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By Electronic Transmission

March 5, 2009

The Honorable Douglas Shulman
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Logos on Substitute and Composite Forms 1099

Dear Commissioner Shulman:

On behalf of its members, the Investment Company Institute¹ (“ICI”) and the Securities Industry and Financial Markets Association² (“SIFMA”) ask the Internal Revenue Service (the “IRS”) to reconsider its proposal in Revenue Procedure 2008-36³ disallowing the use of corporate logos on substitute and composite Forms 1099. Specifically, we request that the IRS issue revised guidance clarifying that “identifying logos” are not advertising or promotional material for purposes of statement mailing requirements, and that payors may continue to use such identifying logos on substitute and composite Forms 1099.

Section 1.3.2 of Rev. Proc. 2008-36 addresses the use of logos, slogans and advertisements on substitute and composite Forms 1099. This section provides that except for the IRS *e-file* logo, the IRS will not allow “slogans, advertising, and other logos ... on Forms 1096, 1098, 1099, 5498, W-2G,

¹The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$10.14 trillion and serve over 93 million shareholders.

²The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

³ 2008-33 IRB 340.

1042-S, or any payee statements reporting amounts paid during the 2010 calendar year, and thereafter.” The purpose of the prohibition in Rev. Proc. 2008-36 is to prevent taxpayer confusion; the IRS states that the additional information may cause a payee to fail to recognize the importance of the payee statement for tax reporting purposes.

ICI and SIFMA are concerned that the proposed prohibition in Rev. Proc. 2008-36 would eliminate the use of certain identifying marks and slogans that (1) are not advertising or promotional material; and (2) payors have reliably used for more than a decade to alert taxpayers regarding both the importance and source of tax reporting information. Payees are accustomed to receiving payee statements containing these familiar identifying marks and slogans. Eliminating the use of this identifying information actually would cause payee confusion where today we believe there is very little, if any.

ICI requested similar guidance in 1996. In the attached letter to Commissioner Richardson (the “1996 letter”), ICI asked the IRS to issue an announcement that payors would not be penalized for placing logos on substitute payee statements, and an interpretation of the statement mailing requirement that expressly permitted the use of identifying logos on these statements. The 1996 letter noted that the use of identifying logos or slogans is especially helpful for payees receiving multiple payee statements regarding several mutual funds. This type of information helps payees identify and keep track of several documents for purposes of tax reporting and personal recordkeeping. As discussed in the 1996 letter, the use of these identifiers promotes tax compliance and is consistent with Congressional intent regarding statement mailing requirements.

In response to the 1996 letter, the IRS issued Notice 96-62,⁴ which informed payors that the IRS intended to issue regulations permitting them to use certain logos and identifying slogans on substitute Forms 1099. The notice stated that the amended regulations generally would permit logos (including the name of the payor in any typeface, font, or stylized fashion and/or a symbolic icon) and identifying slogans, provided the logo or identifying slogan is used by the payor in the ordinary course of its trade or business. Pending issuance of such regulations, the IRS stated that it would not impose penalties in connection with a payor’s use of a logo or an identifying slogan on a payee statement if it satisfied these requirements.

The amended regulations discussed in Notice 96-62 were never issued.⁵ Payors such as brokers and mutual funds, however, have relied upon the guidance in the notice and continue to place their logos on substitute and composite payee statements. Twelve years later, we are not aware of any evidence that the use of logos on these statements has resulted in shareholder confusion. Rather, as discussed in the 1996 letter, investors rely upon these logos to distinguish between the often

⁴ 1996-49 IRB 1.

⁵ The IRS has since determined that it is unnecessary to issue amended regulations. Instead, guidance regarding logos, slogans and advertisements is provided in Rev. Proc. 2008-36.

numerous statements received. Eliminating these logos now would create the taxpayer confusion that the guidance in Rev. Proc. 2008-36 intends to prevent, in addition to significant costs and burdens to payors.

