

MEMO# 4367

December 29, 1992

INSTITUTE COMMENTS ON PROPOSED TWENTY-PERCENT WITHHOLDING REGULATIONS

December 29, 1992 TO: PENSION COMMITTEE NO. 47-92 RE: INSTITUTE COMMENTS ON
PROPOSED TWENTY-PERCENT WITHHOLDING REGULATIONS

Attached is a copy of the Institute's submission to the Internal Revenue Service concerning the temporary and proposed regulations under the Unemployment Compensation Amendments of 1992. (See Institute Memorandum to Pension Members No. 28-92, Operations Members No. 39-92, and Transfer Agent Advisory Committee No. 62-92, dated October 22, 1992.) The Institute's comments focus upon three aspects of the regulations. First, the Institute's letter urges that the final regulations permit participants to waive the 30-day advance notice requirement by making affirmative elections concerning their distributions. The Institute's submission also recommends that the responsibility to provide the notice in the context of a section 403(b) arrangement rest in the first instance upon the plan administrator, and shift to the payor only if the arrangement does not have a plan administrator. Second, the comments address the means by which direct rollovers are accomplished. The Institute supports the use of a standard notation to differentiate checks representing direct rollovers from those representing trustee-to-trustee transfers. In addition, the Institute requests clarification that a direct rollover check cannot include amounts representing employee after-tax contributions. Third, the Institute submission requests certain clarifications concerning payors' responsibilities with respect to required minimum distributions under section 401(a)(9) of the Code, which do not qualify as eligible rollover distributions. With respect to qualified plans, the Institute recommends that, in order to shift the withholding responsibility from the plan administrator to the payor, the plan administrator must identify which portion, if any, of a participant's distribution represents a required minimum distribution. The Institute also urges the Service to clarify in the final regulations that a payor under a section 403(b) arrangement may assume that a distribution does not represent a required minimum distribution, unless otherwise advised by the participant. We will keep you informed of developments. Kathy D. Ireland Associate Counsel - Pension Attachment