

**MEMO# 4131**

September 29, 1992

## **IRS FINALIZES TAX DEPOSIT REGULATIONS**

11/ In many cases, the changes made by the final regulations reflect comments made by the Small Business Administration. 22/ Thus, for example, while a payor might have an obligation to deposit on Day 2 amounts withheld pursuant to backup withholding on Day 1, because the amount withheld exceeded \$100,000, tax withholding on the payor's payroll made on Day 1 would not have to be deposited on Day 2 unless the payroll tax also exceeded \$100,000. September 29, 1992 TO: TAX MEMBERS NO. 58-92 OPERATIONS MEMBERS NO. 31-92 PENSION COMMITTEE NO. 36-92 TRANSFER AGENT ADVISORY COMMITTEE NO. 51-92 RE: IRS FINALIZES TAX DEPOSIT REGULATIONS

Earlier this year, the Internal Revenue Service ("IRS") proposed certain amendments to the regulations under Internal Revenue Code section 6302 that provide the rules for depositing, among other things, amounts withheld under the backup withholding requirements of Code section 3406. (See Institute Memorandum to Tax Committee No. 21-92, Operations Committee No. 17-92 and Transfer Agent Advisory Committee No. 30-92, dated June 9, 1992.) The Institute testified at an IRS hearing in support of these proposed amendments because they would (1) simplify the procedures for making semi-weekly deposits and (2) maintain the distinction for deposit purposes between backup withholding amounts and other withheld tax amounts. (See Institute Memorandum to Tax Committee No. 29-92, Pension Committee No. 27-92, Operations Committee No. 21-92 and Transfer Agent Advisory Committee No. 42-92, dated August 3, 1992.) The attached final regulations retain the features of the proposed payroll tax deposit system that were supported by the Institute.1/1 Specifically, the final regulations permit payors to treat amounts withheld pursuant to Code section 3406 backup withholding separate from other withheld tax amounts in determining payroll tax deposit obligations. 2/2 In addition, the 33/ In addition, if the period between the close of a semi-weekly period (Wednesday/Friday or Saturday/Tuesday) and the regular deposit date includes a banking holiday, the obligation to make tax deposits will be postponed to ensure that payors have at least three banking days following the close of the semi-weekly period to make the required deposit. - 1 - regulations retain the procedure, discussed below, by which "semi-weekly depositors" generally make tax deposits on the same days (i.e., Wednesday and Friday) each week. However, the final regulations do not adopt the Institute's suggestion that amounts withheld on pensions and annuities under Code section 3405 also be treated (like backup withholding amounts) as separate from other withheld tax amounts. Similarly, the regulations do not provide other guidance on or clarification of the rules for depositing amounts withheld on pension and annuity accounts. Under the final regulations, backup withholding amounts would be deposited under one of three methods. In determining which method to apply generally to payments made during a calendar year, the payor would ascertain the aggregate amount of taxes reported during the "lookback

period", i.e., the twelve month period ending on June 30 of the preceding year. The first deposit method -- for the "monthly depositor" -- applies to payors who withheld \$50,000 or less of tax during the lookback period. Monthly depositors are required to deposit withheld taxes on or before the 15th day of the following month. If a payor withheld more than \$50,000 during the lookback period, the payor would be a "semi-weekly depositor." Under this method, deposits generally would be required (i) on or before each Wednesday for payments made during the prior Wednesday, Thursday and/or Friday and (ii) on or before each Friday for payments made during the prior Saturday, Sunday, Monday and/or Tuesday. 3/3 Under the third method, if the amount of undeposited backup withholding accumulated to \$100,000 or more, the payor would be required to deposit this amount by the close of the next business day without regard to whether the payor was a monthly depositor or a semi-weekly depositor. These final regulations are effective January 1, 1993 and apply to the deposit of employment taxes (including backup withholding amounts) attributable to payments made after December 31, 1992. Pursuant to a special transition rule, payors may continue to make deposits during 1993 in accordance with the regulations as they existed prior to these amendments. We will keep you informed of developments. - 2 - Keith D. Lawson Associate Counsel - Tax Attachment

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