasury Secretary is given broad authority to identify "other factors (or satisfaction of subjective or objective tests)" that indicate positions are offsetting.[11] Upon the initial enactment of this authority, the Joint Committee on Taxation's Bluebook described it as "enabl[ing] the Treasury to develop presumptions which treat complex or innovative types of straddles as offsetting positions."[12]

There is ample evidence that the long-short strategy operates as a complex and innovative type of straddle. While not squarely within the scope of section 1092 as currently interpreted and applied by Treasury and the IRS, these strategies could not accomplish what they purport to do—that is, manufacture tax losses while preserving overall gains—if the tax losses they produced were not offset by gains elsewhere in the strategy. Congress had the foresight to know that taxpayers would devise clever workarounds to the spirit of its anti-abuse provisions like the

[8] *See* section 1092(a)(1)(A).
[9] *See* section 1092(c)(2)(A).
[10] Section 1092(c)(3).
[11] Section 1092(c)(3)(A)(vi).
[12] Staff of the Joint Comm. on Tax'n, 97th Cong., 1st Sess., General Explanation of the Economic Recovery Tax Act of 1981, 289 (Jt. Comm. Prt. 1981).

straddle rules and relied on Treasury and the IRS to address these workarounds. I am merely asking that you fulfill your obligation to safeguard the integrity of our tax system as envisioned by Congress.

In summary, I support Treasury and IRS efforts not to "let sophisticated abusive tax structuring become a runaway train."[13] I encourage you to stand by those words and use your authority to target the abusive tax sheltering proliferating with the use of tax-aware long-short investment strategies.

Sincerely,

Ron Wyden

United States Senator
Ranking Member, Committee on Finance

[13] Statement of Kevin Salinger at the July 21, 2026 Wall Street Tax Association seminar, "Developments in Tax Aware Financial Product Strategies," at 04:25, https://www.taxalphainsider.com/wsta-treasury-transcript/.