

**MEMO# 9450**

November 24, 1997

## **SUBMISSION TO MASSACHUSETTS ON 30 PERCENT TEST REPEAL**

1 See Institute Memorandum to Tax Committee No. 38-97, dated November 3, 1997. [9450] November 24, 1997 TO: TAX COMMITTEE No. 43-97 RE: SUBMISSION TO MASSACHUSETTS ON 30 PERCENT TEST REPEAL

As you know,<sup>1</sup> the Institute recently wrote to the Massachusetts Department of Revenue ("DOR") to request prompt clarification that those regulated investment companies ("RICs") organized in Massachusetts business trust form that are subject to Massachusetts tax will not be required, pursuant to chapter 62 of Massachusetts law, to comply with the 30 percent test of Internal Revenue Code section 851(b)(3) after the date on which the provision was repealed for federal tax purposes (i.e., taxable years beginning after August 5, 1997). This issue does not arise for RICs organized in corporate form because the chapter of Massachusetts law pursuant to which they are taxed (chapter 63) contains a section expressly providing for automatic conformity to federal law. On November 14, the Institute met with representatives of the DOR to discuss the Institute's request. At the conclusion of the meeting, the DOR's General Counsel asked the Institute to respond to the following three questions: First, is the governing statutory language "ambiguous"? Second, does the DOR have the authority to issue the interpretive relief that the Institute has requested? Third, should the DOR issue the interpretative relief, taking into account any precedent that such an action may set in other contexts? The attached Institute memorandum, which responds affirmatively to each of the DOR's questions, sets forth numerous technical and policy considerations supporting our request for prompt guidance clarifying that the 30 percent test has been repealed for all Massachusetts tax purposes. The accompanying cover letter requests a follow-up meeting within the next week or two during which we could respond to any additional questions raised by the DOR. Keith D. Lawson Associate Counsel - Tax Attachment (in .pdf format)