

**MEMO# 9445**

November 24, 1997

## **CAPITAL GAINS ISSUES TO BE RAISED WITH IRS**

1 See Institute Memorandum to Accounting/Treasurers Members No. 48-97 and Tax Members No. 45-97, dated November 12, 1997. [9445] November 24, 1997 TO: TAX COMMITTEE No. 42-97 RE: CAPITAL GAINS ISSUES TO BE RAISED WITH IRS

The attached letter discusses three issues that the Institute plans to raise with the Internal Revenue Service ("IRS") regarding IRS Notice 97-64, which describes regulations to be issued regarding the treatment by regulated investment companies ("RICs") of various types of capital gain income.<sup>1</sup> Please contact the undersigned at your earliest convenience (at 202-326- 5832) with your thoughts regarding any additional capital gains issues that should be raised with IRS. As you know, the Notice requested comments regarding the proper treatment of a loss on the sale of RIC shares held for six months or less that is recharacterized under section 852(b)(4)(A) as a long-term loss to the extent of any capital gain dividend received on those shares. The Institute supports an ease-of-administration rule pursuant to which the full amount of any recharacterized loss would be treated as a 20 percent rate loss. The second issue relates to the Notice's announcement that "a RIC . . . determines the maximum amounts which may be designated in each class of capital gains dividends by performing the computation required by section 1(h) as if the RIC . . . were an individual whose ordinary income is subject to a marginal tax rate of at least 28 percent." Because of the uncertainty surrounding this Notice, the Institute will seek clarification regarding whether IRS intends for RICs to follow the capital loss carryover rules applicable to individuals; such treatment could result in RICs treating capital loss carryovers as 28 percent rate losses, but presumably with no expiration on the period over which they could be carried forward. Finally, the letter expresses an interest in pursuing with IRS an extension of the Notice's section 4982 "bifurcation approach" to situations covered by the existing post-October loss rules, so that a RIC could net all of its post-October gains and losses against each other before pushing any remaining loss into the RIC's next taxable year. Keith D. Lawson Associate Counsel - Tax