The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 1211

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INSTITUTE COMMENTS ON RECENT AMENDMENTS TO BACKUP WITHHOLDING AND DUE DILIGENCE REGULATIONS

- 1 - June 22, 1989 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 TRANSFER AGENT SHAREHOLDER ADVISORY COMMITTEE NO. 13-89 RE: INSTITUTE COMMENTS ON RECENT AMENDMENTS TO BACKUP WITHHOLDING AND DUE DILIGENCE REGULATIONS _____ As we previously informed you, the IRS published amended regulations in April providing some limited relief for payors from the existing backup withholding and due diligence requirements. (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.) The amendments do not, however, adequately resolve several significant problems (that we have already raised several times with the IRS) that are created for investment companies by the existing regulatory system. The attached comment letter raises once again our principal concerns with these requirements and, in addition, suggests that the relief provided by the April amendments for de minimis failures to make required mailings to all pre-1984 accounts without certified TINs be clarified and broadened. I. DUE DILIGENCE REQUIREMENTS FOR POST-1983 ACCOUNTS The Institute's two principal concerns with the definition of due diligence for post-1983 accounts remain unresolved. Consequently, the Institute has suggested again that investment company payors be able to satisfy the due diligence standard, when a certified TIN is not provided with a request to open an account, without having to refuse to open the account or, subsequently, close the account if a certified TIN is not received. In addition, the Institute has suggested again that when a shareholder, who has purchased shares in one investment company through a broker, transfers invested assets from a - 2 - broker-introduced account to a second investment company in the same complex without the assistance of the broker, the second investment company be able to treat the broker-provided TIN as certified in the same manner as the first investment company. II. DUE DILIGENCE REQUIREMENTS FOR PRE-1984 ACCOUNTS The Institute has also suggested that the April amendments to the definition of due diligence for pre-1984 accounts be clarified and broadened. As we previously informed you, an earlier amendment to these regulations provided that if a payor of a pre-1984 account who had not satisfied all of the required mailings wanted to receive administrative relief from the incorrect TIN penalty for 1988 or subsequent calendar years, a separate mailing must have been sent by June 30, 1988 to all payees of pre-1984 accounts without certified

TINs. (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.) The amended regulations issued in April provide that relief may be granted to those payors who failed to make these "fresh-start mailings" to all payees, so long as the failure to mail was limited to a de minimis number of accounts (i.e., the lesser of 5,000 accounts or one percent of the total number of accounts). To receive relief in future years, the payor must make a separate mailing to all such accounts in the following year and nonseparate mailings in each year thereafter until a certified TIN is received. The Institute's comment letter suggests that the scope of this relief is not entirely clear and should be clarified by examples illustrating the section's application. The Institute further suggests that the administrative relief provided by this amendment apply for a given account both to the year of the de minimis failure to mail and to all subsequent years, so long as any failures to make required mailings are limited to a de minimis number of accounts. If the relief is to be available only in the year following the year of the de minimis failure, the Institute suggests that the relief be available for any account for which the required mailings are subsequently made, without regard to whether the mailings are made to all of the de minimis accounts. III. B NOTICES Finally, the Institute's comment letter repeats several suggestions previously made to reduce the burden that will be placed on payors when B Notices are received this fall. For example, the Institute recommends again that all investment - 3 - company payors be given the option of receiving B Notice data on computer tape rather than on paper regardless of the number of B Notices sent to them. We will keep you informed of developments. Keith D. Lawson Assistant General Counsel Attachment

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