Mr. John Doe

Tax-Strategies for the Redeployment of funds from Business Sale

September 1st, 2009

Business Sale Case Study

Client Name:	[redacted]
Date:	**6/8/2009**

Business Sold:	[redacted]

THE BLUE OAK GROUP, LLC

Andrew W. Topka
952 758 1031
andrew@blueoakllc.com

Goodwill	$	1,358,000.00
Real Estate	$	854,000.00
Debt Payoff (Real Estate)	$	343,000.00
Total Sales Price	$	2,555,000.00

*figures based on current understanding of expected proceeds and relinquished debt

IRC §1031 Exchange - DST Programs

DST #1:	**Cypress Medical Offices**		**Equity Placed**	**Non-Recourse Debt**
Sponsor:	TIC Properties	**Suggested Investment:**	$ 453,500.00	$ 453,500.00
Location:	Wichita, KS			
Type:	Medical Specialty	**Average Annual Income:**	$38,547.50	
Minimum Equity	$290,700			
Anticipated 1st Yield	8.00%			
Average CoC Yield	8.50%			
Holding Period	10 years			
% Equity	50%	**Avg Gross Monthly Income:**	$ 3,212.29	
% Debt	50%			
Closing Costs:	$ -			
Investment Overview	* See attached Executive Summary			

DST #2:	**Beamer Place Apartments**		**Equity Placed**	**Non-Recourse Debt**
Sponsor:	Geneva Corporation	**Suggested Investment:**	$ 450,000.00	$ 507,446.81
Location:	Houston, TX			
Type:	Multi-Family	**Average Annual Income**	$33,750.00	
Minimum Equity	$300,000			
Anticipated 1st Yield	7.00%			
Average CoC Yield	7.50%			
Holding Period	7-10 years			
% Equity	47.0%			
% Debt	53.0%	**Avg Gross Monthly Income:**	$ 2,812.50	
Closing Costs:	$ -			
Investment Overview	* See attached Executive Summary			

DST #3:	**Vintage Knolls and the Hillside**		**Equity Placed**	**Non-Recourse Debt**
Sponsor:	Wilkonson 1031	**Suggested Investment:**	$ 458,000.00	$ 516,468.09
Location:	Pennsylvania			
Type:	Senior Assisted Living	**Average Annual Income**	$36,067.50	
Minimum Equity	$300,000			
Anticipated 1st Yield	7.50%			
Average CoC Yield	7.88%			
Holding Period	7-10 years			
% Equity	47.0%			
% Debt	53.0%	**Avg Gross Monthly Income:**	$ 3,005.63	
Closing Costs:	$ -			
Investment Overview	* See attached Executive Summary			

IRC §263C Programs

Sponsor/Program:	**US Energy - Omega 2**			**Non-Recourse**
Location:	Appalachin Basin		**Equity Placed**	**Debt**
Type:	Developmental Oil	**Suggested Investment:**	$ 425,250.00	$ -
Preferred Yield	12.00%	**Average Annual Income**	$84,341.25	
Average CoC Yield	19.83%			
% Equity	100.0%			
% Debt	0.0%	**Avg Gross Monthly Income:**	$ 7,028.44	
Investment Overview	* See attached Executive Summary			

Sponsor/Program	**US Energy - Platinum A**			**Non-Recourse**
Location:	Appalachin Basin		**Equity Placed**	**Debt**
Type:	Developmental Natural Gas	**Suggested Investment:**	$ 425,250.00	$ -
Preferred Yield	12.00%	**Average Annual Income**	$84,341.25	
Average CoC Yield	19.83%			
% Equity	100.0%			
% Debt	0.0%	**Avg Gross Monthly Income:**	$ 7,028.44	
Investment Overview	* See attached Executive Summary			

