

MEMO# 3270

November 13, 1991

INSTITUTE REQUESTS DELAY IN IMPOSITION OF BACKUP WITHHOLDING ON ACCOUNTS RECEIVING 2 B NOTICES IN 3 YEARS

November 13, 1991 TO: TAX COMMITTEE NO. 35-91 OPERATIONS COMMITTEE NO. 34-91
CLOSED-END FUND COMMITTEE NO. 30-91 UNIT INVESTMENT TRUST COMMITTEE NO. 38-91
TRANSFER AGENT ADVISORY COMMITTEE NO. 52-91 RE: INSTITUTE REQUESTS DELAY IN
IMPOSITION OF BACKUP WITHHOLDING ON ACCOUNTS RECEIVING 2 B NOTICES IN 3 YEARS

As we previously informed you, the Internal Revenue Service recently issued amended regulations and a new revenue procedure that modify the existing "B Notice" procedures to require payors to impose backup withholding on any account for which the payor has received two notices within three calendar years that the payee's name and taxpayer identification number ("TIN") do not match (the "2/3 rule"), unless the payor receives from the Social Security Administration ("SSA") verification of the payee's TIN on Form SSA-7028. (See Institute Memorandum to Tax Members No. 40-91, Operations Members No. 23-91, Closed-End Fund Members No. 41-91, Unit Investment Trust Members No. 43-91 and Transfer Agent Advisory Committee No. 44-91, dated September 24, 1991). Many fund complexes have informed the Institute of problems that their shareholders are experiencing in getting TIN verification from SSA. Innumerable local SSA offices are telling shareholders that they either do not have copies of Form SSA-7028 or that the form does not exist. Thus, many shareholders are sending funds documents purporting to verify their TINs (such as SSA computer printouts of their records) that do not meet the express requirements of the recent IRS regulations and revenue procedure. A fund receiving TIN "verification" by some method other than Form SSA-7028 is faced with the difficult decision to either (1) impose backup withholding on shareholders who have attempted to secure the necessary TIN verification, but have been prevented by SSA from furnishing a Form SSA-7028 to the funds, or (2) not impose backup withholding and defend against possible charges that the fund is liable for the tax that should have been withheld. In the attached letter to the IRS Commissioner, the Institute states that it is grossly unfair for payors to be faced with this "Hobson's choice" and strongly urges that the - 1 - imposition of backup withholding pursuant to the 2/3 rule be delayed until next year. The Institute letter notes that a compromise position, such as permitting payors to accept any form of TIN verification that purports to have been provided or suggested by SSA, will not prevent withholding on those persons who have been so confused by the conflicting information received from payors and the SSA that they have either failed to contact the payor or did not provide the payor with sufficient grounds to exempt the account from backup withholding. Finally, the letter includes copies of

correspondence received by funds from their shareholders illustrating many of the ways in which shareholders are attempting to verify their TINs when local SSA offices do not have copies of Form SSA-7028. We will keep you informed of developments. Keith D. Lawson
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