

MEMO# 9287

September 29, 1997

INSTITUTE REQUEST FOR GUIDANCE ON POST-OCTOBER LOSS RULES

[9287] September 29, 1997 TO: TAX COMMITTEE No. 32-97 ACCOUNTING/TREASURERS COMMITTEE No. 35-97 RE: INSTITUTE REQUEST FOR GUIDANCE ON POST-OCTOBER LOSS RULES _____ The attached memorandum submitted by the Institute to the Treasury Department and the Internal Revenue Service requests guidance for 1997 clarifying two issues relating to the new maximum capital gains rates and their impact on regulations under Section 852 that implement the excise tax "Post-October Loss" Rules. A supplemental submission will be made later this year, following the next Tax Committee meeting, containing recommendations for 1998 and later years. The first issue addressed in the memorandum involves the definition of a Post-October Loss and whether the definition should be modified during 1997 to change the treatment for a fund with a year-end in May through September that (1) made a capital gain distribution during 1996, (2) realized gains after May 6, 1997 on transactions taxed at a maximum rate of 20%, (3) had a Post- Oct. loss on "28% rate" transactions, but (4) had for the Post-October period neither a net capital loss nor a net long-term capital loss. In this situation, a fund would not have a Post-October loss (as the term is defined currently) but would have distributed in 1996 more gain taxable at a 28% maximum rate than it had for its entire taxable year. One possible resolution of this issue would be to push the Post-October "28% loss" until the next taxable year, which would "preserve" the gain already distributed and require an additional distribution of the "20% gain." The Institute Memorandum recommends, however, that the Post-October loss regulations not be modified for 1997, as funds could be left with too little time to implement any regulatory changes. The second issue addressed in the Memorandum involves the situation in which a fund is required by the Post-October loss rules to "push" a gain into the next taxable year and any gain arising on the date to which the transaction is pushed is taxed at a maximum rate different from the rate that would have applied on the date the transaction actually occurred. For example, assume a fund with a June 30 year-end that, on March 31, realized a gain taxable at a 28% maximum rate that is deferred pursuant to the Post-October loss rules until July 1, when gains are taxed at a 20% maximum rate. The Institute Memorandum recommends that the character of the deferred gain be maintained. Thus, any gain realized before May 7 would not be recharacterized as 20% gain if it were deferred until June 1 or July 1 (when all long-term gains are subject to a 20% maximum rate) and any gain realized after May 6 and before July 29 on assets held for more than 12, but not more than 18, months (taxable at a 20% maximum rate) would not be recharacterized as 28% gain if it were deferred until August 1 or later. We will keep you informed of developments. Keith D. Lawson Associate Counsel - Tax Attachment (in .pdf format)

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