

MEMO# 14180

November 26, 2001

INSTITUTE SUBMITS LETTER TO TREASURY DEPARTMENT ON PORTABILITY OF RETIREMENT ASSETS

[14180] November 26, 2001 TO: PENSION COMMITTEE No. 73-01 PENSION OPERATIONS ADVISORY COMMITTEE No. 71-01 RE: INSTITUTE SUBMITS LETTER TO TREASURY DEPARTMENT ON PORTABILITY OF RETIREMENT ASSETS The Institute today submitted the attached letter to Treasury and IRS officials on the portability provisions of the Economic Growth and Tax Relief Reconciliation Act (EGTRRA). The letter was developed based on comments provided during several conference calls with members; we want to thank you for your assistance in developing the Institute's recommendations on these matters. Specifically, the letter requests regulatory guidance on the following issues under EGTRRA's portability provisions: Communication of After-Tax Information Between Employer-Sponsored Plans. The letter makes the following points regarding the communication of after-tax information in a plan-to-plan rollover. • As provided in the Institute's prior letter on revisions to the model 402(f) notice,¹ the letter recommends that the updated notice inform the participant that he or she should check with the administrator of the sending plan to determine how much, if any, of the rollover amount consists of after-tax amounts. • In the case of a direct rollover that includes after-tax amounts from one employer-sponsored plan to another, the "sending" plan should provide the basis information it has to the "receiving" plan. • In the case where a sending plan does not provide after-tax information to the receiving plan, guidance should expressly permit a receiving plan that accepts after-tax rollovers — after asking either the participant or the sending plan whether the rollover contains after-tax amounts — to treat the entire rollover amount as pre-tax dollars for plan recordkeeping and reporting purposes. Additionally, receiving plans that do not accept 1 See Institute Memorandum to Pension Committee No. 59-01 and Pension Operations Advisory Committee No. 51-01, dated August 17, 2001. 2 after-tax rollovers should be allowed to make this assumption after disclosing the restriction to the participant. Attributes and Recordkeeping of Rollover Assets. The letter requests clarifying guidance on the attributes and recordkeeping of assets upon rollover to another plan. Specifically, it recommends that Treasury and the IRS: • confirm that retirement assets rolled from one plan to another become subject to the rules applicable to the receiving plan; • should not require receiving plans to separately track (1) assets subject to "grandfathered" treatment in the sending plan, (2) earnings on after-tax contributions prior to the rollover, and (3) after-tax rollovers (from the sending plan) separate and apart from after-tax contributions (made directly to the receiving plan); • clarify the circumstances under which such capital gains and income-averaging treatment would be available, if at all; and • develop guidance on corrections with regard to after-tax rollovers. After-Tax Rollovers From Other Plan Types. The letter requests guidance on the extent to which

401(a), 403(b) and 457 plans may receive after-tax rollovers from other types of plans. It also seeks confirmation that EGTRRA allows after-tax amounts to be rolled from one 403(b) plan to another, and between 457 plans. Basis Recovery Rules. The letter seeks confirmation that Code section 72(e) does not dictate the extent to which participants may roll over certain portions of their distribution, such as those consisting solely of pre-tax amounts, to another savings vehicle. Standards for Hardship Exception to 60-Day Rollover Rule. Because the statutory provision providing for the hardship exception to the 60-day rollover rule does not appear to be self-executing, the letter requests that Treasury and the IRS issue guidance to assist participants in determining whether they meet the waiver standard. Thomas T. Kim Associate Counsel Attachment (in .pdf format)

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