

**MEMO# 3122**

September 24, 1991

# **IRS REVENUE PROCEDURE AND AMENDED TEMPORARY REGULATIONS ON "B" NOTICES**

1 \*/ No change has been made to Temp. Treas. Reg. section 35a.3406-1(f)(1), which provides that a payor shall treat the receipt of two or more notices in a calendar year with respect to a payee as the receipt of one notice for purposes of this rule. September 24, 1991 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 TRANSFER AGENT ADVISORY COMMITTEE NO. 44-91 RE: IRS REVENUE PROCEDURE AND AMENDED TEMPORARY REGULATIONS ON "B" NOTICES

The attached IRS revenue procedure and amended temporary regulations provide additional guidance on the procedures to be followed this fall upon receipt of notification from the IRS or a broker, pursuant to a "B" Notice, that a payee's taxpayer identification number ("TIN") is "incorrect". The revenue procedure provides rules for use when a payor has received notification from IRS or a broker twice \*/1 within three calendar years that a payee's name and TIN do not "match", the so-called "2-in-3" rule. The new temporary regulations amend the "B" Notice rules that were included in regulations issued last year. (See Institute Memorandum to Tax Members No. 37-90, Operations Members No. 27-90, Closed-End Fund Members No. 36-90, Unit Investment Trust Members No. 61-90 and Transfer Agent Advisory Committee No. 34-90, dated September 21, 1990.) The revenue procedure provides that if a payor receives notification from the IRS or a broker twice within three calendar years that a payee's TIN is incorrect, the payor must: (1) disregard any further TINs, whether or not certified under penalties of perjury, received from the payee unless the Social Security Administration ("SSA") or the IRS has notified the payor that such TIN is correct; - 1 - (2) provide the payee with a notice setting forth certain information, discussed below; and (3) impose backup withholding on reportable payments made to the account for the period (a) beginning no later than after the close of the day 30 business days after the date the payor is notified of the incorrect TIN, unless the SSA (or the IRS, in the case of an employer identification number ("EIN")) has notified the payor of a valid TIN, and (b) ending within 30 calendar days after receiving such notification of a valid TIN from SSA (or IRS). The revenue procedure further provides that the notice to the payee must provide the payor's name and address and instruct the payee to contact the Social Security Administration (if the TIN is a social security number ("SSN")) or the IRS (if the TIN is an EIN) to prevent backup withholding or to stop it once it has begun. If the incorrect TIN is an SSN, the payee must be instructed to (1) contact the SSA by telephone to request a Form SS-5, Application for Social Security Card, (2) furnish to SSA a completed Form SS-5 and any other documents required, along with the payor's name and address, and (3) request that the SSA send Form 7028

(Notice to Third Party of Social Security Number Assignment) directly to the payor. If the incorrect TIN is an EIN, the payee must be instructed to contact the Internal Revenue Service Center where the payee's tax returns are filed and request, in writing, that the IRS provide a Letter 147C to the payee. In addition, the revenue procedure provides that backup withholding may be stopped under the 2-in-3 rule, in the case of an SSN, only when SSA sends a Form 7028 directly to the payor. If the TIN is an EIN, the payor may not stop withholding under the 2-in-3 rule until the payee sends the payor (1) a copy of the Letter 147C (verifying the payee's name and TIN), that has been provided to the payee by the IRS, and (2) a completed Form W-9. The amended regulations make several changes to the "B" Notice rules. First, as discussed in the revenue procedure, if the TIN is an SSN, the Social Security Administration, rather than IRS, will notify the payor of the payee's correct TIN. Second, a sole proprietor may furnish his individual name and either his SSN or the EIN for the sole proprietorship. If the business name for the sole proprietorship is also provided, the sole proprietor's individual name must be provided first. Third, a substitute "B" Notice no longer must instruct the payee to return to the payor a statement affirming that the payee has contacted the SSA or the IRS. Fourth, the effective date for the "B" Notice rules in the regulations is amended to clarify that "informational" B Notices received prior to September 1, 1990 are not treated as first notices for purpose of the 2-in-3 rule. The regulations also revise the appendix to section 35a.3406-1, which - 2 - provides a sample substitute payee notice. We will keep you informed of developments. Keith D. Lawson Associate Counsel - Tax Attachments KDL:bmb