

**MEMO# 3080**

September 12, 1991

# **INSTITUTE TESTIFIES ON INFORMATION REPORTING PENALTY REGULATIONS AND THE REASONABLE CAUSE WAIVER**

September 12, 1991 TO: TAX COMMITTEE NO. 29-91 OPERATIONS COMMITTEE NO. 27-91  
TRANSFER AGENT ADVISORY COMMITTEE NO. 41-91 RE: INSTITUTE TESTIFIES ON  
INFORMATION REPORTING PENALTY REGULATIONS AND THE REASONABLE CAUSE WAIVER

As you know, earlier this year the Internal Revenue Service ("IRS") issued temporary and proposed regulations on information reporting penalties and the reasonable cause waiver; a public hearing on the regulations was also announced. (See Institute Memoranda to Tax Committee No. 25-91, Operations Committee No. 24-91, and Transfer Agent Advisory Committee No. 36-91, dated July 31, 1991 and to Tax Members No. 6-91, Operations Members No. 7-91, Closed-End Fund Members No. 9-91, Unit Investment Trust Members No. 9-91, and Transfer Agent Advisory Committee No. 10-91, dated February 25, 1991.) Attached is testimony given by the Institute at this week's IRS hearing on the regulations. While generally supportive of the regulations, the testimony requests that the regulations be clarified and modified in a few respects consistent with comments previously filed by the Institute. Specifically, the Institute suggested the following clarifications: 1) The section 6724 reasonable cause regulations (Temp. Treas. Reg. sections 301.6724-1T(e) and (f)) should confirm that a payor has made an initial solicitation for a payee's taxpayer identification number ("TIN") when (a) the payor furnishes the payee with an application to purchase securities of an investment company, (b) the application requests the payee's TIN and (c) the payee uses the application to purchase the securities. 2) The regulations should clarify the obligation of brokers holding shares of an investment company in street name to file with the Internal Revenue Service and provide to investors corrected IRS Form 1099 tax information returns and statements. Clarification of the following points was expressly requested: - 1 - a) the date in January (the so-called "cut-off date") after which tax information provided by a fund to a broker could be excluded from January payee statements without violating any information reporting requirements; b) the obligation, if any, of a broker to send to payees supplemental, "corrected" statements for information received from a fund after the cut-off date and before January 31; c) the obligation, if any, of a broker to send to payees supplemental, "corrected" statements for information received from a fund after January 31; and d) the obligation, if any, of a broker to send to the Internal Revenue Service information other than that sent to payees by January 31. In each situation where the broker has an obligation to send corrected information, we suggested that the regulations clarify by what date(s) and in what form the corrections must be sent. 3) The regulations should clarify that a payor who has previously made solicitations for a TIN in at least two consecutive years, where the solicitations would satisfy the annual mailing requirements of

the regulations, not be required to make any additional annual mailings. 4) Examples should be added to the regulations to illustrate situations in which the transition rules of Temp. Treas. Reg. section 301.6724-1T(h)(2), which apply in determining reasonable cause for information returns required to be filed after December 31, 1989 and on or before April 22, 1991, will be met. \* \* \* \* \* We will keep you informed of developments. Keith D. Lawson Associate Counsel - Tax Attachment KDL:bmb

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