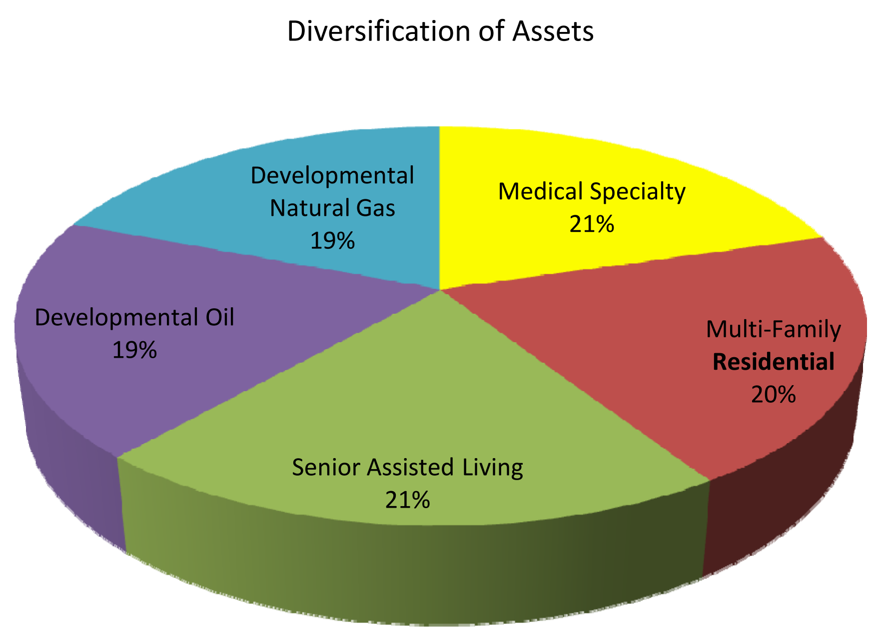
Summary

					Equity Placed		Debt Acquired
Net Proceeds	$	2,212,000.00	**Total Suggested Investment**	$	2,212,000.00	$	1,477,414.89
1031 Equity Replaced	$	2,212,000.00					
Additional Cash Required	$	-	**Avg. Gross Annual Income**		$240,980.00		
1031 Debt Relinquished	$	343,000.00					
1031 Debt Replaced	$	1,477,414.89	**10 year Avg Weighted Yield**		13.14%		
Additional Debt Acquired	$	1,134,414.89					
New 1031 Debt/Equity Ratio		40%					

Closing Costs:	$	-	**Total Average Gross Monthly Income*:**	**$**	**20,081.67**

*Returns are anticipated and not guaranteed.

