MEMO# 22417

April 21, 2008

Maryland Legislature Exempts RICs from New Corporate Reporting Requirement

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TO: ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 7-08
TAX MEMBERS No. 12-08 RE: MARYLAND LEGISLATURE EXEMPTS RICS FROM NEW CORPORATE REPORTING REQUIREMENT

As requested by the Institute, the Maryland General Assembly has passed legislation (identical bills SB 444 and HB 664, herein "Legislation") to amend the Maryland Tax Reform Act of 2007's corporate reporting requirement. Specifically, the Legislation provides that regulated investment companies ("RICs"), as defined in section 851(a) of the Internal Revenue Code, are excluded from the reporting rules.

Changes to Corporate Reporting Rules

For entities that are subject to Maryland's reporting requirement, the Legislation reduces the administrative burden of compliance by, among other things:

- excluding, in addition to RICs, insurance companies and companies that are not subject to U.S. federal income tax from the definition of a "corporate group" required to file a report;
- amending the definition of a "corporate group" by eliminating the definition of "doing business," which removes the express requirement that corporations engaged in certain activities (e.g., earning income from intangible property or providing services to Maryland customers) file reports based solely on such activities;
- making the due date for submitting 2006 tax year data the same as the due date of a corporation's 2007 Maryland income tax return;

- changing the due date for the Comptroller's comprehensive report from December 1 to March 1 of each year; and
- deleting the $10,000 fine and five-year imprisonment penalties and instead requiring the Maryland Comptroller to establish an oversight and penalty system.

General Corporate Reporting Requirements

Each corporation that is required to file a Maryland income tax return and is a member of a "corporate group," as defined in the statute, must file a pro forma "water's edge" combined corporate income tax return in accordance with regulations adopted by the Comptroller. Such corporations also must report:

1. The sales factor that would be calculated for Maryland and the difference in Maryland income tax that would be owed if the corporation were required to include in the numerator of the sales factor for purposes of apportioning income to the state all sales of property shipped from an office, store warehouse, factory, or other place of storage in Maryland where:
    a. the purchaser is the Federal Government; or
    b. the property is shipped or delivered to a customer in a state in which the selling corporation is not subject to a state corporate income tax or state franchise tax measured by net income and could not be subjected to such a tax if the state were to impose it; and
2. For any income that the taxpayer has identified, on its Maryland income tax return or another state's income tax return, as income that is nonoperational and therefore not apportionable:
    a. the amount and source of that nonoperational income; and
    b. if the commercial domicile of the corporation is in Maryland, the difference in tax that would be owed if the corporation were required to allocate 100% of the nonoperational income to Maryland to the fullest extent allowed under the United States Constitution.

To read SB 444 go to http://mlis.state.md.us/2008rs/bills/sb/sb0444t.pdf. To read HB 664 go to http://mlis.state.md.us/2008rs/bills/hb/hb0664t.pdf.

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