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TO: JEE

DATE: _____

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FROM: George V. Delson

NUMBER OF PAGES
(including this page): 8

REFERENCE: GM/Bear Stearns/FTC

MESSAGE

If you want, you can just look at the conclusion. Let me know when you complete the details.

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**GEORGE V. DELSON ASSOCIATES
OFFICE MEMORANDUM**

TO: JEE

DATE: September 15, 2010

FROM: GVD

PRIORITY STATUS: Routine

COPIES TO: DKI

SUBJECT: GM/Bear Stearns/FTC

PRIVILEGED FILE

Enclosed is a copy of the memo that I put out on or about 9/29/08. Section E, thereof deals with the transaction being treated as a loan of 100,000 shares of Bear Stearns stock to JEE. However, **Bear Stearns stock was converted into J P Morgan Chase** at an exchange rate of .21753 of JPM for each share of BS stock. Accordingly, **JEE owes FTC 21,753 shares of JPM stock since BS stock is no longer available to be returned.**

In order to "clean up" the stock loan, JEE needs to do the following:

1. Purchase 21,753 shares of JPM stock;
2. Arrange for the delivery of such stock to FTC in satisfaction of the stock loan;
3. In addition JEE owes FTC dividends on the borrowed stock. Therefore, attached is a schedule of the rate of dividends which JPM paid during the stock loan period;
4. Since this is a "stock loan", then JEE owes FTC the dividends paid by BS and JPM during that period. The attached memo shows that BS paid dividends on this stock in the amount of \$272,000.
5. In addition, JPM paid dividends quarterly on the stock at varying rates during this period in the total amount of \$5.00 per share. (See the annexed schedule).

6. Thus, JEE owes FTC dividends on the stock borrowed as follows:

a. BS period (see item 3 above)	\$272,000
b. JPM period (\$5.00 X 21,753 shares)	<u>108,765</u>
Total dividends due	<u>\$380,765</u>

CONCLUSION

• JEE purchase 21,753 shares of JPM stock (current price \$41)	\$ 891,873
• Deliver stock to FTC (or other delivery instructions from FTC)	-
• Transfer funds (wire/check) for dividends reimbursement	<u>380,765</u>
• Total estimated cost	<u>\$1,272,638</u>

The sooner this transaction is concluded, the better.

GEORGE V. DELSON ASSOCIATES
OFFICE MEMORANDUM

TO: File

DATE: September 29, 2008

FROM: GVD

PRIORITY STATUS: Routine

COPIES TO: JEE
DKI

SUBJECT: JEE/GM/FTC Bear Stearns

PRIVILEGED FILE

There is, currently, an inconsistent position with respect to the recording of the transfer, in 2005, by FTC of 100,000 shares of Bear Stearns stock. We need to take some action to resolve the inconsistency. What follows is a recitation of the pertinent facts and a discussion of the tax effects of one resolution versus another.

A. The pertinent facts.

1. On 10/24/05 JEE directed the transfer by FTC to GM of 100,000 shares of Bear Stearns ("BS") stock. On that date it had a market value of 104.5 per share – \$10,450,000 in total. FTC acquired the stock on 7/14/05 by purchase – cost basis 106.26 – \$10,106,260. The stock was delivered to GM's account at BS from FTC's account at BS. FTC recorded the transfer on its books as a "Stock Loan Receivable" in the amount of its cost basis.
2. Dividends were paid by BS on this stock and received by GM as follows: 2006 – \$112,000; 2007 – \$128,000; 2008 – \$32,000. These amounts were included in GM's income tax returns for the years 2006 and 2007; 2008 has, obviously, not yet been filed.
3. On 3/14/08 GM sold 100,000 shares of BS stock for a net price of \$3,199,947 – she used the stock "transferred" from FTC to make delivery on the sale.

4. On or about March 30, 2008 BS announced its "Merger/Acquisition" by JP Morgan Chase ("JPM") whereby BS shareholders would receive .21753 shares of JPM for each share of BS stock.
5. JPM is currently selling for \$44.12 per share – thus the equivalent of 100,000 shares of BS (in JPM stock) at this date (9/25/08) would be – $100,000 \times .21753 \times 44.12 = \$959,742$.
6. If GM were to replace the BS stock "borrowed" from FTC, it would cost her only \$959,742 plus the dividends on BS received by her in the amount of \$272,000.

B. Based upon the above facts, FTC has treated the transfer of BS stock as a "loan" (carried on its balance sheet as such) while GM has treated same as "ownership". A discussion of the tax issues follows.

