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G. Crawford Moorefield

crawford.moorefield@strasburger.com

713-951-5629

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Tax Issues for Distressed Energy Companies

Distress in the Oil Patch.

- Dramatic Decline in Oil and Gas Prices Beginning in Fall of 2014.
 - Over 60 Chapter 11 Filings in 2015.
 - Over 100 as of September 13, 2016 with over \$67MM in total debt.
- Many Energy Companies – Downstream, Midstream, Exploration & Service Companies are structured as pass-through entities.

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Tax Issues for Distressed Energy Companies Cont'd.

- Partnerships and LLC's.
- Publicly Traded Partnerships "PTP's" or "MLP's".
- Pass throughs, particularly MLPs' raise especially complex issues in a troubled company restructuring.

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Overview of Basic Restructuring Tax Issues

- Cancellation of Debt ("COD") income.
- Loss carryforwards.
 - Net opening loss carryforwards ("NOLS") for corporations.
 - Suspended losses for pass-throughs – basis, at-risk and passive activity loss limitations.

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COD Income

- The excess of stated principal or adjusted issue price over the amount of money and value of property transferred in satisfaction of debt.
- Taxable as ordinary income under IRC Section 61(a)(12).
- Does not apply to non-recourse debt which is treated as Section 1001 exchange with proceeds equal to stated principal of note.

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Bankruptcy Insolvency Exception

- COD Income Recognition.
- Debtor in bankruptcy – Chapter Proceeding or similar state law proceeding (§108(b)(1)(A)).
- Debtor is insolvent for tax purposes.
Insolvency is measured on a fair market value basis. Non-recourse debt is treated as liability only to the extent of value of underlying security. Non-recognition applies only to the extent of insolvency.

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Title search: Cancellation of Debt

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"Cancellation of Debt"