

MEMO# 2393

December 24, 1990

TIMING OF SECOND B NOTICE AND PENALTY NOTICE MAILINGS

December 24, 1990 TO: TAX COMMITTEE NO. 36-90 OPERATIONS COMMITTEE NO. 29-90
TRANSFER AGENT ADVISORY COMMITTEE NO. 56-90 RE: TIMING OF SECOND B NOTICE AND
PENALTY NOTICE MAILINGS _____ At a

recent meeting of the Transfer Agent Advisory Committee, several questions arose regarding the timing of (1) a second IRS "B Notice" mailing and (2) the mailing of penalty notices. Subsequently, the Institute contacted the IRS on these issues. We now understand that B Notices will be mailed in March 1991 to those payors who did not receive B Notices last fall. We further understand that in March 1991 the IRS will send notices to payors assessing any applicable penalties for (1) failures to file correct taxpayer identification numbers ("TINs"), (2) failures to file information returns and statements on magnetic media, (3) failures to file timely information returns and statements and (4) failures to file information returns and statements in "processable" formats. As payors will only be given 10 days to respond to the notices sent in March, the IRS plans to send in February a list of all shareholder accounts for which the IRS believes incorrect taxpayer identification numbers have been filed. A separate question arose at the 1990 Operations Conference regarding whether payors may, under the existing due diligence regulations, effectively defend against a penalty for failure to provide correct taxpayer information if they open an account without a certified TIN and subsequently impose backup withholding. After discussing this issue with the conference speaker, the speaker's comments have been clarified as follows. Payors who receive an awaiting-TIN certification may assert the due diligence defense by imposing backup withholding and making required mailings if a certified TIN is not received. However, payors who receive neither a certified TIN nor an awaiting-TIN certification when the account is opened may not assert the due diligence defense merely by imposing backup withholding and making mailings. We will keep you informed of developments. Keith D. Lawson Associate General Counsel