

MEMO# 2591

March 7, 1991

INSTITUTE TESTIFIES ON BACKUP WITHHOLDING REGULATIONS

March 7, 1991 TO: TAX COMMITTEE NO. 4-91 OPERATIONS COMMITTEE NO. 7-91 CLOSED-END FUND COMMITTEE NO. 4-91 UNIT INVESTMENT TRUST COMMITTEE NO. 9-91 TRANSFER AGENT ADVISORY COMMITTEE NO. 11-91 RE: INSTITUTE TESTIFIES ON BACKUP WITHHOLDING REGULATIONS

Attached is testimony given by the Institute at this week's IRS public hearing on the revised backup withholding and due diligence regulations issued last fall. (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.) In general, the testimony summarized the written comments previously submitted by the Institute. (See Institute Memorandum 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 and Transfer Agent Advisory Committee No. 5-91, dated February 11, 1991.) The testimony also expressed support for the regulations promulgated in February on information reporting penalties and the reasonable cause waiver. (See Institute Memorandum to Tax Members No. 6-91, Operations Members No. 7-91, Closed-End Fund Members No. 9-91, Unit Investment Trust Members No. 9-91 and Transfer Agent Advisory Committee No. 10-91, dated February 25, 1991.) The testimony focused primarily on when a certified taxpayer identification number ("TIN") must be acquired, the consequences of not acquiring a certified TIN and whether all funds in a fund complex may rely upon a "broker-introduced TIN" when opening new accounts without the broker's assistance. The testimony observed that the new reasonable cause regulations appear to confirm the Institute's prior suggestion that payors be permitted to open accounts without certified TINs and not be subjected to penalties for failure to file correct information returns, provided they impose backup withholding and make the required solicitations for the TIN. In addition, the Institute testified that it believes that the backup withholding regulations may have resolved the industry's concerns relating to - 2 - reliance upon broker-introduced TINs by other funds in a complex. Confirmation of this point was requested. The testimony also requested three operational changes to the "B" Notice procedure: (1) that payors have the option to receive all "B" Notice data on computer tape; (2) that payors be permitted to designate a recipient for all "B" Notices; and (3) that an 800 number be provided for payees to contact the IRS and the Social Security Administration to discuss name/TIN mismatches. Finally, the Institute requested that the IRS make available to payors the "name control" program for fiduciary and nominee accounts to help reduce the number of name/TIN mismatches in this area. We will keep you informed of developments. Keith D. Lawson Associate Counsel - Tax Attachment KDL:bmb

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