

**MEMO# 2507**

February 11, 1991

# **INSTITUTE COMMENTS ON PROPOSED INFORMATION REPORTING AND BACKUP WITHHOLDING REGULATIONS**

- 1 - February 11, 1991 TO: TAX COMMITTEE NO. 3-91 OPERATIONS COMMITTEE NO. 4-91  
CLOSED-END FUND COMMITTEE NO. 3-91 UNIT INVESTMENT TRUST COMMITTEE NO. 7-91  
TRANSFER AGENT ADVISORY COMMITTEE NO. 5-91 RE: INSTITUTE COMMENTS ON  
PROPOSED INFORMATION REPORTING AND BACKUP WITHHOLDING REGULATIONS

As you know, over the past several years the IRS has issued and periodically revised regulations regarding information reporting, backup withholding and due diligence. In September 1990, the IRS reissued several of these regulations, relating principally to backup withholding, in proposed form. (See Institute Memorandum to Tax Members No. 44-90, Operations Members No. 31-90, Closed-End Fund Members No. 41-90, Unit Investment Trust Members No. 67-90 and Transfer Agent Advisory Committee No. 38-90, dated October 12, 1990.) Unlike the existing temporary regulations, which are in question and answer ("Q&A") format, the proposed regulations are in traditional (narrative) regulation format. In the attached letter, the Institute makes several comments relating to (1) the standard for avoiding penalties for failure to provide correct taxpayer identification information on returns and statements, (2) operational changes to the "B" Notice procedure to ease the burdens it places on payors and (3) methods of formatting fiduciary and nominee accounts. In summary, our specific suggestions are: 1. The standard that investment company payors must meet to avoid imposition of the penalties for failure to provide correct taxpayer identification information on returns and statements should permit the following: a. The standard should permit investment company payors to open shareholder accounts by mail, electronic transmission (wire transfer) or telephone without receiving - 2 - either a certified taxpayer identification 1 \*/ The comment letter observes that two changes made by the proposed regulations may have resolved this issue. Consequently, the letter requests clarification on this point. - 1 - number ("TIN") or an awaiting-TIN certification, and should not be required that the account subsequently be closed, provided that the payor (a) imposes backup withholding within 30 days after the date the account is opened, (b) makes a separate, first-class mailing soliciting the certified TIN and (c) makes subsequent, nonseparate mailings each year until the certified TIN is received. b. The standard should permit all open-end investment companies ("mutual funds") within the same complex or family of funds to rely upon "broker-introduced TINs" provided that (a) the broker has not notified the fund complex that the TIN is either not certified or incorrect and (b) the subsequent accounts are opened without the assistance of a broker.\*/1 2. The following operational changes should be made to the "B" Notice procedure to ease the burdens that it places on payors: a. Payors that file information returns on magnetic media should be given the option of receiving "B" Notice

data on computer tape rather than paper regardless of the number of mismatches. b. Investment company complexes should be permitted to designate a single recipient for all "B" Notices sent by the IRS to investment companies in the complex. c. The IRS should provide an 800 number for payees to contact the IRS and the Social Security Administration regarding TIN discrepancies. 3. The Institute seeks to work closely with the Service regarding the formatting of fiduciary and nominee accounts so that the correct name/TIN combination is identified. To this end, the Institute has discussed with John Devlin, Director of the Office of Information Reporting Program, the - 2 - release of the Service's name control program for fiduciary and nominee accounts as a first step toward resolving these formatting concerns. All of the comments relating to the due diligence/reasonable cause standard and the "B" Notice procedures have been made in earlier Institute comment letters. (See Institute Memoranda to Tax Committee No. 33-90, Operations Committee No. 28-90, Closed-End Fund Committee No. 28-90, Unit Investment Trust Committee No. 55-90, and Transfer Agent Advisory Committee No. 53-90, dated December 17, 1990 and to Tax Committee No. 7-88, Operations Committee No. 13-88, Closed-End Fund Committee No. 14-88 and Transfer Agent Advisory Committee No. 8- 88, dated April 21, 1988.) The letter also requests an opportunity to testify at an IRS public hearing on these proposed regulations scheduled for March 4, 1991. We will keep you informed of developments. Keith D. Lawson Associate General Counsel Attachment KDL:bmb