

**MEMO# 4219**

October 29, 1992

# **TENNESSEE ATTORNEY GENERAL OPINION ON PASS THROUGH OF FEDERAL AND TENNESSEE OBLIGATION INTEREST**

October 29, 1992 TO: TAX COMMITTEE NO. 41-92 UNIT INVESTMENT TRUST COMMITTEE NO. 64-92 MONEY MARKET MEMBERS - ONE PER COMPLEX NO. 21-92 RE: TENNESSEE ATTORNEY GENERAL OPINION ON PASS THROUGH OF FEDERAL AND TENNESSEE OBLIGATION INTEREST \_\_\_\_\_ As you know, the Tennessee legislature earlier this year passed legislation which allows for pass through of federal and Tennessee obligation interest. (See Institute Memorandum to Tax Members No. 34-92, Unit Investment Trust Members No. 30-92 and Money Market Members - One Per Complex No. 6-92, dated May 15, 1992.) The entire legislative effort had originally begun in 1990 as a result of the Tennessee Revenue Commissioner's reaction to an opinion of the Tennessee Attorney General. That opinion had stated that Tennessee's then-current law allowing pass through of the character of Tennessee obligation interest, but not of federal obligation interest, was an unconstitutional violation of the requirement that United States obligations receive treatment comparable to those of a state's own obligations, as set forth in the Supreme Court case *Memphis Bank & Trust Co. v. Garner*, 459 U.S. 392 (1983). Attached is an opinion of the Tennessee Attorney General in which he concludes that (1) all obligations of Tennessee and its political subdivisions are eligible for pass-through treatment, (2) dividends or distributions of investment companies and unit investment trusts are exempt from the state's Hall Income Tax in proportion to the income of the entity derived from United States or Tennessee obligations, and (3) the Hall Income Tax as amended to permit flow through of federal and Tennessee obligation interest does not unconstitutionally discriminate against federal obligations. We will keep you informed of further developments. David J. Mangefrida Jr. Assistant Counsel - Tax Attachment