Frank Lunn

From: Greg Shepard <greg@rapower3.com>
Sent: Thursday, November 07, 2013 7:24 PM
Subject: Ra3 Vital Tax Info

In analyzing an Auditor's Proposed Report, I'm sharing my following thoughts:

DISALLOW DEPRECIATION ON SOLAR BUSINESS

A. Taxpayer is unable to establish time spent on business.

My Response: There a number of criteria for establishing hours spent on a business as outlined on the irs.gov website. You only have to meet one of the criterion. Most RaPower3 Team Members qualify under guideline #2. Almost all of our RaPower3 Team Members work by themselves in their solar energy business. They have no employees and therefore, they do all or most of the work involving their solar energy business. So there are no hourly requirements.

B. Taxpayer is unable to establish the ability to generate income form the solar panels (lenses) purchased.

My Response: First, when you start a business, you are not required to generate income right away. especially with innovative technology. It is standard to give the taxpayer some time to generate income. Rental and Bonus income should start in 2014.

Second, (From the Anderson Tax Attorney Opinion Letter) A taxpayer can start claiming depreciation of an asset as soon as his or her property is placed in service. Property is placed in service when it is ready and available for a specific use, whether in a business activity, an income-producing activity, a tax-exempt activity, or a personal activity. This does not mean you have to be using the property, just that it is ready and available for its specific use.

If the equipment is ready and available for ANY income producing activity, including leasing it out for advertising purposes, the owner may start claiming depreciation of the asset. **THIS MEANS YOUR BONUS REFERRAL CONTRACT.**

Agent Misconception: She says, "The taxpayer purchases solar panels (lenses) and then immediately leases them back to the seller." **The following is what really happens:**

A. IAS (International Automated Systems) gives RaPower3 the right to sell its lenses.

B. RaPower3 sells the solar lenses to its clients, most of which pay taxes. The taxpayer signs an Equipment Purchase Agreement with RaPower3 LLC, a Nevada Limited Liablity Company with principal offices in Delta, Utah.

C. The taxpayer also signs an Operation and Maintenance Agreement with LTB, LLC, a Nevada Limited

Liability with principal offices in Las Vegas, Nevada. The taxpayer agrees to rent his/her lenses to LTB, LLC for $150 per year per solar lens. The taxpayer also makes certain demands on LTB, LLC in order to reasonably insure a smooth operation and protection for the lenses.

Another Agent Misconception: She says, "The panels (lenses) at some point after an initial 5-year period will earn some rental income. **Here's what's written in the Agreement:**

A. The rental income begins right away. $150 a year per lens for the **first** five years. Then $68 per lens per year per lens for the next 30 years.

B. The initial down payment is $1,050 per lens. The total rental payback is $2,790 per lens. That's **some** rental income!

Final Incorrect Assertion: She states, "The panels are leased back to the company (Incorrect-see above), and therefore, according to the lease agreement and rental income (sic) would be an investment asset (We say purchase not investment) and reportable on Schedule E as a **passive activity** with **no material participation**. This means, to this auditor, the depreciation cannot be allowed.

Our position: This auditor seems to be unaware that the taxpayer's solar energy business has a multi-level marketing structure to it. Millions of Americans are involved in network or multi-level marketing and are allowed depreciation benefits. You can't single this taxpayer out. Again, I cite the **Anderson Tax Attorney Opinion** letter:

"Stated simply, if you do most of the work in the business using the RaPower-3 energy equipment, any losses associated with your business will be non-passive and can be deducted without limitation.

Generally any work you do in connection with your business will be considered participation. In a multi-level marketing structure, participation would include any activity to increase the productivity of other individuals engaged in sales such as recruiting, training, motivating and counseling such individuals. Other ways to participate in your business would include meeting and counseling with the operator of the equipment, negotiating sale and distribution of energy, reviewing productivity and costs, among others.

Right now, the government is enacting programs geared to foster and encourage development of energy sources. RaPower-3's equipment could allow you to enter the energy market and capitalize on those government incentives."

More subsantiation form the Kirton-McConkie Tax Attorney Opinion Letter:

A. At-Risk Limitations

Code Section 465(a) provides that the losses (in this case, depreciation deductions in excess of the Rental Payments) of certain taxpayers from certain activities are only allowed to the extent of the aggregate amount with respect to which the taxpayer is at risk with respect to such activity. The taxpayers subject to Code Section 465(a) include a subchapter C corporation that meets the ownership requirements of Code Section 542(a)(2), which are summarized above.

