

MEMO# 7444

December 7, 1995

GEORGIA INTANGIBLES TAX

1 See Institute Memorandum to Accounting/Treasurers Members No. 18-95, Closed-End Fund Committee No. 12-95, Tax Members No. 19-95, and Unit Investment Trust Members No. 13-95, dated March 29, 1995. December 7, 1995 TO: ACCOUNTING/TREASURERS MEMBERS No. 55-95 CLOSED-END FUND COMMITTEE No. 61-95 TAX MEMBERS No. 53-95 RE: GEORGIA INTANGIBLES TAX

As you may know, the Institute filed suit against the State of Georgia challenging the application of Georgia's intangible personal property tax to shares issued by mutual funds and to interests in unit investment trusts where such mutual funds or trusts hold obligations of the United States. Last spring, the Georgia Department of Revenue conceded that shares issued by mutual funds which are organized as business trusts, and interests in unit investment trusts, are not subject to the intangibles tax to the extent that the value of the shares or interests reflects the value of investments in United States obligations held by the fund or trust.¹ We are pleased to report that the Department of Revenue has now conceded that shares issued by mutual funds which are organized as corporations, and qualify as regulated investment companies for federal tax purposes, are not subject to the intangibles tax to the extent that the value of the shares reflects the value of the fund's investments in United States obligations. For this purpose, obligations of the United States include obligations that are exempt from state tax pursuant to 31 U.S.C. 3124 and O.C.G.A. 48-6-22(1). The Department of Revenue has not issued any guidance indicating whether the change of position has retroactive effect. The Institute's counsel in Georgia indicated that taxpayers interested in seeking refunds of intangibles tax paid in prior years should submit a refund claim to the applicable county commission or county commissioner. The claim must be filed within three years after the date the tax was paid. While there is no specific form for requesting a refund, the claim must be in writing and must include a summary statement of the grounds for the claim. If the taxpayer desires a conference in connection with the claim, the claim should include a request for a conference. We will keep you informed of developments. Anne M. Barr Assistant Counsel - Tax