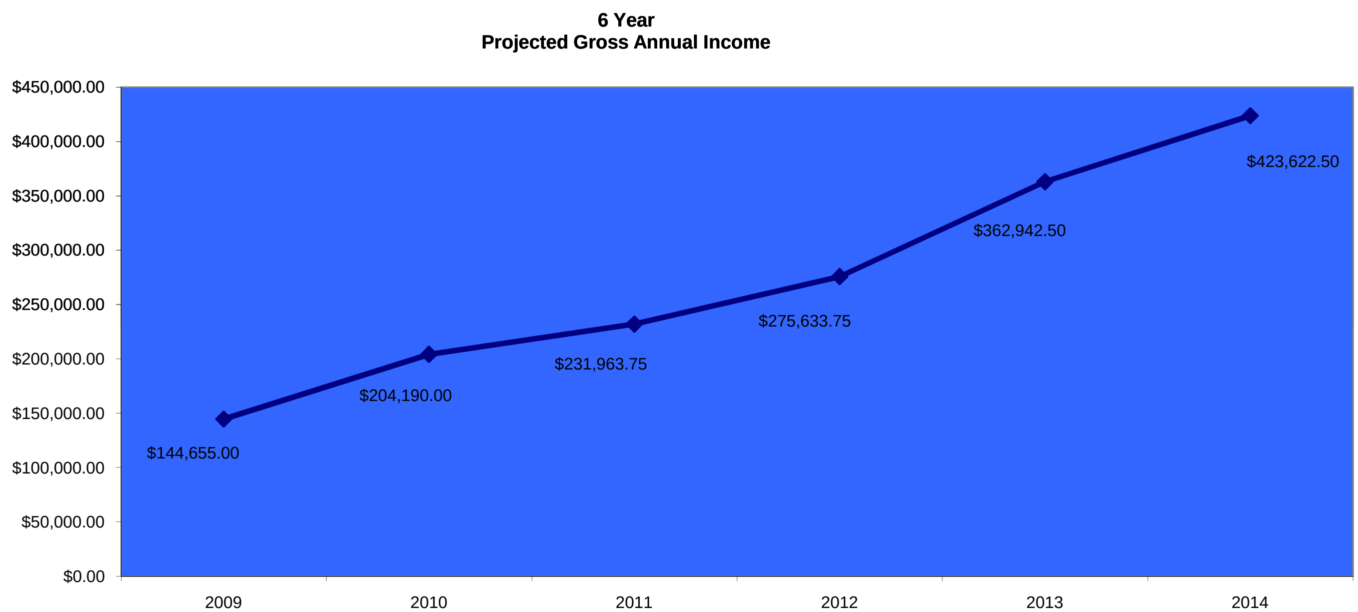
Asset Class Allocation



Annual Breakdown

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Cypress Medical Offices	8.00%	8.00%	8.25%	8.25%	8.50%	8.50%	8.75%	8.75%	9.00%	9.00%
Beamer Place Apartments	7.00%	7.00%	7.25%	7.25%	7.50%	7.50%	7.75%	7.75%	8.00%	8.00%
Vintage Knolls and the Hillside	7.50%	7.50%	7.50%	7.75%	7.75%	8.00%	8.00%	8.25%	8.25%	8.25%
US Energy - Omega 2	5.00%	12.00%	15.00%	20.00%	30.00%	37.00%	30.00%	24.00%	22.00%	20.00%
US Energy - Platinum A	5.00%	12.00%	15.00%	20.00%	30.00%	37.00%	30.00%	24.00%	22.00%	20.00%
Weighted Average Simple Yield	6.54%	9.23%	10.49%	12.46%	16.41%	19.15%	16.47%	14.24%	13.58%	12.82%
***Gross Annual Income**	$144,655.00	$204,190.00	$231,963.75	$275,633.75	$362,942.50	$423,622.50	$140,963.75	$142,108.75	$144,367.50	$144,367.50
***Gross Monthly Income**	$12,054.58	$17,015.83	$19,330.31	$22,969.48	$30,245.21	$35,301.88	$11,746.98	$11,842.40	$12,030.63	$12,030.63

Anticipated Annual Income



* All returns and income stream consistancy are anticipated and not guaranteed

* 100% Tax Deduction in Year 1. 1st distribution check expected in Month 9

Tax Consequence

IRC §1031

Capital Gain on Real Estate	$	553,500
Depreciation Recapture on Real Estate	$	300,500
LT Capital Gains Rate (Federal)		15%
LT Capital Gains Rate (State)		7.8%
Depreciation Recapture Rate		25%
Taxes Deferred on Real Estate Gain	$	126,198
Taxes Deferred on Deprecaition Recap	$	75,125
TOTAL TAX DEFERRAL USING IRC §1031	$	201,323

IRC §263C

Goodwill Value	$	1,358,000.00
FF&E Value	$	-
Form of Entity		S-Corp
Entity Tax Rate on Goodwill		Capital Gains
LT Capital Gains Rate (Federal)		15%
LT Capital Gains Rate (State)		7.8%
Taxes Eliminated on Goodwill	$	309,624
Taxes Eliminated on FF&E		0
TOTAL TAX ELIMINATION USING IRC §263C	$	309,624

Combined Effect

Total Tax Deferal and/or Elimination	**$**	**510,947**
Percent Tax Savings on Purchase Price		**20.0%**

Sample of Pre-Investment Tax Analysis

Andrew W. Topka

From: Maria T. Scarozza [mts@bspcpa.com]
Sent: Monday, December 22, 2008 1:29 PM
To: Andrew W. Topka
Attachments: Final Change Thomas Topka #4.pdf

2008 tax projection for Revised Thomas and Marsha Topka #4

Case 1	2007 without any investment in US Energy Partnership (USEP)			

Case 2	2008 without any investment in US Energy Partnership (USEP)			

Case 3	Tax Year	2008		
	Amount of investment in USEP		**$**	**200,000.00**
	Amount of IDC tax deduction		**$**	**180,000.00**
	Projected tax savings federal		**$**	**29,012.00**
	Projected tax savings state		**$**	**14,271.00**

Case 4	Tax Year	2008		
	Amount of investment in USEP		**$**	**500,000.00**
	Amount of IDC tax deduction		**$**	**450,000.00**
	Projected tax savings federal		**$**	**69,512.00**
	Projected tax savings state		**$**	**35,678.00**

Case 5	Tax Year	2008		
	Amount of investment in USEP		**$**	**556,000.00**
	Amount of IDC tax deduction		**$**	**500,400.00**
	Projected tax savings federal		**$**	**77,072.00**
	Projected tax savings state		**$**	**39,674.00**
	This is the maximum amount that can be deducted before the tax benefit is limited by Alternative Minimum Taxes			

Assumptions:

All 2008 income based on provided information.

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Please be advised that, based on current IRS rules and standards, the advice contained herein is not intended to be used, for the avoidance of any tax penalty that the IRS should assess related to this matter.

