

**MEMO# 19665**

January 31, 2006

## **DRAFT COMMENT LETTER ON CA APPORTIONMENT REGULATIONS - CONFERENCE CALL SCHEDULED FOR TUESDAY, FEBRUARY 7, 2006**

©2006 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. [19665] January 31, 2006 TO: ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 1-06 TAX COMMITTEE No. 2-06 RE: DRAFT COMMENT LETTER ON CA APPORTIONMENT REGULATIONS - CONFERENCE CALL SCHEDULED FOR TUESDAY, FEBRUARY 7, 2006 Attached is a draft comment letter regarding California's draft regulations on apportionment rules for mutual fund service providers. A copy of the draft regulations and an explanation of provisions are also attached. The Institute provided comments last year to the California Franchise Tax Board ("FTB") in connection with its symposium to discuss these regulations.<sup>1</sup> The attached comment letter addresses some issues raised in our October 2005 letter, including recommendations that "throw-out" and "throw-back" rules be eliminated. A conference call has been scheduled for Tuesday, February 7, 2006 at 2:00 p.m. EDT to discuss the draft comments. If you would like to participate in the call, please complete the attached response form and fax it to Ezella Wynn at 202-326-5841 or ewynn@ici.org by Monday, February 6, 2006 at 5:00 p.m. EDT. To access the call, please dial 888-913-9968 and enter passcode 69044. The purpose of this call is to discuss specific proposals to be included in the Institute's comment letter, including possible recommendations in response to FTB's request for additional information. Please consider the following: Section (b)(1)(A)(i) and (b)(1)(B)(ii) - The draft comment letter recommends that the California regulations include a rule similar to Maryland's with respect to omnibus accounts, i.e., treat the shareholder of record as the domiciliary. The comments also propose allowing estimates of the underlying shareholder market based on some percentage of known shareholders. Is this a feasible approach? Would a lower or higher percentage threshold make sense? Are there other reasonable methods for deriving underlying shareholder information that we should propose? The FTB has specifically requested additional comments regarding this issue. Section (b)(1)(A)(ii) - Should the RIC's taxable year that ends during the taxable year of the principal member of the combined reporting group be used, 1 See Institute Memorandum (19306) to Adviser Distributor Tax Issues Task Force No. 11-05 and Tax Members No. 27-05, dated October 31, 2005. 2 notwithstanding its use by other states? Is this administratively burdensome where, for example, a service provider must keep track of different taxable years for a significant number of funds? Section (b)(1)(D) - Are there alternatives to a throw-back rule that will address concerns regarding nowhere income?

Should we recommend a broad definition of the term “taxable in a given state,” such as a definition that includes states that have jurisdiction to tax but choose not to tax? The FTB has specifically requested additional comments regarding this issue. Throw-out Rules - The FTB has specifically requested additional comments regarding alternatives to the throw out rules in sections (b)(1)(A)(i) and (b)(1)(B)(ii). Lisa Robinson Associate Counsel Attachment no. 1 (in .pdf format)

---

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.