

MEMO# 3949

July 24, 1992

INSTITUTE COMMENTS ON PROPOSED TAX DEPOSIT REGULATIONS

July 24, 1992 TO: TAX COMMITTEE NO. 28-92 PENSION COMMITTEE NO. 26-92 OPERATIONS COMMITTEE NO. 20-92 TRANSFER AGENT ADVISORY COMMITTEE NO. 39-92 RE: INSTITUTE COMMENTS ON PROPOSED TAX DEPOSIT REGULATIONS

As you may know, the Internal Revenue Service ("IRS") recently issued proposed amendments to the regulations under section 6302 of the Internal Revenue Code that provide rules for depositing "employment taxes", including payroll taxes, pension and annuity withholding amounts and backup withholding amounts. (See Institute Memorandum to Tax Committee No. 21-92, Operations Committee No. 17-92 and Transfer Agent Advisory Committee No. 30-92, dated June 9, 1992.) The attached comment letter reflects the two principal comments received by the Institute from members regarding these regulations. First, the Institute applauds the proposed new semi-weekly deposit rule which, by replacing the current system which divides each month into eighths, would greatly simplify the depositing of taxes, including backup withholding. Under the new rules, payors who have withheld more than \$12,000 in tax in any of the prior four quarters would generally be required to deposit withheld taxes (up to \$100,000) only twice a week -- on or before each Tuesday and Friday. The Institute letter recognizes that some opposition to the Tuesday/Friday rule may exist in the payroll community, which prefers an alternative deposit rule, and urges only that the Tuesday/Friday rule be retained for non-payroll taxes, such as backup withholding. Second, the Institute supports the distinction made for deposit purposes, such as for purposes of determining whether \$100,000 in tax has been collected which must be deposited by the close of the next day, between backup withholding and other withheld tax amounts. This distinction is appropriate because the customer/product-withholding and payroll-withholding functions typically take place in different parts of a financial institution. The Institute letter further suggests that it may also be appropriate to provide separate tax deposit rules for pension and annuity withholding currently required by section 3405, at least to the extent that this withholding takes place as - 1 - part of a financial service company's retirement plan business, rather than with respect to its former employees. The same operational problems that would arise, if backup withholding amounts were combined with payroll tax amounts, already exist in the pension withholding/payroll tax deposit context. We will keep you informed of developments. Keith D. Lawson Associate Counsel - Tax Attachment

should not be considered a substitute for, legal advice.