

MEMO# 18946

June 16, 2005

IRS NOTICE 2005-47 PROVIDES INTERIM GUIDANCE CONCERNING STATE OR LOCAL BOND OPINIONS UNDER CIRCULAR 230

©2005 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [18946] June 16, 2005 TO: FIXED-INCOME ADVISORY COMMITTEE No. 14-05 MONEY MARKET FUNDS ADVISORY COMMITTEE No. 12-05 TAX MEMBERS No. 16-05 RE: IRS NOTICE 2005-47 PROVIDES INTERIM GUIDANCE CONCERNING STATE OR LOCAL BOND OPINIONS UNDER CIRCULAR 230 Notice 2005-47 (attached) provides interim guidance, including guidance requested by the Institute¹, concerning State or local bond opinions under Circular 230; this circular governs practice before the Internal Revenue Service, including standards relating to written advice provided by tax practitioners. As we previously informed you, Treasury recently issued final and proposed regulations under Circular 230 to modify the rules for tax shelter opinions by requiring certain opinions called “covered opinions” to include additional disclosures.² Opinions that are within the definition of “State or local bond opinion” are expressly excluded from the rules applicable to “covered opinions” and are not required to include the additional disclosures set forth in the regulations. Instead, counsel must separately provide written advice to the issuer in the transcript of proceedings or a similar document. The final regulations, which provide rules relating to “covered opinions,” are effective for written advice rendered after June 20, 2005. The proposed regulations provide rules relating to “State or local bond opinions” and should become effective no sooner than 120 days after final regulations are published in the Federal Register. The final regulations include a definition of “State or local bond opinion.” Opinions that do not meet this definition are subject to the rules in the final regulations governing “covered opinions.” As requested by the Institute, Notice 2005-47 clarifies that the definition of “State or local bond opinion” includes, in relevant part: One or more Federal tax issues reasonably related and ancillary to [the excludability of interest on a State or local bond from gross income under section 1 See Institute Memorandum (18610) to Fixed-Income Advisory Committee No. 8-05, Money Market Funds Advisory Committee No. 6-05 and Tax Members No. 4-05, dated March 3, 2005. 2 See Institute Memorandum (18356) to Tax Members No. 50-04, dated December 20, 2004. 2 103 of the Internal Revenue Code]. Such issues include, but are not limited to ... whether a State or local bond has been reissued for Federal tax purposes [and] whether the organization that is borrowing the proceeds of the State or local bond is described in section 501(c)(3) of the Internal Revenue Code... The interim definition of “State or local bond opinion” will be effective for opinions rendered after June

20, 2005. The Notice states that Treasury and the IRS also are considering other modifications to the requirements for State or local bond opinions, including, but not limited to (i) adding a provision that would permit a practitioner under certain circumstances to render an opinion that addresses less than all the significant Federal tax issues raised by the State or local bond issue and (ii) permitting exclusions similar to those applicable to covered opinions for an opinion that would otherwise be a State or local bond opinion if the opinion is a preliminary, post-filing or negative opinion, or is in-house counsel advice. Lisa Robinson Associate Counsel Attachment (in .pdf format) 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 18946, or call the ICI Library at (202) 326-8304 and request the attachment for memo 18946.

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