

MEMO# 2252

October 11, 1990

B NOTICE UPDATE

- 1 - October 12, 1990 TO: TAX MEMBERS NO. 41-90 OPERATIONS MEMBERS NO. 30-90
CLOSED-END FUND MEMBERS NO. 40-90 UNIT INVESTMENT TRUST MEMBERS NO. 66-90
TRANSFER AGENT ADVISORY COMMITTEE NO. 37-90 RE: B NOTICE UPDATE

As you know, the IRS is presently notifying payors of interest and dividends, pursuant to Code section 3406(a)(1)(B), of accounts for which payees' names and taxpayer identification numbers ("TINs") do not "match." (See Institute Memorandum to Tax Members No. 39-90, Operations Members No. 29-90, Closed-End Fund Members No. 38-90, Unit Investment Trust Members No. 63-90 and Transfer Agent Advisory Committee No. 36-90, dated September 24, 1990.) Under the so-called "B Notice" regulations, payors who are notified of "incorrect" TINs are generally required to notify payees of the "mismatch" and impose backup withholding if a certified TIN is not received within a specified period. This memorandum discusses a few questions that have arisen regarding the B Notice Program. 1. Time Periods for Notifying Shareholders and Imposing Backup Withholding Payors are required to notify payees and impose backup withholding within certain time periods following "receipt" of notification from the IRS or a broker of an incorrect TIN. Pursuant to amendments to the temporary regulations promulgated last year, the IRS announced (1) that B Notices will be sent to payors before the date on the Notice and (2) the date set forth on the Notice from the IRS (or a broker) shall be considered the date of receipt by, and notification to, the payor unless the date of actual receipt is later, in which case the date of actual receipt will control. (See Institute Memorandum to Tax Members No. 14-89, Unit Investment Trust Members No. 22-89, Closed-End Fund Members No. 18-89, Operations Members No. 15-89 and Transfer - 2 - Agent Shareholder Advisory Committee No. 9-89, dated April 18, 1989.) We understand that the B Notices being sent this fall to payors are dated October 15, 1990. As we previously informed you, the IRS recently amended its temporary regulations and revised the time periods before which certain activities in connection with B Notices must be commenced. (See Institute Memorandum to Tax Members No. 37-90, Operations Members No. 27-90, Closed-End Fund Members No. 36-90, Unit Investment Trust Members No. 61-90 and Transfer Agent Advisory Committee No. 34-90, dated September 21, 1990.) First, the time period within which payors must notify payees of name/TIN mismatches has been extended to 15 business days from the date of receipt of the Notice by the payor. Second, backup withholding must commence on all reportable payments and withdrawals made after the close of the 30th business day after the date of receipt of the notification unless the payee provides the payor with a certified TIN. One rule that has not changed, however, is that payees are instructed (by the sample B Notice appearing in the appendix to Treasury Regulation section 35a.3406-1) to provide payors with a certified TIN within 30 calendar days from the date on the notice. Thus, if a payor receives notification of a name/TIN mismatch before October 15, 1990 (the date on the notice) and the payor is open for business Monday through Friday thereafter, except for Thanksgiving Day (November 22),

payors will be required to notify payees of name/TIN mismatches no later than November 5, 1990, payees should provide a certified TIN to payors by November 14, 1990 and payors must withhold on all reportable payments and withdrawals made on or after November 28, 1990 to persons who have not provided the requisite certification, although payors are permitted to begin withholding sooner. 2. Two Notifications Within Three Year Period

Several persons have asked whether the B Notices being received now are to be considered the first or the second notifications for purposes of the rule that a payor who receives two B Notices with respect to a payee within any three-year period may terminate backup withholding only after receiving a notice from the IRS that a correct name/TIN combination has been provided (the "2/3 rule"). The confusion has apparently arisen because "test-runs" based on 1988 information returns were sent earlier in 1990 and the IRS stated once that 1990 was the first year to which the 2/3 rule could be applied. The IRS has clarified its position by informally notifying us that the B Notices being received this fall based upon 1989 information returns are the first notification for purposes of the 2/3 rule. This informal IRS clarification conforms to Temp. Treas. Reg. section 35a.3406-(f)(1), which provides that, for purposes of the 2/3 rule, a payor shall not count any notice as a first notice - 3 - unless the payor was required to notify the payee pursuant to the B Notice procedure (which is first being applied with respect to 1989 information returns). * * * We will keep you informed of developments. Keith D. Lawson Associate General Counsel