

From: "jeffrey E." <jeevacation@gmail.com>
To: Melanie Spinella <[REDACTED]>
Subject: Fwd: Attorney – Client Privilege
Date: Tue, 18 Aug 2015 15:25:53 +0000

children

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From: Brad Wechsler <[REDACTED]>
Date: Tue, Aug 18, 2015 at 11:14 AM
Subject: Attorney – Client Privilege
To: Richard J Bronstein <[REDACTED]>, "Melanie Spinella ([REDACTED])"
<[REDACTED]>
Cc: John Castrucci <[REDACTED]>, Richard Joslin <[REDACTED]>, "Jeffrey Epstein (jeevacation@gmail.com)" <jeevacation@gmail.com>

MEMORANDUM

TO: Rick Bronstein
Melanie Spinella

CC: John Castrucci
Rich Joslin
Jeffrey Epstein

DATE: August 18, 2015

RE: Attorney – Client Privilege

Here is my distillation of conversation(s) with Paul Weiss, Glenn Stankee (maritime attorney), John Castrucci and Rich Joslin of the boat/tax issues:

In General

1. If a boat is used for more than 14 days for personal use by you or members of your family, it is considered a "personal residence" by the code. If it is also chartered out to third parties (your situation), the share of expenses and depreciation properly allocated to the business can be used to offset charter revenues. However, if expenses are greater than revenues (your case), you can only use that portion of expenses that reduces charter income to zero, i.e., you cannot use the excess deductions or excess depreciation to offset other income.
2. There are some complicated ways to structure around this result at the time of purchase or thereafter; however, your boat was purchased in an entity treated as a U.S. partnership, which means the rules above apply.
3. From what I gather, a lot of people take the position if they are very active in trying to charter their boat -- even if they use it for more than 14 personal days a year -- they are not restricted in deducting excess expenses. I believe that is an aggressive position.
4. With respect to the sale, if a boat is considered a personal capital asset (like a home) because of greater than 14 days of personal use, you are prevented from deducting the capital loss.
5. There are other ways of creating appropriate deductibility, i.e., if, as of today, you stopped using your boat for pleasure and declared it a business and only chartered it for the next six months you could claim a 2015 deduction (including depreciation) because you have used the boat for less than 14 days. This would entitle you to approximately \$2MM of deductions, including depreciation. You could also take the position that a future sale generated a business loss; for example, selling the boat for \$20MM would generate a loss of \$4MM. However, the IRS could challenge any of these losses on the basis you didn't have a profit motive in owning the boat. We can discuss the net advantages to you in following this path but I believe (a) that they interfere with important potential personal uses -- remember this path requires less than 14 days of personal or family use in 2015 -- and (b) they don't necessarily outweigh the idea of selling the boat as soon as possible and minimizing the losses of owning the boat.
6. One alternative that was brought up is to convert the boat owner to a foreign corporation i.e., even though the boat currently has a foreign owner, (BJAV Marine, Ltd) we elected to treat the boat as a partnership for U.S. tax purposes. (This conversion can be accomplished by filing an election with the IRS, and the election can be retroactive by up to 75 days). If this conversion is effective before the boat has more than 14 days of personal use in 2015, this would allow you to claim a loss from operations in 2015, subject to the profit motive issue. If we did this, it would also substantially improve the tax loss claim on sale. The value of this loss on sale to you would be, hypothetically, \$4-8MM x 33% at a \$16-20MM sales price.
7. Subject to discussing with Jeffrey and understanding the reporting obligations associated with being a foreign corporation seller, the tax advisors like this path because it leads to appropriate losses and deductions. We should discuss whether it's worth becoming a foreign entity. I'm not yet convinced until we have a Jeffrey conversation (which I'm scheduling).
8. This is a complex area and I have over-simplified some of the nuances; nonetheless, I think it accurately portrays where we stand.

Let's discuss as necessary.

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please note

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JEE

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