

**MEMO# 1125**

April 21, 1989

# **INSTITUTE STATEMENT ON INFORMATION REPORTING PENALTIES**

- 1 - April 21, 1989 TO: TAX COMMITTEE NO. 5-89 OPERATIONS COMMITTEE NO. 7-89  
TRANSFER AGENT SHAREHOLDER ADVISORY COMMITTEE NO. 10-89 CLOSED-END FUND  
COMMITTEE NO. 11-89 UNIT INVESTMENT TRUST COMMITTEE NO. 19-89 RE: INSTITUTE  
STATEMENT ON INFORMATION REPORTING PENALTIES

Attached is the Institute's statement to the House Ways and Means Subcommittee on Oversight concerning the Internal Revenue Code's civil penalty provisions. The Subcommittee is currently conducting a comprehensive review of present-law civil penalties and plans to provide a report with recommendations to the full Ways and Means Committee upon completion of its review. The Institute has numerous concerns with the existing due diligence and backup withholding regulations. Two principal concerns are highlighted in the statement. First, the due diligence standard for post-1983 accounts has been defined to force investment companies to make one of two choices in order to avoid the section 6676(b) penalty: either refuse to open or, subsequently, close the accounts of shareholders who do not certify their TINs. The statement emphasizes that this requirement puts investment companies at a competitive disadvantage and is untenable. Second, an investment company in a complex may not treat as certified a TIN provided by a broker for a shareholder who invested in another investment company in the same complex and wishes to transfer money from the first, broker-introduced, account to a new account without the assistance of the broker; this requirement is too inflexible because the first investment company is generally entitled to treat the TIN as certified and no policy reason supports requiring a shareholder to use a broker to switch accounts within a single complex. The Institute's statement indicates that the industry supports reasonable efforts to enhance tax compliance; the Institute supports imposing backup withholding on shareholders and taking other measures to ensure that shareholders either - 2 - provide correct, certified TINs or pay the appropriate tax on their investment company earnings. For this reason, the Institute has, for the past 6 years, worked with the Treasury and the Internal Revenue Service in an effort to develop a reasonable definition of due diligence that effectively accomplishes the goals of the Interest and Dividend Tax Compliance Act of 1983. However, because the Institute's efforts to develop such a standard have been unsuccessful, the Institute believes that legislation is necessary. We will keep you informed of developments. Keith D. Lawson Assistant General Counsel Attachment

should not be considered a substitute for, legal advice.