Maria Scarozza, CPA
Brock, Schechter & Polakoff, LLP, 726 Exchange Street, Suite 822, Buffalo, NY 14210
Tel: (716) 854-5034, Fax: (716) 854-7195
www.bspcpa.com, email: mts@bspcpa.com

Thomas and Marsha Topka #4

Summary Report

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
Income:					
Interest & Dividends	23,133	17,000	17,000	17,000	17,000
Self-employment Income	0	0	-180,000	-450,000	-500,400
Social Security Benefits	11,974	12,325	12,325	12,325	12,325
Capital Gains & Losses	185,957	1,233,655	1,233,655	1,233,655	1,233,655
Total Income	**221,064**	**1,262,980**	**1,082,980**	**812,980**	**762,580**
Total Adjustments	**0**	**0**	**0**	**0**	**0**
Adjusted Gross Income	**221,064**	**1,262,980**	**1,082,980**	**812,980**	**762,580**
Personal Exemptions	**6,800**	**4,666**	**4,666**	**4,666**	**4,666**
Itemized Deductions:					
Medical Expense	2,507	0	0	0	0
Charitable Contributions	150	0	0	0	0
Taxes	51,137	44,920	44,920	44,920	44,920
Interest Expense	12,103	11,038	11,038	11,038	11,038
3% AGI Floor	-1,293	-11,030	-9,230	-6,530	-6,026
Total Itemized	**64,604**	**44,928**	**46,728**	**49,428**	**49,932**
Standard Deduction	10,700	11,900	11,900	11,900	11,900
Total Deductions from AGI	**71,404**	**49,594**	**51,394**	**54,094**	**54,598**
Taxable Income	**149,660**	**1,213,386**	**1,031,586**	**758,886**	**707,982**
Regular Tax:					
Schedule or Table Tax	30,897	396,260	332,630	237,185	219,369
Alternative Capital Gains Tax	16,079	172,243	144,973	104,068	96,432
Appropriate Regular Tax	**16,079**	**172,243**	**144,973**	**104,068**	**96,432**
Net Alternative Minimum Tax	1,141	7,795	6,053	6,458	6,534
Total Federal Taxes	**17,220**	**180,038**	**151,026**	**110,526**	**102,966**
Net Federal Tax Due	**17,220**	**180,038**	**151,026**	**110,526**	**102,966**
Resident State Tax	11,283	93,851	79,580	58,173	54,177
Net Resident State Tax Due	**11,283**	**93,851**	**79,580**	**58,173**	**54,177**

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Thomas and Marsha Topka #4

Summary Report

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
Total Net Tax Due	**28,503**	**273,889**	**230,606**	**168,699**	**157,143**
Marginal Nominal Federal Rate	26	26	26	26	26
Marginal Federal Rate with Phaseouts	33	26	26	26	26
Marginal Resident State Rate	6	8	8	8	8

Main Worksheet

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
Filing Status	Joint	Joint	Joint	Joint	Joint
Personal Exemptions	2	2	2	2	2
Ordinary Income	35,107	29,325	-150,675	-420,675	-471,075
Net Long-term Gain or Loss	185,957	1,233,655	1,233,655	1,233,655	1,233,655
Adjusted Gross Income	**221,064**	**1,262,980**	**1,082,980**	**812,980**	**762,580**
Itemized Deductions	64,604	44,928	46,728	49,428	49,932
Standard Deduction	10,700	11,900	11,900	11,900	11,900
Taxable Income	**149,660**	**1,213,386**	**1,031,586**	**758,886**	**707,982**
AMTI Net of Exemption	157,264	1,251,942	1,071,942	801,942	751,542
Schedule or Table Tax	**30,897**	**396,260**	**332,630**	**237,185**	**219,369**
Alternative Capital Gains Tax	16,079	172,243	144,973	104,068	96,432
Tentative Minimum Tax	17,220	180,038	151,026	110,526	102,966
Net Federal Tax	**17,220**	**180,038**	**151,026**	**110,526**	**102,966**
State Tax	11,283	93,851	79,580	58,173	54,177
Total Net Tax Liability	**28,503**	**273,889**	**230,606**	**168,699**	**157,143**

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Thomas and Marsha Topka #4

Ordinary Income

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
Interest and Dividends	23,133	17,000	17,000	17,000	17,000
Self-employment Income	0	0	-180,000	-450,000	-500,400
Other Ordinary Income	11,974	12,325	12,325	12,325	12,325
Total Ordinary Income	**35,107**	**29,325**	**-150,675**	**-420,675**	**-471,075**
Total Adjustments	**0**	**0**	**0**	**0**	**0**
Net Ordinary Income	**35,107**	**29,325**	**-150,675**	**-420,675**	**-471,075**

Interest and Dividends

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
Net Qualified EE Bond Interest	0	0	0	0	0
Other Interest	22,952	17,000	17,000	17,000	17,000
Nonqualified Dividends	181	0	0	0	0
Total Interest & Dividends	**23,133**	**17,000**	**17,000**	**17,000**	**17,000**

