

MEMO# 14514

March 8, 2002

DRAFT INSTITUTE COMMENTS FOR YOUR REVIEW ON CAPITALIZATION GUIDANCE

[14514] March 8, 2002 TO: TAX COMMITTEE No. 7-02 TASK FORCE ON ADVISER/DISTRIBUTOR TAX ISSUES RE: DRAFT INSTITUTE COMMENTS FOR YOUR REVIEW ON CAPITALIZATION GUIDANCE As we previously informed you, the Treasury Department and the Internal Revenue Service have issued an Advance Notice of Proposed Rulemaking ("Advance Notice") describing guidance that will be issued regarding the deductibility or capitalization of expenditures incurred in connection with intangible assets.¹ The Advance Notice provides a framework for proposed regulations describing (1) specific categories of expenditures incurred in acquiring, creating or enhancing intangible assets or benefits that taxpayers are required to capitalize and (2) certain types of transaction costs otherwise capitalizable that nevertheless would be deductible. We have prepared for your review the attached draft comment letter on the Advance Notice based upon the discussion at our February meeting. Our comments address the following aspects of the Advance Notice: Part I provides comments on the general approach reflected in the Advance Notice and expands upon the reasons we endorse this approach. Part II expresses our specific support for the proposed treatment of employee compensation and suggests that similar treatment should be accorded to contract employees who are functionally similar to regular employees in terms of the capitalization analysis. Part III indicates that regular and recurring expenses should generally be deductible, particularly when such costs constitute routine costs of operating a business. In this Part, we also request specific confirmation that the approach contemplated by the Advance Notice is not intended to overturn published guidance permitting mutual funds to deduct their stock issuance expenses. Finally, Part IV responds to the Advance Notice's request for comments on a possible residual rule (or principles) that could be used to identify costs that should be capitalized under section 263(a) but that are not described in the Advance Notice. In this Part, we suggest that any such rule or principles be drafted as narrowly and objectively as possible and that costs that are permitted to be currently deducted in accordance with existing published guidance not be subject to the residual rule. ¹ See, Institute Memorandum to Tax Committee No. 3-02 and Task Force on Adviser/Distributor Tax Issues, dated January 25, 2002. ² ACTION REQUESTED We welcome your input on the issues that are reflected in the letter as well as on issues that we have not included at this time. In order to submit the comment letter by the due date, we request that you provide your comments and suggestions to the undersigned (cbarre@ici.org or 202/326-5821) or Keith Lawson (lawson@ici.org or 202/326-5832) by March 15, 2002. Catherine Barre Assistant Counsel Attachment (in .pdf format)

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