For example, many brokerage firms employ the services of a clearing organization that acts as payor and withholding agent. Those brokerage firms are known in the securities industry as “Introducing Member Firms” or “Introducing Brokers.” Customers of Introducing Brokers do not identify themselves as clients of the clearing organization and rarely are familiar with its name and role in the information reporting process. Introducing Broker monthly statements do not prominently display the name of the clearing organization and most always contain the logo of the Introducing Broker. Eliminating the use of the logo from the tax reporting process would increase confusion among those recipients who are customers of an Introducing Broker as it relates to the role the clearing organization has assumed as the payor of Introducing Broker customers. Some recipients simply may disregard the mailing because they will not recognize the clearing organization name.

Additionally, recipients that are customers directly with a broker dealer that is a self clearing firm may have accounts at multiple brokerage firms and, therefore, may receive multiple Forms 1099. This would create yet further confusion, as the logo helps to differentiate the broker dealer for which the account relationship exists.

Further, broker dealers are required under FINRA Rule 2340 to provide no less than quarterly Customer Account Statements, and they are required to provide trade confirmations under Rule 10b-10.⁶ These documents include (and the applicable rules do not restrict the use of) company logos. Many customers use the statements and, in some cases, the trade confirmations to reconcile their Forms 1099. Because these documents are not required to include the payor’s name and tax identification number, the logo is the key mark that differentiates one broker dealer from the other to the shareholder. Thus, eliminating logos from substitute and composite Forms 1099 likely will result in significant taxpayer confusion.

ICI and SIFMA share your concerns regarding the taxpayer’s ability to easily recognize their substitute and composite Forms 1099 and to distinguish these documents from other mail they receive. We support policies that promote efficient delivery of tax information on substitute and composite Forms 1099. When these policies are infringed upon, taxpayers are more likely to disregard their substitute and composite Forms 1099, which could result in underreporting and/or an influx of telephone and email inquiries into our member organizations regarding the whereabouts of their customers’ Forms 1099. To prevent these situations and to foster sound tax administration, members of ICI and SIFMA have developed various practices designed to increase the likelihood that their customers will recognize and retain their substitute and composite Forms 1099. Identifying logos play a vital role in enabling a taxpayer’s ability to recognize their tax statements. Over the past decade our members have produced and mailed hundreds of millions of substitute and composite

⁶ Although funds are not subject to these rules, they voluntarily provide quarterly statements and trade confirmations as a service to their customers.

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Forms 1099 with identifying logos. The logos are not only effective, but they also, to our knowledge, have not been the source of a single client complaint.

Rather than ban logos, we suggest that Rev. Proc. 2008-36 include additional information regarding rules intended to enhance a taxpayer's ability to recognize their substitute and composite Forms 1099. It would be helpful to the information reporting community if the Revenue Procedure included: (1) examples of substitute and composite Forms 1099 which contain logos that are acceptable; and (2) examples of substitute and composite Forms 1099 which contain inappropriate advertising and slogans. Addressing the problem in this manner serves two objectives. It allows the continued use of logos, which help taxpayers recognize their substitute and composite Forms 1099, and also provides a clear explanation about the ban on advertising and slogans, which impair a taxpayer's ability to recognize their substitute and composite Forms 1099.

For the reasons discussed here and in the 1996 letter, ICI and SIFMA strongly urge the IRS to issue revised guidance clarifying that, consistent with Notice 96-62, the use of identifying logos that are not advertising or promotional in nature continues to be permitted.

We will contact the IRS soon to request a meeting on this issue. If we can provide the IRS with additional information or respond to any questions, please do not hesitate to call Shahira Knight at SIFMA at (202) 962-7333 or Karen Gibian at ICI at (202) 371-5432.

