

# The University of Texas School of Law 64<sup>th</sup> Annual Taxation Conference

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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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64<sup>th</sup> Annual Taxation Conference session

"Cancellation of Debt"