Self-employment Income & Loss

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
Taxpayer's Self-employment Inc/Loss:					
Domestic Production Inc/Loss	0	0	-180,000	-450,000	-500,400
Taxpayer's Total Self-empl Inc/Loss	**0**	**0**	**-180,000**	**-450,000**	**-500,400**
Spouse's Total Self-empl Inc/Loss	**0**	**0**	**0**	**0**	**0**
Total Self-employment Income	**0**	**0**	**-180,000**	**-450,000**	**-500,400**

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Thomas and Marsha Topka #4

Other Ordinary Income

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
Social Security Benefits	14,087	14,500	14,500	14,500	14,500
Less: Exclusion	**-2,113**	**-2,175**	**-2,175**	**-2,175**	**-2,175**
Includible Social Security Benefits	**11,974**	**12,325**	**12,325**	**12,325**	**12,325**
Total Other Ord Income	**11,974**	**12,325**	**12,325**	**12,325**	**12,325**

Domestic Production Activities Deduction

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
Domestic Production Income or Loss:					
Self-employment	0	0	-180,000	-450,000	-500,400
Total Domestic Production Inc/loss	**0**	**0**	**-180,000**	**-450,000**	**-500,400**
Domestic Production Deduction	**0**	**0**	**0**	**0**	**0**
Oil Related Reduction	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
Net Domestic Production Deduction	**0**	**0**	**0**	**0**	**0**

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Thomas and Marsha Topka #4

Capital Gains and Losses

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
Net Short-term Gain or Loss	**0**	**0**	**0**	**0**	**0**
Other Long-term Investment Gain/Loss	185,957	0	0	0	0
Security Transaction Analyzer	0	1,233,655	1,233,655	1,233,655	1,233,655
Child's Cap Gain Divs:Parent's Rtn	**0**	**0**	**0**	**0**	**0**
Net Long-term Gain or Loss	**185,957**	**1,233,655**	**1,233,655**	**1,233,655**	**1,233,655**
Total Capital Gain or Loss	**185,957**	**1,233,655**	**1,233,655**	**1,233,655**	**1,233,655**
Net Capital Gain	**185,957**	**1,233,655**	**1,233,655**	**1,233,655**	**1,233,655**
Total 28% Rate Gain or Loss	**0**	**0**	**0**	**0**	**0**
Net Short-term Loss	**0**	**0**	**0**	**0**	**0**
Net 28% Rate Gain	**0**	**0**	**0**	**0**	**0**
Total Unrecaptured §1250 Gain	**0**	**0**	**0**	**0**	**0**
Total Short-term & 28% Losses	**0**	**0**	**0**	**0**	**0**
Net Unrecaptured §1250 Gain	**0**	**0**	**0**	**0**	**0**
Qualified 5-Year Gain:					
5-Yr Gain Purchased Pre-2001	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
Total Pre-2001 5-Year Gain	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
5-Year Gain Purchased Post-2000	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
Total Post-2000 5-Year Gain	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
Total Qualified 5-Year Gain	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Thomas and Marsha Topka #4

Itemized Deductions

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
Medical Expense	19,087	14,000	14,000	14,000	14,000
7.5% of AGI	**-16,580**	**-94,724**	**-81,224**	**-60,974**	**-57,194**
Net Deductible Medical	**2,507**	**0**	**0**	**0**	**0**
Other Net Personal Casualty Loss	0	0	0	0	0
10% of AGI	**-22,106**	**-126,298**	**-108,298**	**-81,298**	**-76,258**
Net Deductible Casualty	**0**	**0**	**0**	**0**	**0**
Charitable Contributions	150	0	0	0	0
Adjustment to State Income Taxes	6,124	14,292	14,292	14,292	14,292
Total State Income Taxes	**6,124**	**14,292**	**14,292**	**14,292**	**14,292**
Higher Tax Amount	**6,124**	**14,292**	**14,292**	**14,292**	**14,292**
Property Taxes:Residential	45,013	30,628	30,628	30,628	30,628
Qualified Residence Interest	12,103	11,038	11,038	11,038	11,038
Apply 1998 Tech Corr Casualty Rule	Yes	Yes	Yes	Yes	Yes
Miscellaneous Investment Expenses	0	0	0	0	0
Other Miscellaneous Expense	790	0	0	0	0
2% of AGI	**-4,421**	**-25,260**	**-21,660**	**-16,260**	**-15,252**
Net Deductible Miscellaneous Expense	**0**	**0**	**0**	**0**	**0**
Total Itemized Before Floor	**65,897**	**55,958**	**55,958**	**55,958**	**55,958**
Medical, Casualty Inv Int & Gambling	**2,507**	**0**	**0**	**0**	**0**
Itemized w/o Med, Caslty, & Interest	**63,390**	**55,958**	**55,958**	**55,958**	**55,958**
3% AGI Floor Post 1990	**-1,293**	**-11,030**	**-9,230**	**-6,530**	**-6,026**
Itemized After Floor	**62,097**	**44,928**	**46,728**	**49,428**	**49,932**
Total Itemized	**64,604**	**44,928**	**46,728**	**49,428**	**49,932**

