

UPDATE REGARDING INCOME TAX ISSUES

February 7, 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.

Earlier in this case, the Receiver posted a memorandum related to income tax issues that are likely relevant to your circumstance as an investor with Pinnacle Development Partners, LLC and related entities and individuals, which we have concluded was operated as a Ponzi scheme. We recently became aware of a decision dated August 15, 2007 by the United States District Court for the Middle District of Florida in *Kaplan v. U.S.*, 2007 U.S. Dist. LEXIS 59684, *; 100 A.F.T.R.2d (RIA) 5674, which could affect the way that your losses are treated by you and the IRS.

In short, the *Kaplan* case arises from a Ponzi scheme that operated from 1986 to 2001. The Kaplans, who were investors in the scheme, claimed deductions for theft losses for: (1) the amount of their actual loss; (2) certain “phantom income” reported but not received by them over the term of their investment in the scheme; and, (3) taxes paid on the “phantom income” in earlier years for which a refund was barred by the statute of limitations. The deductions were taken in 2001, the year in which the nature of the scheme was discovered (but prior to resolution of all investor’s claims and a distribution). The IRS contested the timing of the deductions, as well as the Kaplans ability to claim the “phantom income” and related tax payments as theft losses. In its decision, the district court ruled in favor of the government and against the taxpayers (i.e., the Kaplans) on each of these issues.

While the *Kaplan* 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, if followed by the IRS and other courts, it could have a significant impact on the ability of investors to seek refunds of taxes previously paid and the timing of any theft loss deduction. 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.***