

From: "jeffrey E." <jeevacation@gmail.com>
To: "Barry J. Cohen" <[REDACTED]>
Subject: Re: Advisor fee deductions--PRIVILEGED AND CONFIDENTIAL
Date: Wed, 23 Aug 2017 09:48:02 +0000

Barry , please do not send me anything at all . I have no time . Sorry . I've told Leon

On Tue, Aug 22, 2017 at 8:24 PM Barry J. Cohen <[REDACTED]> wrote:
Begin forwarded message:

From: "Barry J. Cohen" <[REDACTED]>
Date: August 22, 2017 at 7:17:22 PM EDT
To: Joseph Vinciguerra <[REDACTED]>, Brad Wechsler <[REDACTED]>
Cc: Richard Joslin <[REDACTED]>, John Castrucci <[REDACTED]>
Subject: Advisor fee deductions--PRIVILEGED AND CONFIDENTIAL

On a call today, David Kirk at EY made a case for the following approach to deducting advisor fees that involved setting up and structuring (construed fairly broadly) a new disregarded entity, like AP Narrows, and others.

1. Find entities which were set up
 - a. within the last 2 years, and
 - b. the advisor expenses were incurred prior to an entity's starting its operations.
2. If the entity is a DRE, stand it up (make it a K-1 issuer) by adding a partner (like a sub S).
3. Whoever paid the advisor should also be made a partner of the entity.
4. The entity should reimburse the partner(s) who paid the advisor.
 - a. If the entity lacks sufficient cash, a someone should infuse cash into it.
5. The entity can then capitalize this as a formation expense.
6. The expense should not be amortized.
7. If the entity liquidates and distributes its assets (e.g., art) in kind, the capitalized expense will be incorporated in the basis of each piece of art.
 - a. Allocation among the individual pieces of art can probably be any reasonable method, like pro rata according to value or embedded gain.
8. It is possible that other assets could be distributed from the entity prior to liquidation, and that would concentrate the advisor expense (upon liquidation) in the remaining pieces.
9. When and if the assets distributed in liquidation are sold, gain or loss would be reduced by the amount of the capitalized amount in each asset.
10. The IRS may scrutinize this transaction given the size of the advisor expense, and this is even more likely if the liquidation happens too soon after formation. (Maybe would have to be 2020 or later. . . .)

I've left out the complex reasoning behind this, as well as the rejected scenarios that EY decided won't work for complex reasons. Joe, John and Rich should feel free to supplement my outline.

Barry J. Cohen |

President and Special Counsel |

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please note

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