

MEMO# 2038

July 19, 1990

INSTITUTE COMMENTS ON IRS FORM 5452 (CORPORATE REPORT OF NONDIVIDEND DISTRIBUTIONS)

- 1 - July 19, 1990 TO: TAX COMMITTEE NO. 15-90 ACCOUNTING/TREASURERS COMMITTEE NO. 20-90 CLOSED-END FUND COMMITTEE NO. 16-90 UNIT INVESTMENT TRUST COMMITTEE NO. 31-90 RE: INSTITUTE COMMENTS ON IRS FORM 5452 (CORPORATE REPORT OF NONDIVIDEND DISTRIBUTIONS) _____

As you may know, IRS Form 5452 (Corporate Report of Nondividend Distributions) provides that any corporation, including any regulated investment company ("RIC"), making a return of capital payment must file Form 5452 with the IRS in order to advise shareholders on Form 1099-DIV that they received a return of capital during the calendar year. Through last year, extensions of time to file Form 5452 beyond the February 28 due date were automatically granted provided that the extension requested did not extend beyond the due date, including extensions, for filing the corporation's federal income tax return. Last fall, the IRS amended Form 5452 to require that it be filed with all supporting documents (including certain pages from the corporation's federal income tax return) by February 28, without extension, for a corporation to report a return of capital as such on Forms 1099-DIV issued in January. (See Attachment A.) If this filing requirement could not be met, a corporation would be required to report return of capital distributions first as taxable income and later, after Form 5452 and all supporting documents were filed, as returns of capital. After these amendments were announced, the Institute and others sought relief for RICs, which would be particularly burdened by this change. In January 1990, the IRS announced that these amendments would not apply to Forms 5452 filed with respect to fiscal years ending in 1989. (See Institute Memorandum to Tax Members No. 5-90 and Unit Investment Trust Members No. 7-90, dated January 29, 1990). Recently, the Institute met with the IRS to seek a permanent resolution of this issue and suggested that Form 5452 be amended to permit RICs to continue to file all supporting - 2 - documents after February 28 while reporting return of capital - 3 - distributions to shareholders as such in January. The attached Institute letter to the IRS (Attachment B) expresses our concerns with being required to file supporting documents by February 28, establishes several reasons why RICs should be distinguished from other corporations with respect to the filing requirements for Form 5452 and suggests several alternatives to RICs filing Form 5452 with all supporting documents by February 28. We will keep you informed of developments. Keith D. Lawson Associate General Counsel Attachments

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.