

MEMO# 2961

July 31, 1991

IRS ANNOUNCES HEARING ON REGULATIONS CONCERNING INFORMATION REPORTING PENALTIES AND THE REASONABLE CAUSE WAIVER

July 31, 1991 TO: TAX COMMITTEE NO. 25-91 OPERATIONS COMMITTEE NO. 24-91
TRANSFER AGENT ADVISORY COMMITTEE NO. 36-91 RE: IRS ANNOUNCES HEARING ON
REGULATIONS CONCERNING INFORMATION REPORTING PENALTIES AND THE REASONABLE
CAUSE WAIVER _____ In the attached
notice, the IRS announces a public hearing on September 9, 1991 on the temporary and
proposed regulations issued earlier this year on information reporting penalties and the
reasonable cause waiver. As we previously informed you, these regulations contain a
definition for the new "reasonable cause" standard for waiving information reporting
penalties which generally reflects the suggestions made by the Institute for relaxing the old
"due diligence" standard, which applied to information returns and payee statements filed
before January 1, 1990. (See Institute Memorandum to Tax Members No. 6-91, Operations
Members No. 7-91, Closed-End Fund Members No. 9-91, Unit Investment Trust Members No.
9-91 and Transfer Agent Advisory Committee No. 10-91, dated February 25, 1991.) The
Institute's Backup Withholding Task Force examined these regulations and suggested a few
relatively technical clarifications to the reasonable cause standard, which the Institute
made in the attached comment letter. First, a payor should be deemed to have made an
initial solicitation for a payee's taxpayer identification number ("TIN") when (a) the payor
furnishes the payee with an application to purchase fund shares that requests the payee's
TIN and (b) the payee uses the application to purchase the shares. Second, the deadline for
making the first annual solicitation following notification of an incorrect TIN should be on or
before the later of December 31 or 30 days after the date that the payer is notified of the
incorrect TIN (rather than on or before December 31, regardless of notification date). Third,
the regulations should be amended to provide explicitly that a payor need not make two
additional annual solicitations for a payee's TIN if the payor has already made two
consecutive annual mailings in a form which would generally satisfy the annual mailing
requirements of the new regulations. Finally, the "transition rules" of Temp. Treas. Reg.
section 301.6724-IT(h)(2), which apply to information returns required to be filed after
December 31, 1989 and on or - 1 - before April 22, 1991, should be clarified through the
use of examples which illustrate how the various transition rules are met. The Institute
must provide to the IRS by August 26 an outline of oral comments we will present at the
hearing on September 9. If you have any additional comments on these regulations that
you wish the Institute to present, please inform me of them (at 202/955-3585) no later than
August 21. We will keep you informed of developments. Keith D. Lawson Associate Counsel

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