

**MEMO# 19306**

October 31, 2005

## **INSTITUTE COMMENT LETTER ON CALIFORNIA APPORTIONMENT RULES**

©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. [19306] October 31, 2005 TO: ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 11-05 TAX MEMBERS No. 27-05 RE: INSTITUTE COMMENT LETTER ON CALIFORNIA APPORTIONMENT RULES Attached is an Institute comment letter regarding California's proposal to issue apportionment regulations for mutual fund service providers. The letter was submitted in connection with a California Franchise Tax Board ("FTB") symposium to discuss the proposal. The Institute's letter urges the FTB to adopt a method for apportioning a mutual fund service provider's California taxable income that fairly and accurately reflects the service provider's market activity in the state. Specifically, the letter states that: • several states have found that sales apportionment rules based upon the residency of the shareholders in the service provider's mutual funds ("market-based apportionment") can reflect fairly state taxable income; • a "throw-out" rule is inconsistent with market-based apportionment, distorts income, and can result in unconstitutional double-taxation; and • a "throw-back" rule also is inconsistent with market-based apportionment. Additionally, the comment letter discusses the unique relationship among mutual fund service providers and the need for flexible apportionment rules for nominee, or "street name" accounts, and closed-end funds. Lisa Robinson Associate Counsel Attachment (in .pdf format)

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