For purposes of Section 465(a), a taxpayer is considered to be at risk for an activity in amount equal to the sum of the amount of money or property contributed to the activity and certain amounts borrowed with respect to the activity. Code Section 465(b)(1). Taxpayers are considered to be at risk for borrowed amounts only if the

taxpayer is personally liable for the repayment of such amounts or has pledged property (other than property used in such activity) as security for such borrowed amounts; provided that a taxpayer will not be considered to be at risk with respect to borrowed amounts to the extent such amounts are borrowed from a person who has an interest in the activity (other than as a creditor) or from a person who is related to such a person. Code Section 465(b)(2) and (b).

Whether an obligation constitutes debt for tax purposes ultimately depends upon whether there was "a genuine intention to create a debt, with a reasonable expectation of repayment, and did that intention comport with the economic reality of creating a debtor-creditor relationship." *Jensen* v. *Commissioner*, 208 F.2d 226 (l0th Cir. 2000) (citing *Dixie Dairies Corp.* v. *Commissioner*, 74 T.C. 476, 494 (1980)). Courts consider a variety of factors in making this determination, including (i) whether the promise to repay was evidenced by a written agreement, (ii) interest was charged, (iii) a fixed maturity date and/or a fixed schedule for repayments was set forth in the instrument or by agreement, (iv) security or other collateral was given to ensure repayment, (v) repayments were made, (vi) the borrower was not insolvent at the time of the advance and (vii) the parties otherwise acted consistently with such transfer being a loan. *See e.g.*, *Fisher* v. *United States*, 54 T.C. 905 (1970) and *Miller* v. *Commissioner*, T.C. Memo 1982-

629. Of course, not every factor is relevant in every situation, and the weight assigned to each factor varies from situation to situation. As noted by the Supreme Court, "[t]here is no one characteristic ... which can be said to be decisive in the determination of whether the obligations are ... debts" for tax purposes." *John Kelley Co.* v. *Commissioner*, 326 U.S. 521, 530 (1946).

It is our understanding that the parties genuinely intend to create a debt in the form of the Promissory Note and Buyer's obligation to make the Installment Payments and that the parties intend for the Installment Payments to be made. Similarly, the economic relationship between the Buyer and Seller appears to comport with the economic reality of creating a debtor-creditor relationship. For example, the Buyer and Seller have evidenced their intent for the Buyer to make the Installment Payments in both the Purchase Agreement and the Promissory Note; they have agreed that the Installment Payments will bear interest at the long-term applicable federal rate; they have agreed upon a fixed schedule for repayments; the Buyer's obligation to make the Installment Payments is secured by the Solar Lenses, which the Seller may repossess in the event the Buyer fails to make the Installment Payments when due; the Buyer will not be insolvent when it enters into the Purchase Agreement and is expected to have sufficient cash flow to make the Installment Payments; and the parties have acted consistently with treating the Installment

Payments as a loan. Therefore, the Installment Payments appear to be a bona fide debt for tax purposes.

As discussed in Section II.C.2.c above, the Buyer is personally liable for the Installment Payments and such amounts are not borrowed from a person who has an interest in the activity (other than as a creditor) in which the Solar Lenses will be used or from a person who is related to such a person. Therefore, the Buyer's amount at risk with respect to the Solar Lenses for purposes of Code Section 465 shall be an amount equal to the aggregate Purchase Price for the Solar Lenses.

A. Passive Activity Limitations

Code Section 469(a) provides that certain losses (in this case, depreciation deductions in excess of the Rental Payments) and credits associated with passive activities of certain taxpayers are only allowed to the extent of the taxpayer's income from passive activities. The taxpayers subject to Code Section 469 include closely-held subchapter C corporations. Code Section 469(a)(2). However, Code Section 469(e)(2) provides that a closely held subchapter C corporation that is not a personal service corporation can offset active income with passive

activity losses and credits. Code Section 269A(b)(l) defines a personal service corporation as a corporation the principal activity of which is the performance of personal services and such services are substantially performed by employee-owners. Code Section 269A(b)(3) provides that all related persons, within the meaning of Code Section 144(a)(3), are treated as a single entity. Code Section 144(a)(3) defines a related person as anyone described in Code Sections 267, 707(b) or 1563(a) (except that 80% is substituted for 50% everywhere is appears in Code Section 1563(a)).

So long as a Buyer's principal activity is something other than the performance of personal services, the Buyer will be able to use the credits and losses attributable to the Solar Lenses to offset active income from other sources.

Regards, GregGreg Shepard
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