

**MEMO# 5983**

June 21, 1994

## **IRS REVISES RULING ON RIC INVESTMENTS IN PARTNERSHIPS**

1 See Institute Memorandum to Accounting/Treasurers Members No. 15-94, Closed-End Fund Committee No. 14-94 and Tax Members No. 25-94, dated June 10, 1994. 2 Also attached is a copy of Rev. Rul. 94-40, marked to show the modifications made by Rev. Rul. 94-40A. June 21, 1994 TO: ACCOUNTING/TREASURERS MEMBERS NO. 18-94 CLOSED-END FUND COMMITTEE NO. 17-94 TAX MEMBERS NO. 28-94 RE: IRS REVISES RULING ON RIC INVESTMENTS IN PARTNERSHIPS

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As we previously informed you, on June 10 the IRS issued Revenue Ruling 94-40 regarding application of the excise tax minimum distribution rules of Internal Revenue Code section 4982 to a regulated investment company ("RIC") holding an interest in a partnership.<sup>1</sup> The Institute recently telephoned and met with officials at the Treasury Department and the IRS to express industry concerns with the revenue ruling. First, the ruling requires that a RIC be treated as receiving its share of the partnership's income for purposes of the minimum distribution excise tax rules but does not, by its terms, provide the RIC with the earnings and profits it needs to distribute the income and eliminate its excise tax liability. Second, the ruling contains language suggesting that a RIC must apply its tax accounting rules, such as the section 852(b)(9) rule for accruing dividend income on the ex-dividend date, as if the RIC held directly its share of the partnership's assets. We are pleased to inform you that today the IRS released the attached modification (Revenue Ruling 94-40A) to Revenue Ruling 94-40.<sup>2</sup> This modified ruling addresses the industry's second concern. As noted in the revised ruling, some taxpayers have interpreted language in the ruling regarding a RIC's obligation to take into account its share of partnership items of income, gain, loss and deduction to mean that, for excise tax purposes, a RIC's methods of accounting override the methods of accounting of a partnership in which the RIC is a partner. The revised ruling states that IRS did not intend this result. Accordingly, Rev. Rul. 94-40A modifies Rev. Rul. 94-40 to provide that the partnership's methods of accounting will control in determining the income that the RIC must take into account for minimum distribution purposes. We will keep you informed of developments. Keith D. Lawson Associate Counsel - Tax Attachments