**State taxes are used for estimating federal itemized deduction only,
please do not rely on this planner to estimate your state taxes.
Consult a CPA familiar with your state income taxes.**

**This is a projection only based on 2007 income tax figures with
limited adjustments for known variances for 2008.
Actual results can vary.**

Thomas and Marsha Topka #4

Qualified Residence Interest

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
Phased Out Mortgage Insurance Prems	**0**	**0**	**0**	**0**	**0**
Qualified Housing Interest	12,103	11,038	11,038	11,038	11,038
Total Qualified Residence Interest	**12,103**	**11,038**	**11,038**	**11,038**	**11,038**

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Thomas and Marsha Topka #4

Alternative Minimum Tax

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
Taxable Income:	149,660	1,213,386	1,031,586	758,886	707,982
Preferences & Adjustments:					
Personal Exemptions	6,800	4,666	4,666	4,666	4,666
Medical Exp Adjustment	2,507	0	0	0	0
Taxes	51,137	44,920	44,920	44,920	44,920
Itemized Deduction Floor	-1,293	-11,030	-9,230	-6,530	-6,026
Private Activity Bond Interest	0	0	0	0	0
Section 1202 Exclusion Preference	0	0	0	0	0
Regular Tax Capital Loss or Gain	-185,957	-1,233,655	-1,233,655	-1,233,655	-1,233,655
AMT Capital Gain or Loss	185,957	1,233,655	1,233,655	1,233,655	1,233,655
Alt Min Taxable Income	208,811	1,251,942	1,071,942	801,942	751,542
AMT Exemption Before Phase-out	66,250	69,950	69,950	69,950	69,950
Adjusted AMT Exemption	66,250	69,950	69,950	69,950	69,950
Exemption After Phase-out	51,547	0	0	0	0
Taxable Excess	157,264	1,251,942	1,071,942	801,942	751,542
Tent Min Tax from Schedule	40,889	347,044	296,644	221,044	206,932
Tent Min Alt Capital Gains Tax	17,220	180,038	151,026	110,526	102,966
Tent Min Tax Bef AMT Foreign Tax Cr	17,220	180,038	151,026	110,526	102,966
AMT Foreign Tax Credit Allowed	0	0	0	0	0
Tentative Minimum Tax	17,220	180,038	151,026	110,526	102,966
Regular Tax Before Foreign Tax Cred	16,079	172,243	144,973	104,068	96,432
Foreign Tax Credit Allowed	0	0	0	0	0
Regular Tax	16,079	172,243	144,973	104,068	96,432
Alternative Minimum Tax	1,141	7,795	6,053	6,458	6,534

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Thomas and Marsha Topka #4

Capital Gain/Loss - Alt Min

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
Net Short-term Gain/Loss	0	0	0	0	0
Other Long-term Gain/Loss: Reg Tax	185,957	1,233,655	1,233,655	1,233,655	1,233,655
Net Long-term Gain/Loss	185,957	1,233,655	1,233,655	1,233,655	1,233,655
Total Capital Gain/Loss	185,957	1,233,655	1,233,655	1,233,655	1,233,655
Net Capital Gain	185,957	1,233,655	1,233,655	1,233,655	1,233,655
Total 28% Gain or Loss	0	0	0	0	0
Net Short-term Loss	0	0	0	0	0
Net 28% Rate Gain	0	0	0	0	0
Total Unrecaptured Sec 1250 Gain	0	0	0	0	0
Total Short-term & 28% Losses	0	0	0	0	0
Net Unrecaptured Sec 1250 Gain	0	0	0	0	0

