

**MEMO# 8079**

July 23, 1996

## **INSTITUTE COMMENTS ON NONRESIDENT ALIEN WITHHOLDING**

1 See Institute Memorandum to Tax Members No. 19-96, Operations Members No. 18-96 and Transfer Agent Advisory Committee No. 22-96, dated April 25, 1996. July 23, 1996 TO: TAX MEMBERS No. 32-96 OPERATIONS MEMBERS No. 34-96 TRANSFER AGENT ADVISORY COMMITTEE No. 43-96 RE: INSTITUTE COMMENTS ON NONRESIDENT ALIEN WITHHOLDING

As we previously informed you, the Internal Revenue Service ("IRS") has issued proposed regulations that would make major changes to the rules for withholding tax on certain payments made to persons who are neither citizens nor residents of the United States ("nonresident aliens" or "NRAs").<sup>1</sup> In the attached comment letter, the Institute applauds the approach taken by the regulations and urges a few modifications. The Institutes principal concern with the proposed regulations relates to the overly restrictive standard adopted for determining whether an NRA investor may obtain benefits provided by any income tax treaty between the United States and his or her country of residence without obtaining an IRS-generated taxpayer identification number ("TIN"). Specifically, the proposed regulations provide generally that an NRA investor must provide a payor with his or her TIN to obtain treaty benefits unless the payment relates to stock that trades on a "U.S. established financial market," a term limited to (1) "national securities exchanges" such as the New York Stock Exchange and (2) "interdealer quotation systems" such as the NASDAQ over-the-counter market. As mutual fund shares technically do not fall within the proposed regulations definition of "U.S. established financial market," the Institutes comment letter urges that the term be expanded to treat as trading on such a market "any redeemable security issued by an investment company registered under the Investment Company Act of 1940." The Institutes comment letter also urges that the proposed regulations be modified to (1) provide that an IRS Form W-8 certification of foreign status not expire if all correspondence to the NRA shareholder continues to be sent to the "permanent address" provided on the Form; (2) permit mutual funds to rely upon W-8s held by a broker; (3) permit reliance upon electronically submitted and faxed W-8s; and (4) maintain the March 15 deadline for sending tax information with respect to NRA investors to IRS (on IRS Form 1042) and to the shareholders (on IRS Form 1042-S). We will keep you informed of developments. Keith D. Lawson Associate Counsel - Tax Attachment Note: Not all recipients of this memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Information Resource Center at (202)326-8304, and ask for this memo's attachment number: 8079.

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