Sincerely,

/s/ Karen Gibian

Karen Lau Gibian
Associate Counsel – Tax Law
Investment Company Institute

/s/ Shahira Knight

Shahira Knight
Managing Director
Securities Industry and Financial Markets Association

Attachment

cc: Linda Stiff
Deputy Commissioner
Services & Enforcement
Internal Revenue Service

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Richard Byrd, Jr.
Commissioner
Wage & Investment Division
Internal Revenue Service

Sue Sottile
Director – Tax Forms & Publications
Office of Media & Publications
Internal Revenue Service

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Acting Chief Counsel
Internal Revenue Service

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Internal Revenue Service

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Associate Chief Counsel (Procedure & Administration)
Internal Revenue Service



INVESTMENT COMPANY INSTITUTE

CATHERINE L. HERON
VICE PRESIDENT & SENIOR COUNSEL
TAX, PENSION, AND INTERNATIONAL

August 2, 1996

The Honorable Margaret Milner Richardson
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Room 3000
Washington, DC 20224

RE: "Logos" on Substitute Forms 1099

Dear Commissioner Richardson:

On behalf of its investment company members, the Investment Company Institute¹ requests IRS clarification of the circumstances under which a logo or similar corporate identifier may be used on a substitute Form 1099 under the statement mailing requirements of Code section 6042.² Specifically, we request that IRS issue: 1) an immediate announcement that payors will not be penalized for placing "logos" on substitute payee statements; and 2) an interpretation of the statement mailing requirement that expressly permits the use of "identifying logos" on these statements.

The immediate announcement of a moratorium would afford the Service time to review and fully consider proposed interpretations of the statement mailing requirements and also would relieve payors of the expense and burden that would result if they were required to change their payee statements by removing or modifying the logos that have been used on substitute forms for many years. The subsequent adoption of an IRS interpretation that expressly permits the use of "identifying logos" on substitute Forms 1099 would be consistent with Congressional intent regarding the statement mailing requirements.

Mutual Fund Tax Reporting

1. Mutual Funds and the Fund "Family"

Mutual funds are pooled investment vehicles that permit investors to acquire interests in a professionally-managed, diversified portfolio of securities. Funds typically are organized as corporations or business trusts, with a board of directors or trustees responsible for the

¹ The Investment Company Institute is the national association of the American investment company industry. Its membership includes 6,004 open-end investment companies ("mutual funds"), 450 closed-end investment companies and 10 sponsors of unit investment trusts. Its mutual fund members have assets of about \$3.119 trillion, accounting for approximately 95 percent of total industry assets, and have over 38 million individual shareholders.

² Several provisions of the Internal Revenue Code provide "statement mailing" requirements with respect to payments of specific types of income. For example, the statement mailing requirement with respect to the reporting of dividend income is contained in Code section 6042(c). Regulations interpreting the "statement mailing" requirement, such as Treas. Reg. section 1.6042-4, were issued in proposed form in 1990 and were finalized using essentially identical language in December 1995. See, 60 Fed. Reg. 66105, 66110-66112 (December 21, 1995).

overall management of the fund. The day-to-day operations of the fund are performed by third party service providers, since mutual funds generally have no employees of their own.

One such third party is a mutual fund management company which typically sponsors a fund and provides services that may include portfolio management, recordkeeping, shareholder communications, etc. A mutual fund management company will often sponsor and provide services to a number of different funds which are referred to as a fund family.

2. Tax Reporting By Mutual Fund Families

Fund investors may own shares of several funds within the same fund family. If an investor owns shares of six funds within a fund family, for example, the investor typically would receive Form 1099-DIV tax information for all six funds, as each is required by the Internal Revenue Code to distribute its income annually. In addition, Form 1099-B tax information would be provided with respect to each fund from which one or more redemptions of shares were made during the calendar year. As each fund is a separate corporation for federal tax purposes, every item of tax information (dividend payments, gross proceeds, etc.) relating to a shareholder's investment in that fund is reported separately to both the shareholder and IRS.

Pursuant to a 1993 Institute request, IRS revised its substitute Form 1099 instructions to permit the use of a combined statement providing Form 1099-DIV and 1099-B information for one or more funds within a fund family. Thus, in our example above, a fund family could send a payee a single statement that contained dividend and gross proceeds information for six different funds.

