

MEMO# 6503

December 29, 1994

INSTITUTE COMMENT LETTER ON NONRESIDENT ALIEN WITHHOLDING

December 29, 1994 TO: OPERATIONS COMMITTEE No. 38-94 TAX COMMITTEE No. 40-94
TRANSFER AGENT ADVISORY COMMITTEE No. 52-94 TASK FORCE ON NONRESIDENT ALIEN
WITHHOLDING RE: INSTITUTE COMMENT LETTER ON NONRESIDENT ALIEN WITHHOLDING

As you know, the Internal Revenue Service ("IRS") is considering making extensive changes to the rules governing withholding tax on payments to nonresident alien ("NRA") investors. The proposal under consideration would require all NRA investors receiving U.S. source income to obtain a U.S. Taxpayer Identification Number ("TIN"). Backup withholding would apply to any payments made to foreign investors who do not supply a TIN to the payor. NRA investors could obtain TINs directly from the IRS or by submitting an application to a foreign or domestic financial institution that has entered into an agreement with the IRS to act as an agent for the IRS in receiving and processing TIN applications. U.S. mutual funds or broker-dealers would be eligible to process TIN applications for NRA investors. The Institute submitted the attached comment letter regarding the proposal and its potential impact on U.S. mutual funds. The letter expresses the Institute's concern that the proposal will discourage foreign investment in U.S. mutual funds and would create substantial administrative burdens for U.S. mutual funds with NRA investors. The letter also makes the following suggestions that are designed to reduce the burden on NRA investors and U.S. mutual funds if, despite the potential adverse impact, the IRS moves forward with the new rules.

1. Transition period. There should be a substantial transition period, of at least one year after final regulations are adopted, before the rules take effect
2. Documents acceptable to prove identity and residence. The IRS should develop a broad list of supporting documents that may be submitted with TIN applications to prove identity and residence. An NRA investor submitting a TIN application should be able to submit a duplicate copy of a passport, birth certificate or other acceptable document to prove identity and residence.
3. Reliance by financial institution processing TIN applications. Financial institutions should be entitled to reasonably rely on certifications made in the application, particularly regarding the authenticity of any supporting documents.
4. Awaiting TIN grace period. NRA investors should have a reasonable period, of at least six months, during which to obtain a TIN before backup withholding will apply.
5. Special Rules for Nominees. Payors should be permitted to rely on a nominee's determination of the appropriate rate of withholding for the beneficial owners it represents. Nominees acting on behalf of both beneficial owners that qualify for treaty rate withholding, and others that do not, should be required to establish multiple accounts with a payor, one for each applicable rate of withholding.
6. Special rules for Forms W-8 that include a TIN. A Form W-8 that provides an NRA Investor's TIN should not have an automatic expiration date.
7. Reliance on broker supplied NRA TINs. Payors should be able to rely on NRA TINs furnished by brokers that have obtained TIN certifications from

their customers, just as they currently are able to rely on TINs brokers provide for domestic investors. We will keep you informed of further developments. Peter Cinquegrani Assistant Counsel - Tax Attachment

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.