

**MEMO# 2089**

August 3, 1990

# **POWER TO CONSENT TO CREDIT SUPPORT CHANGES IN PORTFOLIO SECURITIES DOES NOT DISQUALIFY INVESTMENT TRUST**

August 3, 1990 TO: TAX MEMBERS NO. 30-90 UNIT INVESTMENT TRUST MEMBERS NO. 54-90 RE: POWER TO CONSENT TO CREDIT SUPPORT CHANGES IN PORTFOLIO SECURITIES DOES NOT DISQUALIFY INVESTMENT TRUST

In attached Revenue Ruling 90-43, the Internal Revenue Service has ruled that the power of a trustee of an entity classified as an "investment trust" under Treasury Regulation 301.7701-4(c) to consent to a change in the credit support of one of the trust's portfolio holdings will not cause the trust to fail to be a trust for federal income tax purposes. Under the Treasury Regulations, an investment trust with a single class of ownership interests, representing undivided beneficial ownership of the trust's assets, is properly treated as a trust only if the trustee does not have the power to vary the investments of the trust. A power to vary investments is one that enables the trustee to take advantage of market changes to improve the value of the investments held by the trust for the benefit of all of the trust's beneficiaries. Such a power will cause the trust to be considered to be engaged in a business and ordinarily will result in taxation of the trust as a corporation. In the Revenue Ruling, the trustee was allowed under the trust documents to consent to a change in the credit support on the underlying debt obligations owned by the trust only to the extent the trustee reasonably believed the change to be advisable to maintain the value of the trust property by preserving the credit rating of the debt obligations. The Internal Revenue Service ruled that exercise of this power by the trustee would not be the exercise of a power to vary the investments of the trust within the meaning of the Treasury Regulations. David J. Mangefrida, Jr. Assistant General Counsel Attachment

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