

MEMO# 4434

January 20, 1993

DRAFT LETTER TO IRS ON NONRESIDENT ALIEN INVESTOR COMPLIANCE ISSUES

January 20, 1993 TO: TAX COMMITTEE NO. 5-93 TRANSFER AGENT ADVISORY COMMITTEE NO. 7-93 RE: DRAFT LETTER TO IRS ON NONRESIDENT ALIEN INVESTOR COMPLIANCE ISSUES _____ As you may know, the Internal Revenue Service ("IRS") has been studying tax compliance issues relating to nonresident alien ("NRA") investors with a view toward revising the tax withholding regulations under Code section 1441. The attached draft letter to IRS suggests the following changes to simplify reporting and withholding with respect to NRA shareholders: 1) certified IRS Forms W-8 should not expire after three years; 2) a new IRS Form should be provided for certifying U.S. citizenship while residing abroad; 3) the "address rule" of Treas. Reg. Sec. 1.1441-3(b)(3) (which requires a payor of dividends with no definite knowledge of a shareholder's status to impose withholding under section 1441 if the shareholder's address is outside the U.S. and permits the payor to assume that a shareholder is a U.S. citizen or resident if the shareholder's address is within the U.S.) should be retained; 4) payors who incorrectly underwithhold tax should be provided with express authority to recover from the NRA shareholder the additional tax due; 5) payors should be permitted to reverse overwithholding regardless of (a) whether the overwithholding is "erroneous" or has been caused by the payee and (b) when the "error" is discovered or otherwise corrected; and 6) IRS regulations should be modified to reflect the instructions to IRS Forms 1078 and 4224 and clarify that copies of these forms should not be sent to the IRS. The Tax Committee will discuss this draft letter at its meeting on January 28. Please submit any suggestions or other comments with respect to the letter to me either at the Tax Committee meeting or by telephone (202-955-3585) no later than February 1. We will keep you informed of developments. Keith D. Lawson Associate Counsel - Tax Attachment