Use of Logos on Substitute Forms 1099

Mutual fund families often use logos on substitute IRS Forms 1099 to help taxpayers identify the source of the information sent to them. Logos can be particularly beneficial where the name of the specific fund(s) in which the taxpayer has invested does not contain the name of the fund management company that sponsors the fund. For example, assume that a taxpayer invests in the "Tibet Growth Fund," which is sponsored by the ABC Mutual Fund Company. Further assume that the ABC Mutual Fund Company uses the logo ABC and that the taxpayer is quite familiar with the ABC logo because it appears on the Tibet Growth Fund's prospectus and other shareholder correspondence such as annual reports and confirmation statements. Indeed, because the ABC Mutual Fund Company is a large, well-known firm, the taxpayer may well think of his investment as being in "an ABC fund" or "the ABC Tibet Growth Fund." In this case, it may be easier for the taxpayer to identify the payee statement received from the "Tibet Growth Fund" if the logo for the ABC Mutual Fund Company appears on the statement than if it does not.

It is our understanding that payors, including mutual funds and other financial service providers have interpreted the statement mailing requirement as permitting the use of

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identifying information, such as names, symbols and slogans included within a logo, on substitute Forms 1099 sent to taxpayers. This understanding was based upon interpretations of the IRS instructions for Forms 1099, suggesting that logos could be placed on any paper included in the mailing,³ and the statement mailing regulations proposed in 1990 and finalized in 1995, that (1) do not define "promotional or advertising material" and (2) address the use of logos on substitute Forms 1099 by negative inference.⁴

The view that logos can be placed on substitute Forms 1099 also is supported by the legislative history of the statement mailing requirement. In 1986, when Congress enacted the statement mailing requirement that permits payee statements to be accompanied by certain enclosures (such as a check and an account statement), Congress provided that payors could not include "any other material such as advertising, promotional material, or a quarterly or annual report." H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-791 (1986). According to the Senate Finance Committee's Report, "[t]he committee did not permit additional material such as this to be enclosed because such enclosures may make it less likely that some taxpayers will recognize the importance of the information report and utilize the information report in completing their tax returns." S. Rep. No. 313, 99th Cong., 2d Sess. 191 (1986).

This legislative history indicates that Congress was concerned with additional material of a promotional or advertising nature accompanying a substitute Form 1099. Such additional material could create confusion or a distraction from the important tax information substitute Form 1099. Moreover, the preamble to the final statement mailing regulations cites this Congressional concern in rejecting a proposal to permit additional materials to be included with a payee statement, that "the relevant legislative history indicates that Congress wanted to substantially restrict the nontax enclosures in a statement mailing." 60 Fed. Reg. 66109 (December 21, 1995).

Institute Recommendations

As we understand, IRS is currently reviewing its policy with regard to logos on substitute Forms 1099. We urge consideration of the following recommendations.

1. Penalty Moratorium. As an interim measure, we urge IRS promptly to issue an announcement indicating that payors will not be penalized for including logos on substitute

³ It is our understanding that payors interpreted a statement on page 6 of the 1995 Instructions for Forms 1099, 1098, 5498, and W-2G to the effect that "logos are permitted on the envelope and on any enclosures" to permit logos on any document enclosed in the envelope.

⁴ The regulation provides in a section discussing restrictions on enclosures that "no promotional or advertising material is permitted in the mailing of the written statement. Even a *de minimis* amount of promotional or advertising material violates the statement mailing requirement. However, a logo on the envelope containing the written statement and on nontax enclosures . . . does not violate the written statement requirement." Treas. Reg. section 1.6042-4(d)(2)(i).

Forms 1099. In light of the current confusion and uncertainty regarding the use of logos, a moratorium would provide the following benefits:

- * payors could complete promptly the design of their substitute Forms 1099 for 1996, without any concern that inclusion of logos might be later determined to be impermissible, resulting in the possible imposition of penalties;
- * IRS could finalize promptly the pending revenue procedure regarding rules and specifications for private printing of substitute Forms 1099;
- * a payor that included a logo on substitute Forms 1099 for 1995 would not incur the significant burden and expense of reprogramming its computers and printers to take the logo off its 1996 substitute Forms only to place the logo back on the substitute Forms for 1997 if later guidance indicating that the particular logo was permissible is issued; and
- * IRS would have additional time to study the logo issue.

