

**MEMO# 16386**

August 1, 2003

## **COMMENT LETTER ON TAX SHELTER DISCLOSURE REGULATIONS**

[16386] August 1, 2003 TO: TAX MEMBERS No. 41-03 ACCOUNTING/TREASURERS MEMBERS No. 33-03 ADVISOR DISTRIBUTOR TAX ISSUES TASK FORCE No. 13-03 529 PLAN ADVISORY COMMITTEE No. 42-03 UNIT INVESTMENT TRUST MEMBERS No. 27-03 RE: COMMENT LETTER ON TAX SHELTER DISCLOSURE REGULATIONS As we previously informed you,<sup>1</sup> recent tax shelter disclosure regulations issued under Code sections 6011, 6111 and 6112 include several exceptions for regulated investment companies ("RICs") that were suggested by the Institute.<sup>2</sup> In certain respects, however, the regulations and an accompanying revenue procedure (Rev. Proc. 2003-24) continue to have an overly broad application. The Institute today submitted the attached comment letter addressing three concerns. Specifically, • losses on RIC shares are subject to reporting because Rev. Proc. 2003-24 does not permit RIC shareholders to have a "qualifying basis" in their shares; • the scope of the "confidential transaction" category is so expansive as potentially to include transactions where the confidentiality agreement is intended to cover only legitimate proprietary concerns but incidentally also covers the intended tax benefits of the transaction; and • it is unclear whether tax-exempt entities are subject to the full panoply of tax shelter disclosure obligations simply because their tax-exempt status may fall within the definition of a "tax benefit" in a reportable transaction. 1 See Institute Memorandum to 529 Plan Advisory Committee No. 14-03, Accounting/Treasurers Members No. 13-03, Advisor Distributor Tax Issues Task Force No. 5-03, Tax Members No. 15-03 and Unit Investment Trust Members No. 9-03 (No. 15707), dated March 7, 2003. 2 See Institute Memorandum to Accounting/Treasurers Committee No. 55-02, Advisor Distributor Tax Issues Task Force No. 4-02, Tax Members No. 56-02 and Unit Investment Trust Members No. 41-02 (No. 15499), dated December 31, 2002 and Institute Memorandum to 529 Plan Advisory Committee No. 4-03 (No. 15568), dated January 23, 2003. 2 To address these concerns, our comment letter requests that guidance be issued: • modifying Revenue Procedure 2003-24 to permit RIC shareholders to hold a "qualifying basis" in RIC shares, so that such losses are not taken into account in determining whether a transaction is a reportable transaction; • modifying the section 6011 regulations to clarify that confidentiality relates to tax benefits and to treat as a "confidential transaction" only those transactions where the predominant reason for offering the transaction under conditions of confidentiality is related to the potential tax benefit that may result from the transaction; and • modifying the section 6011 regulations to exclude tax-exempt entities from the disclosure rules, except in certain potentially abusive situations, as described in the comment letter. Lisa Robinson Assistant Counsel Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 16386, or call the ICI Library at (202) 326-8304 and request the attachment for memo 16386. Attachment (in .pdf format)

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