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Thomas and Marsha Topka #4

AMT Alternative Capital Gains Tax

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
1 AMT Taxable Excess	157,264	1,251,942	1,071,942	801,942	751,542
2 Net Capital Gain From Sales	185,957	1,233,655	1,233,655	1,233,655	1,233,655
3 Qualified Dividend Income	0	0	0	0	0
4 Total Net Capital Gain	185,957	1,233,655	1,233,655	1,233,655	1,233,655
5 Unrecaptured Sec 1250 Gain	0	0	0	0	0
6 28% Rate Gain	0	0	0	0	0
7 Total Adjustments (R5+R6)	0	0	0	0	0
8 Adjusted Net Cap Gain (R2-R7+R3)	185,957	1,233,655	1,233,655	1,233,655	1,233,655
9 Adjusted NCG + §1250 Gain (R5+R8)	185,957	1,233,655	1,233,655	1,233,655	1,233,655
10 Lesser of Above or NCG (R4,R9)	185,957	1,233,655	1,233,655	1,233,655	1,233,655
11 Taxable Less Above (R1-R10)	0	18,287	0	0	0
12 Tax on Row 11 from AMT Sched	0	4,755	0	0	0
13 Lesser:Adj NCG or Taxable(R8,R1)	157,264	1,233,655	1,071,942	801,942	751,542
14 Sec 1(h)(1)(B) Reg Tax Amount	63,700	65,100	65,100	65,100	65,100
15 Adj NCG in 15% Br <(R13,R14)	63,700	65,100	65,100	65,100	65,100
16 Post 5/5/03 Adjusted Net Cap Gain	185,957	1,233,655	1,233,655	1,233,655	1,233,655
17 >5/5/03 ANCG in 15% Br <(R15,R16)	63,700	65,100	65,100	65,100	65,100
18 5% Tax (R17 X 5%)(0% after 2007)	3,185	0	0	0	0
19 Total AMT Qualified 5-Year Gain	0	0	0	0	0
20 Remaining ANCG in 15% Br(R15-R17)	0	0	0	0	0
21 AMT 5Yr in 15% Br <(R19,R20)	0	0	0	0	0
22 8% Tax (R21 X 8%)	0	0	0	0	0
23 Remaining ANCG in 15% Br(R20-R21)	0	0	0	0	0
24 10% Tax ((R23 X 10%)	0	0	0	0	0
25 Remaining Adj NCG (R13-R15)	93,564	1,168,555	1,006,842	736,842	686,442
26 Pre-2011 Calculations:					
27 Remaining >5/5/03 ANCG (R16-R17)	122,257	1,168,555	1,168,555	1,168,555	1,168,555
28 >5/5/03 in Higher Brkts <(25,27)	93,564	1,168,555	1,006,842	736,842	686,442

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Thomas and Marsha Topka #4

AMT Alternative Capital Gains Tax

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
29 15% Tax (R28 X 15%)	14,035	175,283	151,026	110,526	102,966
30 Remaining Adjusted NCG (R25-R28)	0	0	0	0	0
31 20% Tax (R30 X 20%)	0	0	0	0	0
32 Post 2010 Calculations:					
33 Remaining 5-Year (R19-R21)	N/A	N/A	N/A	N/A	N/A
34 AMT 5-Year Purchased Post-2000	N/A	N/A	N/A	N/A	N/A
35 Least:ANCG,5-Yr,>00(R25,R33,R34)	N/A	N/A	N/A	N/A	N/A
36 18% Tax (R35 x 18%)	N/A	N/A	N/A	N/A	N/A
37 20% Tax ((R25-R35) X 20%)	N/A	N/A	N/A	N/A	N/A
38 Amounts Taxed Above (R11+R15+R25)	157,264	1,251,942	1,071,942	801,942	751,542
39 Remaining Taxable (R1-R38)	0	0	0	0	0
40 25% Tax on Remaining (R39 X 25%)	0	0	0	0	0
41 AMT Alt Cap Gains Tax (R12+R18+					
42 +R22+R24+R29+R31+R36+R37+R40)	17,220	180,038	151,026	110,526	102,966
43 AMT Marginal Rate for Ordinary	33	26	26	26	26
44 Apply 2004 Technical Correction?	N/A	N/A	N/A	N/A	N/A

