MEMO# 2887

June 28, 1991

LEGISLATION ON THRESHOLDS FOR PASS-THROUGH OF FEDERAL OBLIGATION INTEREST CHARACTER IN NEBRASKA AND MARYLAND

June 28, 1991 TO: TAX MEMBERS NO. 22-91 ACCOUNTING/TREASURERS MEMBERS NO. 14-91 MONEY MARKET MEMBERS - ONE PER COMPLEX NO. 19-91 RE: LEGISLATION ON THRESHOLDS FOR PASS-THROUGH OF FEDERAL OBLIGATION INTEREST CHARACTER IN NEBRASKA AND MARYLAND ____ The Institute is pleased to announce further progress in the goal of eliminating state thresholds on the percentage of the assets of a regulated investment company ("RIC") which must be invested in U.S. government obligations before the pass-through of the exemption from state tax for dividends derived from interest on federal obligations is allowed. As you may know, the Institute recently wrote to those states which have such a threshold, pointing out that these thresholds violate federal law. (See Institute Memorandum to Tax Committee No. 8-91, dated April 9, 1991.) Maryland and Nebraska have recently passed legislation eliminating their threshold requirement. In both states, prior court decisions had struck down the threshold requirements. (See Institute Memoranda to Money Market Members - One Per Complex No. 12-90 and Tax Members No. 38-90, dated September 21, 1990 and to Money Market Members - One Per Complex No. 19-90 and Tax Members No. 56-90, dated December 12, 1990.) The Nebraska statute codifies the holding of Lowenstein v. State of Nebraska, a state district court case. In addition, the statute clarifies that the funds themselves are not subject to the Nebraska income tax on the income received from non-Nebraska municipal obligations. The Maryland statute codifies the informal position of the Comptroller, as stated to the Institute in response to its 1990 state tax survey, that Maryland could not enforce its threshold requirement following the decision in Comptroller of the Treasury v. First United Bank and Trust. Finally, attached is the response of the South Carolina Tax Commissioner to our recent letter on thresholds. In it, the state agrees with the Institute's analysis that their threshold - 2 - is unconstitutional and informs the Institute that the state is currently reviewing the method by which it may eliminate its threshold requirement. We will keep you informed of further developments. David J. Mangefrida, Jr. Assistant Counsel - Tax Attachments DJM:bmb