MEMO# 2134

August 22, 1990

INSTITUTE URGES JOINT TAX COMMITTEE TO SUPPORT LEGISLATION ON PASSIVE FOREIGN INVESTMENT COMPANIES

August 22, 1990 TO: TAX COMMITTEE NO. 23-90 RE: INSTITUTE URGES JOINT TAX COMMITTEE TO SUPPORT LEGISLATION ON PASSIVE FOREIGN INVESTMENT COMPANIES ____ Attached is the Institute's letter to the Joint Committee on Taxation urging legislation to relieve the industry's current problem with passive foreign investment companies ("PFICs"). Under the Internal Revenue Code, the sale at a gain of the stock of a PFIC held by a regulated investment company ("RIC") for more than one tax year results in a tax at the RIC level regardless of whether the RIC has distributed that gain to its shareholders. This result occurs because the gain arising on the sale of the PFIC stock is allocated back over the entire time the stock was held by the RIC, and the RIC is denied the dividends paid deduction for dividends derived from the gain allocated back to prior tax years. The Institute has been urging the Treasury Department to adopt regulations which would allow a RIC to "mark-to-market" any PFIC stocks at the end of each tax year and distribute to its shareholders any gain recognized, thus avoiding a tax at the RIC level. To date the Treasury has been undecided as to whether it has sufficient authority to promulgate such regulations. The Institute has been working to convince the Treasury that it has this authority. (See our attached letter of July 20, 1990.) As noted in the letter to Mr. Pearlman, the Joint Tax Committee staff has already recommended that a mark-to-market system be adopted as a part of any tax simplification package. We will keep you informed of further developments. David J. Mangefrida, Jr. Assistant General Counsel