

**MEMO# 9388**

November 3, 1997

## **INSTITUTE LETTER TO MASSACHUSETTS REGARDING 30 PERCENT TEST**

1 See Institute Memorandum to Tax Members No. 40-97, dated October 21, 1997. [9388]  
November 3, 1997 TO: TAX COMMITTEE No. 38-97 RE: INSTITUTE LETTER TO  
MASSACHUSETTS REGARDING 30 PERCENT TEST

As you know,<sup>1</sup> the Taxpayer Relief Act of 1997's repeal of the "30 percent test" of Internal Revenue Code section 851(b)(3) for taxable years beginning after August 5, 1997 is not effective automatically throughout the country for state tax purposes. Consequently, the industry has been evaluating various state tax laws to determine whether regulated investment companies ("RICs") subject to tax in a jurisdiction are still subject to the 30 percent test. In many states, statutory provisions have been enacted that give immediate effect to changes made to the Internal Revenue Code (including changes to definitions and the calculation of taxable income). In other states, such as California and Massachusetts, some action following a federal change is required to conform state tax law to Internal Revenue Code modifications. This action could be either a legislative change (which could apply to all federal changes or only to specially-identified changes) or, perhaps, an administrative pronouncement. In Massachusetts, the tax rules applicable to corporations (contained in chapter 63 of the Commonwealth's laws) conform automatically to federal changes. The rules applicable to business trusts (contained in chapter 62), however, do not contain a comparable "automatic conformity" provision. The Institute has sent to the General Counsel of the Massachusetts Department of Revenue the attached letter urging clarification, through a Technical Information Release or comparable public pronouncement, to the effect that the Department will not require RICs organized as Massachusetts business trusts to comply with the 30 percent test as a condition for exemption from Massachusetts taxation. This clarification would treat all RICs comparably under Massachusetts law, whether they are organized in Massachusetts business trust, or corporate, form. Keith D. Lawson Associate Counsel - Tax Attachment