

MEMO# 2202

September 21, 1990

IRS AMENDS "B NOTICE" REGULATIONS

11/ The IRS also filed with the Federal Register yesterday 352 pages of regulations in proposed form only dealing generally with backup withholding and due diligence issues. These additional regulations, which are not presently effective, will be the subject of a separate Institute memorandum. 22/ These regulations are known as the "B Notice" regulations because they implement the withholding requirements of Code section 3406(a)(1)(B). 33/ The first version of the B Notice regulations was issued in 1987. (See Institute Memorandum to Tax Members No. 46-87, Unit Investment Trust Committee No. 31-87, Closed-End Fund Members No. 5-87, Operations Members No. 29-87, and Transfer Agent Shareholder Accounting Advisory Committee No. 24-87, dated December 8, 1987.) These regulations were then amended in 1989. (See Institute Memorandum to Tax Members No. 14-89, Unit Investment Trust Members No. 22-89, Closed-End Fund Members No. 18-89, Operations Members No. 15-89 and Transfer Agent Shareholder Advisory Committee No. 9-89, dated April 18, 1989.) - 1 - September 21, 1990 TO: TAX MEMBERS NO. 37-90 OPERATIONS MEMBERS NO. 27-90 CLOSED-END FUND MEMBERS NO. 36-90 UNIT INVESTMENT TRUST MEMBERS NO. 61-90 TRANSFER AGENT ADVISORY COMMITTEE NO. 34-90 RE: IRS AMENDS "B NOTICE" REGULATIONS

The Internal Revenue Service filed with the Federal Register yesterday 1/1 the attached temporary and proposed regulations relating to the imposition of backup withholding due to notification of an incorrect taxpayer identification number (the so-called "B Notice" regulations). 2/2 These regulations are effective on and after January 1, 1989. 3/3 - 2 - The revised B Notice regulations adopt several changes requested by the Institute in our comment letters to and meetings with Treasury and the IRS. (See Institute Memorandum to Tax Committee No. 7-88, Operations Committee No. 13-88, Closed-End Fund Committee No. 14-88 and Transfer Agent Shareholder Advisory 44/ The "prior regulations" remain in effect except to the extent they are modified by these amended regulations. 55/ The payor is also required to provide the payee with a Form W-9 and a self-addressed reply envelope and to inform the payee that withholding would commence if a certified TIN is not provided within a specified time period. - 3 - Committee No. 8-88, dated April 21, 1988; to Tax Committee No. 10-88, Unit Investment Trust Committee No. 14-88, Operations Committee No. 14-88 and Transfer Agent Shareholder Advisory Committee No. 11-88, dated May 13, 1988; to Tax Committee No. 10- 89, Unit Investment Trust Committee No. 27-89, Closed-End Fund Committee No. 20-89, Operations Committee No. 11-89 and Transfer Agent Shareholder Advisory Committee No. 13-89, dated June 22, 1989; to Tax Committee No. 11-89, Unit Investment Trust Committee No. 38-89, Closed-End Fund Committee No. 29-89, Operations Committee No. 12-89 and Transfer Agent Advisory Committee No. 19- 89, dated July 26, 1989; to Tax Committee No. 18-90, Operations Committee No. 14-90 and Transfer Agent Advisory Committee No. 24- 90, dated July 25, 1990; and to Operations Committee No. 20-90, Tax Committee No. 25-90 and Transfer Agent Advisory Committee No. 33-90, dated August 31,

1990). 1. Time Period for Notifying Payees Under the B Notice regulations as they existed prior to the recent amendments (the "prior regulations") 4/4, a payor was required to notify a payee that the taxpayer identification number ("TIN") provided by the payee was incorrect (i.e., did not "match" with the payee's name) 5/5 within 5 business days from the date on which the IRS or broker notified the payor of the "mismatch". This procedure was later modified so that B Notices would be mailed to payors two or three weeks before the date on the Notice and that the 5 business day time period would run from the later of receipt of the Notice or the date on the Notice (the date of "deemed" receipt). Under the amended regulations, the 5 business day time period for notifying payees is extended to 15 business days. 2. Time Requirement for Withholding on Withdrawals Under the prior regulations, payors were required to commence backup withholding after 7 business days following receipt of the B Notice on withdrawals (e.g., redemptions) and after 30 business days following receipt of the B Notice on reportable payments (e.g., dividends), unless the payee had in 66/ Of course, payors are not precluded from imposing withholding before the relevant time periods have expired. - 4 - the interim provided a certified TIN. 6/6 As a practical matter, - 5 - funds could not distinguish for withholding purposes between withdrawals and reportable payments and would have been required to withhold on all reportable payments and withdrawals after 7 business days from the date of receipt of the B Notice. The amended regulations eliminate the 7-day/30-day distinction and require that withholding commence on all reportable payments and withdrawals after 30 days from the date of receipt of the notification unless the payee has in the interim provided a certified TIN. 3. Fiduciary Accounts The revised regulations eliminate, until final regulations are issued, the requirement that backup withholding be imposed on any account with respect to which at least one person named in the registration is identified as acting in a capacity as nominee or as administrator, conservator, custodian, receiver, tutor, curator, committee, executor, guardian, trustee, or other fiduciary capacity recognized under governing law. In addition, payors are not required to send B Notices to the payees of such fiduciary and nominee accounts. However, the IRS requests that payors send B Notices to these payees and has provided that the sending of a B Notice in these circumstances will be considered strong evidence of (but not a requirement for) qualification for the reasonable cause exception to the penalty that would otherwise be imposed on failures to file correct TINs on information returns that are filed subsequent to receipt of the B Notice. 4. Reasonable Care Searches Under the prior regulations, backup withholding was required to be imposed on reportable payments made to all accounts of a payee with the incorrect name/TIN combination that the payor could locate using reasonable care. Under the revised regulations, where the B Notice contains an account number or designation, backup withholding will apply only to the account or accounts corresponding to that number or designation and containing the incorrect name/TIN combination. If the B Notice does not contain an account number or designation, the rule in the prior regulations requiring a reasonable care search will continue to apply. 5. Two Notifications Within Three Year Period Under the prior regulations, if a payor received two B Notices with respect to a payee within any three-year period, backup withholding could be terminated on any account of the payee only by obtaining a notice from the IRS that a correct name/TIN combination had been provided (the "2/3 rule"). Under the amended regulations, the 2/3 rule will apply on an account- by-account, rather than on a payee, basis. Thus, the 2/3 rule - 6 - will apply only where a payor receives a B Notice twice within 3 calendar years with respect to the same account. * * * * * We will keep you informed of developments. Keith D. Lawson Associate General Counsel Attachment

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