

**MEMO# 5963**

June 17, 1994

## **INSTITUTE SUPREME COURT BRIEF ON STATE TAXATION OF REPOS**

\* See Institute Memorandum to Accounting/Treasurers Members No. 8-94, Closed-End Fund Members No. 7-94, Members - One Per Complex No. 17-94 and Tax Members No. 8-94, dated March 9, 1994. June 17, 1994 TO: BOARD OF GOVERNORS NO. 53-94 ACCOUNTING/TREASURERS COMMITTEE NO. 32-94 CLOSED-END FUND COMMITTEE NO. 16-94 TAX MEMBERS NO. 27-94 RE: INSTITUTE SUPREME COURT BRIEF ON STATE TAXATION OF REPOS \_\_\_\_\_ In March, the U.S.

Supreme Court granted certiorari in a Nebraska case involving the state taxation of repurchase agreements ("repos") backed by U.S. Government obligations, *Loewenstein v. State*, 504 N.W. 2d 800 (Neb. 1993), cert. granted, 114 S. Ct. 1215 (March 7, 1994).<sup>\*</sup> The taxpayer in the case is a mutual fund shareholder who received dividends derived in part from repo investments. In earlier proceedings, the State of Nebraska had conceded that federal law prohibits the taxation of fund dividends derived from federal obligation interest. Thus, the issue of state taxation of fund dividends was not presented in the case before the Court. Nevertheless, a brief filed by the State of California and joined by many other states argues that federal law does not prohibit the state taxation of fund dividends derived from federal obligations. These states urge the Court to address this issue. The Institute filed the attached brief as *amicus curiae* in support of the taxpayer. The brief makes the following argument: 1) the state taxation of fund dividends derived from federal obligation interest is an issue not before the Court and, therefore, California's arguments should be rejected; 2) if the mutual fund issue were presented, the Court would be compelled to hold that states are prohibited from taxing fund dividends attributable to federal obligation interest; and 3) Nebraska's attempt to tax income arising from repurchase agreements on federal obligations violates federal law. This case is scheduled for argument during the Court's October 1994 term. Consequently, it is likely that oral argument will occur in late 1994, with a decision rendered by June 1995. We will keep you informed of developments. Catherine L. Heron Vice President and Senior Counsel Attachment