

**MEMO# 16353**

July 25, 2003

## **DRAFT COMMENT LETTER ON TAX SHELTER DISCLOSURE OBLIGATIONS FOR YOUR REVIEW**

[16353] July 25, 2003 TO: 529 PLAN ADVISORY COMMITTEE No. 41-03 ACCOUNTING/TREASURERS COMMITTEE No. 28-03 ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 10-03 TAX COMMITTEE No. 43-03 RE: DRAFT COMMENT LETTER ON TAX SHELTER DISCLOSURE OBLIGATIONS FOR YOUR REVIEW The Treasury Department ("Treasury") and the Internal Revenue Service ("IRS") released final regulations under sections 6011 and 6112 of the Internal Revenue Code (the "Code").<sup>1</sup> The final regulations provide several exceptions for regulated investment companies ("RICs") that were suggested by the Institute following issuance of the regulations.<sup>2</sup> The attached comment letter requests additional guidance regarding the tax shelter disclosure obligations. Specifically, the Institute addresses a concern that the final regulations and accompanying guidance continue to have an overly broad application in certain limited situations. Specifically, • losses on RIC shares are subject to reporting because Revenue Procedure 2003-24 does not permit RIC shareholders to have a "qualifying basis" in their shares; • the scope of the "confidential transaction" category is so expansive as to include transactions where the confidentiality agreement covers only legitimate proprietary concerns and does not cover the intended tax benefits of the transaction; and 1 See Institute Memorandum to 529 Plan Advisory Committee No. 14-03, Accounting/Treasurers Members No. 13-03, Advisor Distributor Tax Issues Task Force No. 5-03, Tax Members No. 15-03 and Unit Investment Trust Members No. 9-03 (No. 15707), dated March 7, 2003 for a discussion of the final regulations. 2 See Institute Memorandum to Accounting/Treasurers Committee No. 55-02, Advisor Distributor Tax Issues Task Force No. 4-02, Tax Members No. 56-02 and Unit Investment Trust Members No. 41-02 (No. 15499), dated December 31, 2002 and Institute Memorandum to 529 Plan Advisory Committee No. 4-03 (No. 15568), dated January 23, 2003 for a discussion of the comments we submitted in response to the temporary and proposed regulations. 2 • it is unclear whether tax-exempt entities are subject to the full panoply of tax shelter disclosure obligations simply because their tax-exempt status may fall within the definition of a "tax benefit" in a reportable transaction. To address these concerns, our comment letter requests that guidance be issued: • modifying Revenue Procedure 2003-24 to permit RIC shareholders to hold a "qualifying basis" in RIC shares, so that such losses are not taken into account in determining whether a transaction is a reportable transaction; • modifying the section 6011 regulations to clarify that confidentiality relates to tax benefits and to treat as a "confidential transaction" only those transactions where the predominant reason for offering the transaction under conditions of confidentiality is related to the tax structure or potential tax benefit that may result from the transaction; and • modifying the section 6011 regulations to exclude tax-exempt

entities from the disclosure rules, except in certain potentially abusive situations, as described in the comment letter. If you have comments concerning the letter, please submit them by Wednesday, July 30, 2003. You may contact Lisa Robinson at 202-326-5835 or [lrobinson@ici.org](mailto:lrobinson@ici.org). You may also contact Keith Lawson at 202-326-5832 or [lawson@ici.org](mailto:lawson@ici.org). Lisa Robinson Assistant Counsel Attachment (in .pdf format)

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