

## UPDATE REGARDING INCOME TAX ISSUES

March 17, 2008

***NOTICE: This memorandum is being provided for information purposes only. The Receiver, his accountants, consultants and attorneys cannot provide any individual with tax advice. Investors are encouraged to consult with a tax advisor regarding their specific circumstances.***

The Receiver has previously posted memoranda related to income tax issues that are likely relevant to your circumstance as an investor with Mobile Billboards of America, Inc. and International Payphone Corporation. We recently became aware of another decision dated January 9, 2008 by the United States Court of Federal Claims in *Johnson v. U.S.*, 101 AFTR 2d 2008-523, which could affect the way that your losses are treated by you and the IRS.

In short, the *Johnson* case arises from a \$78 million investment in a Ponzi scheme that operated from 1988 to 1997. The Johnsons, who were the investors, claimed deductions for theft losses for the amount of their actual loss. This deduction was first claimed in 1998, the year of the loss discovery. By the end of 2001, the Johnsons had ascertained with reasonable certainty they had no prospect of recovery of at least \$37 million of their loss, though an additional \$17 million in recoveries was still being pursued. All issues concerning this remaining \$17 million were finally resolved by 2005. The IRS contested the timing of the deduction in any year prior to 2005, the year of final settlement of all issues. The Court disagreed, stating that the IRS regulations state that a taxpayer is not required to wait until the total amount of recovery from every source has been established, but in this case may take a theft loss deduction for 2001 for the portion of the loss (\$37 million) they were reasonably certain they would not recover at that time.

While the *Johnson* decision is in some ways dependent on the specific facts of that case, you and your tax advisor may find it instructive in dealing with your individual situation. Importantly, it could have a significant beneficial impact on the ability of investors to seek refunds of taxes previously paid and the timing of any theft loss deduction. The holding in this case is markedly different from the *Kaplan*, which was discussed in an earlier memorandum. Accordingly, we encourage you to discuss these issues with your tax adviser as soon as possible so that you can make decisions about filing amended returns or refund claims, as well as whether and when to deal with a theft loss deduction.

We hope the above information will be helpful to you and your tax advisor. ***As indicated above, this information is not intended to be tax advice. It may or may not be applicable to an individual investor's situation. Each individual should consult with a qualified tax advisor such as a Certified Public Accountant or attorney to determine the appropriate tax treatment based on his or her specific circumstances.***