C. If we preserve the treatment as a securities loan to GM–

1. GM must return JPM stock and BS dividends – will cost her about \$1.3 million; (to purchase JPM stock and repay the BS dividends).
2. Must amend 07/06 GM returns for improper reporting of dividends as income.
3. Will have to treat GM sale of BS stock as a short sale with resulting short-term gain of about \$2.2 million and an interest deduction for the returned dividends of \$272,000.
4. FTC will report the dividends received as income – which will flow-through to JEE @ 10% (after EDC adjustment).
5. If FTC then sells the JPM stock, it will have a long-term capital loss of about \$9 million which will "flow thru" to JEE at 10% (after EDC adjustment).

D. If we treat the transfer as a gift on 10/24/05 –

1. FTC constructively distributed the BS stock to JEE.
2. JEE gifted it to GM.

3. FTC will realize gain equal to the appreciation ($\$10,450,000$ less $\$10,106,250 = \$343,750$) – treated as long-term capital gain requiring amended returns for FTC and JEE – the flow through to JEE would be 10% thereof to reflect EDC benefit.
4. JEE’s historical position of gifts to GM being made “in contemplation of marriage” would negate the need for him to file an amended gift tax return.
5. GM’s income tax returns for 2006 and 2007 would not have to be amended because as a donee the BS dividends are hers and thus properly reported.
6. GM sale of BS stock would produce a long-term capital loss of $\$6,906,303$ since her basis would be JEE’s basis which is $\$10,106,250 - (\$10,106,250$ less $\$3,199,947 = \$6,906,303)$.

E. If we treat the transfer of the BS stock on FTC’s books as a loan to JEE who used it to make a gift to GM at that date.

1. This would keep the receivable on FTC’s books (no amended return required).
2. GM’s status as donee and owner would be consistent with her 2006 and 2007 income tax returns reporting the dividends.
3. JEE’s prior income tax returns are correct and the exclusion of the gift to GM is historically consistent.
4. JEE will have an obligation to replace the BS stock borrowed with JPM stock at a current cost of $\$959,742$ plus the dividends of $\$272,000$ on the BS stock as in ¶A6, supra. FTC could sell the replaced JPM stock or hold it for market recovery. FTC would not have a taxable transaction until it sold the JPM Stock. The basis to FTC of the replaced JPM stock would continue to be the basis of the original BS stock – i.e. $\$10,106,250$ – thus a “built in” loss of about $\$9$ million – long-term, subject to EDC computation – 10%.
5. GM will have a long-term capital loss of $\$10,450,000$ (proceeds form sale of $\$3,199,947$ less market value, as basis, at date of gift of $10,450,000$).
6. However, there are two potential issues in this scenario, to wit: (a) can a person make a gift of borrowed property; and (b) if the donee has a loss on

the sale of gifted property, the basis to the donee is the donor's basis; but if the gifted property was borrowed by the donor, then he has no basis until he replaces it. So what is the basis to the donee – market value? Without further consideration, that could be the case.

The issues need to be resolved on a timely basis especially since FTC will be applying shortly for renewal of its EDC status.

Dividend Payout History

JP Morgan Chase (JPM)

Date	Payment	
Jul 1, 2010	\$ 0.05000	} 6 X .05 = 0.30
Apr 1, 2010	\$ 0.05000	
Jan 4, 2010	\$ 0.05000	
Oct 2, 2009	\$ 0.05000	
Jul 1, 2009	\$ 0.05000	
Apr 2, 2009	\$ 0.05000	
Jan 2, 2009	\$ 0.38000	} 7 X .38 = 2.66
Oct 2, 2008	\$ 0.38000	
Jul 1, 2008	\$ 0.38000	
Apr 2, 2008	\$ 0.38000	
Jan 2, 2008	\$ 0.38000	
Oct 3, 2007	\$ 0.38000	
Jul 3, 2007	\$ 0.38000	
Apr 3, 2007	\$ 0.34000	} 6 X .34 = 2.04
Jan 3, 2007	\$ 0.34000	
Oct 4, 2006	\$ 0.34000	
Jul 3, 2006	\$ 0.34000	
Apr 4, 2006	\$ 0.34000	
Jan 4, 2006	\$ 0.34000	
Oct 4, 2005	\$ 0.34000	
Jul 1, 2005	\$ 0.34000	
Apr 4, 2005	\$ 0.34000	
Jan 4, 2005	\$ 0.34000	
Oct 4, 2004	\$ 0.34000	
Jul 1, 2004	\$ 0.34000	

5.00 per share