

**MEMO# 10606**

December 24, 1998

## **IRS RELEASES GUIDANCE ON RECHARACTERIZATION REPORTING AND HARDSHIP ROLLOVER DISTRIBUTIONS**

1 See Institute Memorandum to Pension Committee No. 82-98, Pension Operations Advisory Committee No. 67-98 and Transfer Agent Advisory Committee No. 81-98, dated December 3, 1998. [10606] VIA FAX December 24, 1998 TO: PENSION COMMITTEE No. 91-98 PENSION OPERATIONS ADVISORY COMMITTEE No. 75-98 TRANSFER AGENT ADVISORY COMMITTEE No. 88-98 ROTH IRA AD HOC COMMITTEE OCTOBER 22 ROTH IRA MEETING ATTENDEES RE: IRS RELEASES GUIDANCE ON RECHARACTERIZATION REPORTING AND HARDSHIP ROLLOVER DISTRIBUTIONS

The Internal Revenue Service has released guidance on recharacterization reporting for 1998 and 1999 and has provided transition relief for hardship rollover distributions. Announcement 99-5 provides that alternative methods of reporting 1998 and 1999 recharacterizations of IRA contributions and of 1998 and 1999 reconversions will be acceptable in certain circumstances. This guidance reflects the Institute's request for flexible reporting for recharacterizations and reconversions in our comment letter on Roth IRA guidance as well as in informal discussions with Service and Treasury officials.<sup>1</sup> Specifically, the announcement states that a trustee will not fail to meet the requirements of Forms 1099-R or Forms 5498 merely because, in the event of one or more recharacterizations occurring in 1998 using the same trustee and subsequent reconversions using that same trustee, the trustee uses a reasonable reporting alternative to the method described in Notice 98-49, section 1.408A-7 of the proposed regulations and the instructions to Forms 1099-R and 5498. This same rule applies to recharacterizations and reconversions involving the same trustee in 1999. Any trustee using an alternative method must provide instructions to the IRA owner, in conjunction with account statements (or other information) the trustee provides the IRA owner, on how to use the information provided on the forms to properly report the recharacterizations and reconversions on income tax returns for 1998 and/or 1999 as appropriate, including how to use the information to complete related forms such as Form 8606 and Form 5329. Note that a transaction that occurs between different trustees using different Federal identification numbers for purposes of issuing Forms 1099-R and Forms 5498 is not eligible for "alternate reporting" under the announcement. In addition, the Service issued Notice 99-5, which provides transition relief and guidance relating to the exception to the definition of eligible rollover distribution for certain hardship distributions. The Institute is pleased to report that this transition relief represents relief requested by the Institute with respect to such hardship distributions in a letter to the Treasury Department as well as in informal discussions with Service and Treasury officials. The Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA 98") added an

exception to the definition of eligible rollover distribution for any hardship distribution described in section 401(k)(2)(B)(i)(IV), effective for distributions after December 31, 1998. Generally, the notice provides transition relief for section 401(a) plans and section 403(b) annuities to delay implementation of the exception as it applies to distributions occurring before January 1, 2000. Notice 99-5 states that due to the systems issues related to the change in definition of an eligible rollover distribution, the Service and Treasury Department will allow any distribution from a qualified plan or section 403(b) annuity to be treated as an eligible rollover distribution for all purposes under the Code to the extent that the distribution would have been an eligible rollover distribution as defined under section 402(c)(4) immediately prior to its amendment by RRA 98. However, a qualified plan or section 403(b) annuity is permitted to determine the amount of any eligible rollover distribution in 1999 using the definition of eligible rollover distribution in section 402(c)(4) as amended by RRA 98. The use of the amended definition by the qualified plan or section 403(b) annuity in 1999 will not affect the eligibility of a distributee to determine the portion of the distribution that is an eligible rollover distribution using the definition in effect under section 402(c)(4) prior to its amendment by RRA 98, if the distributee chooses to roll over the distribution within 60 days pursuant to section 402(c) or section 403(b)(8). Notice 99-5 also provides guidance with respect to plan amendments pursuant to the remedial amendment period. Copies of Announcement 99-5 and Notice 99-5 are attached. Kathryn A. Ricard Assistant Counsel Attachments