To: Richard Joslin[redacted]
From: jeffrey E.
Sent: Thur 7/24/2014 7:36:34 PM
Subject: Re: debt financed distribution

agreed

On Thu, Jul 24, 2014 at 3:34 PM, Richard Joslin <[redacted]> wrote:

Just got off phone with Deloitte and Apollo

BRH K-1 now shows interest relating to AMH debt as "debt financed distribution" In years 2007 to 2012 the interest was treated as investment interest. 2013 debt financed interest disclosure ~ $10MM.

The treatment of debt financed distributions from a partnership is governed by Notice 89-5. Succinctly, the partnership either:

1) Treats all interest as "debt financed" and separately states on K-1 for the partner to trace proceeds of debt, with dates and amounts of proceeds, or

2) Looks at expenditures of the partnership during the year of the debt distribution and categorize interest in the manner of the partnership expenditures. To the extent there is more debt than expenditures, then the excess is treated under option 1.

Given that the 2007-2012 K-1's show zero debt financed distribution disclosure, it would appear that option 2 was followed. However, in 2013 it appears option 1 is not followed. Even if the intent was for option 1, the disclosure on the K-1 indicates option 2 was made.

I told Deloitte and Apollo tax that I was concerned that there was a flip flop in options and that changing options was not expressly permitted. I also noted that the onus is on the partner to now go back and trace the proceeds in 2007 and to have records in place to then trace how the investments were then returned, sold. For example, if the debt was used to invest in a partnership and the partnership makes cash distributions, the distributions need also to be traced ad infinitum. It also then draws into question how prior year BRH reporting was made.

It appears that the entity that has the debt (AMH) changed the reporting on its K-1 and the partners of AMH (AP Professional) and partners of AP Professional (BRH) just followed suit. SO the key is to get Deloitte to change the AMH K-1. No tax returns have been filed for 2013 for these entities (extension).

Richard Joslin

CFO

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