

MEMO# 2308

November 6, 1990

ROSTENKOWSKI STATEMENT ON PFICS

November 6, 1990 TO: TAX COMMITTEE NO. 29-90 ACCOUNTING/TREASURERS COMMITTEE
NO. 34-90 RE: ROSTENKOWSKI STATEMENT ON PFICS

As you may know, the Institute has proposed to the Treasury Department that regulated investment companies ("RICs") be permitted by regulation to mark to market shares in passive foreign investment companies ("PFICs"). (See Institute Memorandum to Tax Committee No. 23-90, dated August 22, 1990). Such regulation, if promulgated, would permit RICs to invest in PFICs without incurring the RIC-level tax that otherwise is imposed by the PFIC rules on PFIC gains allocated to certain years prior to the year in which the PFIC gains are realized. However, the Treasury Department has not yet decided whether it has the authority to promulgate the requested regulation. Consequently, the Institute sought to have included in H.R. 5826 an amendment to section 1297(d) which would have clarified the Treasury's authority to prescribe "regulations permitting regulated investment companies to elect to mark-to-market (i.e., treat as sold for fair market value) stock in passive foreign investment companies". Although Congress adjourned without enacting H.R. 5826, the attached floor statement by Congressman Rostenkowski, Chairman of the House Ways and Means Committee, provides that the inaction by the Ways and Means Committee on H.R. 5826 "does not alter any authority that the IRS possess [sic] under present law to prescribe regulations in connection with this issue." The Institute will continue to pursue relief permitting RICs to mark PFIC shares to market and will keep you informed of developments.

Keith D. Lawson Associate General Counsel Attachment