

MEMO# 2387

December 17, 1990

INSTITUTE LETTER ON THE REASONABLE CAUSE WAIVER OF INTERNAL REVENUE CODE SECTION 6724

- 1 - December 17, 1990 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 TRANSFER AGENT ADVISORY COMMITTEE NO. 53-90 RE: INSTITUTE LETTER ON THE REASONABLE CAUSE WAIVER OF INTERNAL REVENUE CODE SECTION 6724

As we previously informed you, the Omnibus Budget Reconciliation Act of 1989 ("OBRA 89") changed the standard that must be satisfied to assert a defense to the \$50 penalty for failure to include a correct taxpayer identification number ("TIN") on an information return or statement. Specifically, OBRA 89 replaced the due diligence standard (a "higher waiver standard") with the reasonable cause standard. (See Institute Memorandum to Closed-End Fund Members No. 68-89, Tax Members No. 48-89, Unit Investment Trust Members No. 70-89, Operations Committee No. 27-89, Accounting/Treasurers Committee No. 55-89 and Transfer Agent Shareholder Advisory Committee No. 31-89, dated December 19, 1989.) To date, no regulations have been issued describing the reasonable cause standard. In the attached letter, the Institute makes two specific suggestions regarding application of the reasonable cause waiver to investment company payors. The opportunity to make additional suggestions, if appropriate, will be available once regulations addressing the reasonable cause standard are released for comment. The Institute's suggestions are as follows. (1) The reasonable cause standard should permit investment company payors to open shareholder accounts by mail, electronic transmission (wire transfer) or telephone without receiving either a certified taxpayer identification number ("TIN") or an awaiting-TIN certification, and should not require that the account subsequently be closed, provided that the payor (a) imposes backup withholding 30 days after the date the account is opened, (b) makes a separate, first-class mailing - 2 - soliciting the certified TIN and (c) makes subsequent, nonseparate mailings each year until the certified TIN is obtained. (2) The reasonable cause standard should permit all 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 accounts are opened without the assistance of a broker. Each of these suggestions was previously made by the Institute with regard to the due diligence standard, but never adopted in Treasury regulations. (See Institute Memorandum 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.) As you may know, the Institute is also preparing comments on the recently released backup withholding and due diligence regulations. (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.) We will keep you informed of developments regarding all of these tax compliance regulatory issues. Keith D. Lawson
Associate General Counsel Attachment

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