2. Permit Identifying Logos on Substitute Forms 1099. The Institute submits that identifying logos promote, rather than hinder, tax compliance by making it easier for payees to identify the source of the information.⁵ Moreover, we do not believe that the legislative history to the statement mailing requirement supports a conclusion that the use of identifying logos on substitute Forms 1099 would violate Congressional intent. Consequently, we urge IRS to issue on interpretation of the statement mailing requirements that confirms the permissibility of including identifying logos on substitute Forms.

We further urge IRS not to distinguish between identifying logos that include a slogan or motto and others that do not. The incorporation of an identifying phrase or slogan into a payor's logo does not make that logo advertising or promotional material. Like a picture or symbol, a brief phrase or other verbiage incorporated into a logo can be merely a corporate identifier. For example, the enclosed substitute Form 1099 prepared for the fictitious Millard Fillmore money management company includes a logo which incorporates the phrase "money managers since 1853." This phrase, together with the adjacent picture of a dapper, well-dressed gentleman, serves as a corporate logo that identifies the company. Neither the symbol nor the accompanying language should be viewed as advertising material. The logo, taken as a whole, represents a means of corporate identification. Moreover, any requirement to delete or remove the phrase "money managers since 1853" could result in significant re-design and re-tooling expenses.

An IRS interpretation confirming the permissible use of identifying logos, including logos with slogans or other verbiage, would not contravene the Congressional prohibition on

⁵ "Identifiers" also make it harder for unscrupulous taxpayers or their advisers to "fake" substitute Forms 1099 in attempts to mislead the IRS and others regarding the income earned by any person.

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advertising or promotional material included in a payee statement. For example, a logo that included the name of the mutual fund and/or the fund management company would be permissible regardless of how the name was written (e.g., style, type size, etc.) or the color in which the name was printed. Similarly, symbols and short slogans that identified the payor or fund sponsor would be permissible if integrated with and incorporated into the identifying logo.

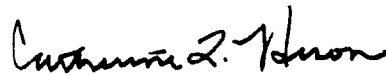
To ensure that no payor violates this Congressional intent, however, the IRS interpretation could prohibit the inclusion within a logo of a "promotional" slogan, which might be expected to change periodically or that expressly solicits additional business from the payee or promotes new services offered by the payor or a related party. For example, a logo that incorporated the phrase "Morningstar top rated fund manager in 1995" would not be permissible under this standard.

As an additional safeguard, IRS could prohibit any logo that was so large or predominant relative to the other information provided that it created confusion regarding the importance of the tax information contained on the substitute Form 1099. In this regard, for example, a printed logo of a size which might distract from the significance of the tax information contained in the document could be more troublesome than a larger watermark of the logo that blended into the paper and was not distracting.

* * *

We will call your office soon to request a meeting on this issue. If we can provide IRS with additional information or respond to any questions, please do not hesitate to call the undersigned at 202-326-5830 or Keith Lawson at 202-326-5832.

Sincerely,



Catherine L. Heron
Vice President and Senior Counsel

Enclosure

cc: John Coulter
Judy Dunn
Gwen Glaize
Kate LaBuda
Clarissa Potter
Sheldon Swartz
Elizabeth Wagner

1996 FORM 1099-DIV



123 Presidential Avenue
 Washington DC 45678
 1 (800) 901-2345

Statement for Recipients of Dividends and Distributions

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

Customer

John Q. Shareholder
 6789 Main Street
 Anytown USA 01234

TAX IDENTIFICATION NUMBER

LEGEND: 1A = 1B + 1C + 1D

Fund Name	Fund Tax ID	Account	1A. Gross Dividends & Other Distributions	1B. Ordinary Dividends	1C. Capital Gain Distributions	1D. Non-Taxable Distributions	2. Federal Income Tax Withheld	3. Foreign Tax Paid

***4. FOR ACCOUNTS WITH FOREIGN TAX PAID THERE ARE VARIOUS COUNTRIES OF ORIGIN**