Sol Schwartz & Associates, P.C.
CERTIFIED PUBLIC ACCOUNTANTS

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Jeff Albrecht
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John Gilbert
Jeff Jackson
Arturo Machado
Cesar Mejia
Jim Rice

TAX MEMORANDUM

To: Dave Jefferson
Burdell Management

Date: August 13, 2018

From: John Gilbert
Arturo Machado

Re: Abandonment of LP Interest

Facts:

Silkbush Holdings, LP, A Texas limited partnership, has an ownership share in a South African corporation which owns an operating vineyard. The limited partners have been infusing cash contributions for many years. The vineyard has yet to earn a profit. Furthermore, the market, political and environmental conditions in South Africa have complicated this matter further.

Query:

You have requested that we provide an analysis of the tax implications under each of the following scenario:

1) Determine the tax implications for Burdell Management following the abandonment of its limited partnership interest

Analysis & Response

When a taxpayer disposes of a partnership interest it generally results in recognition of a capital gain or loss. Generally, the transaction is treated as a capital gain or capital loss due to the fact the transaction qualifies as a sale or exchange. If the transaction does not qualify as a sale or exchange then the loss is generally ordinary. If a partnership interest is abandoned or deemed worthless it may qualify for ordinary loss since that does not constitute a sale or exchange.[1] If a partner does not receive any deemed or actual distributions, the abandonment loss would be ordinary and fully deductible.[2]

Abandonment is defined as a permanent disposition, not sold, never to be used again and not retrieved for sale, exchange, or other disposition. A two-part test must be satisfied before a taxpayer can take an abandonment deduction for property. First, the taxpayer must show an intent to abandon the property, and second, the taxpayer must show an affirmative act of abandonment.

[1] Revenue Ruling 93-80
[2] §IRC Section 165

abandonment. In order to substantiate that an asset was abandoned, a taxpayer must demonstrate that he intended to abandon the asset coupled with an affirmative act of abandonment.

Because of the intangible nature of a partnership interest, the need to satisfy the two requirements for abandonment of a partnership interest can be met by the same act or acts. To establish that the taxpayer meets these test the taxpayer should write to the general partner and if practical the other partners and significant outside parties. This letter should state that he or she is abandoning their partnership interest. The letter should also state that the former partner does not expect or want any future earnings or allocations from the partnership. In addition, the partner should not attempt to receive a distribution or collect amount due from the partnership after notifying the other partners that they are abandoning their interest. Rev. Rul. 93-80 outlines these requirements.

Conclusion

Since your limited partnership has never been allocated any of the partnership liabilities nor have they used any partnership liabilities to deduct losses they will not receive any deemed or actual distributions. Thus as this transaction applies to the limited partners it is not considered a sale or exchange. Thus, as an abandonment Burdell will receive an ordinary loss deduction. It will be important for you to submit a letter to the general partner and other partners stating the information stated above that you wish to abandon your limited partnership interest.

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As required by United States Treasury Regulations, you should be aware that any tax advice contained in the body of this correspondence was not intended or written to be used, and cannot be used, by the recipient for the purposes of avoiding penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law provisions.