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Thomas and Marsha Topka #4

Alternative Capital Gains Tax

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
1 Taxable Income	149,660	1,213,386	1,031,586	758,886	707,982
2 Net Capital Gain From Sales	185,957	1,233,655	1,233,655	1,233,655	1,233,655
3 Qualified Dividend Income	0	0	0	0	0
4 Total Net Capital Gain	185,957	1,233,655	1,233,655	1,233,655	1,233,655
5 Unrecaptured Section 1250 Gain	0	0	0	0	0
6 28% Rate Gain	0	0	0	0	0
7 Total Adjustments (R5+R6)	0	0	0	0	0
8 Adjusted Net Cap Gain (R2-R7+R3)	185,957	1,233,655	1,233,655	1,233,655	1,233,655
9 Taxable Less Adj NCG (R1-R8)	0	0	0	0	0
10 Taxable Below 25%	63,700	65,100	65,100	65,100	65,100
11 Lesser:15% Br or TI-ANCG<(R9,R10)	0	0	0	0	0
12 Taxable Less NCG (R1-R4)	0	0	0	0	0
13 Greater of Row 11 or Row 12	0	0	0	0	0
14 Tax on Row 13	0	0	0	0	0
15 Lesser:Adj NCG or Taxable (R1,R8)	149,660	1,213,386	1,031,586	758,886	707,982
16 15% Bracket	63,700	65,100	65,100	65,100	65,100
17 Taxable less Adj NCG (R1-R8)	0	0	0	0	0
18 Excess 15% bracket (R16-R17)	63,700	65,100	65,100	65,100	65,100
19 Adj NCG in 15% Br <(R15,R18)	63,700	65,100	65,100	65,100	65,100
20 Post 5/5/03 Adjusted Net Cap Gain	185,957	1,233,655	1,233,655	1,233,655	1,233,655
21 >5/5/03 ANCG in 15% Br <(R19,R20)	63,700	65,100	65,100	65,100	65,100
22 5% Tax (R21 X 5%)(0% after 2007)	3,185	0	0	0	0
23 Total Qualified 5-Year Gain	0	0	0	0	0
24 Remaining ANCG in 15% Br(R19-R21)	0	0	0	0	0
25 5 Yr Gain in 15% Br <(R23,R24)	0	0	0	0	0
26 8% Tax (R25 X 8%)	0	0	0	0	0
27 Remaining ANCG in 15% Br(R24-R25)	0	0	0	0	0
28 10% Tax (R27 X 10%)	0	0	0	0	0
29 Remaining Adj NCG (R15-R19)	85,960	1,148,286	966,486	693,786	642,882
30 Pre-2011 Calculations:					
31 Remaining >5/5/03 ANCG (R20-R21)	122,257	1,168,555	1,168,555	1,168,555	1,168,555

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Thomas and Marsha Topka #4

Alternative Capital Gains Tax

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
32 >5/5/03 in Higher Brkts <(29,31)	85,960	1,148,286	966,486	693,786	642,882
33 15% Tax (R32 X 15%)	12,894	172,243	144,973	104,068	96,432
34 Remaining Adjusted NCG (R29-R32)	0	0	0	0	0
35 20% Tax (R34 X 20%)	0	0	0	0	0
36 Post 2010 Calculations:					
37 Remaining 5-Year (R23-R25)	N/A	N/A	N/A	N/A	N/A
38 5-Year Purchased Post-2000	N/A	N/A	N/A	N/A	N/A
39 Least:ANCG,5-Yr,>00(R29,R37,R38)	N/A	N/A	N/A	N/A	N/A
40 18% Tax (R39 x 18%)	N/A	N/A	N/A	N/A	N/A
41 20% Tax ((R29-R39) X 20%)	N/A	N/A	N/A	N/A	N/A
42 Lesser:NCG or 1250 Gain <(R2,R5)	0	0	0	0	0
43 Amt Taxed Above + NCG (R13+R4)	185,957	1,233,655	1,233,655	1,233,655	1,233,655
44 Taxable Income (R1)	149,660	1,213,386	1,031,586	758,886	707,982
45 NCG Taxed Above (R43-R44)	36,297	20,269	202,069	474,769	525,673
46 Remaining 1250 Gain (R42-R45)	0	0	0	0	0
47 25% Tax (R46 X 25%)	0	0	0	0	0
48 Amts Taxed Above(R13+R19+R29+R46)	149,660	1,213,386	1,031,586	758,886	707,982
49 Balance of Taxable (R1-R48)	0	0	0	0	0
50 28% Tax on Balance (R49 X 28%)	0	0	0	0	0
51 Alt Cap Gains Tax: (R14+R22+R26					
52 +R28+R33+R35+R40+R41+R47+R50)	16,079	172,243	144,973	104,068	96,432
53 Marginal Rate for Ordinary	0	0	0	0	0

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Thomas and Marsha Topka #4

Credits

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
Total Personal Credits	**0**	**0**	**0**	**0**	**0**
Total	**0**	**0**	**0**	**0**	**0**
Minimum Tax Credit	10,503	10,503	10,503	10,503	10,503
Total Nonrefundable Credits	**10,503**	**10,503**	**10,503**	**10,503**	**10,503**
Total Payments	**0**	**0**	**0**	**0**	**0**
Additional Pmt Required of 93 Inst	**0**	**0**	**0**	**0**	**0**

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Thomas and Marsha Topka #4

Minimum Tax Credit

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
Taxable Income	**149,660**	**1,213,386**	**1,031,586**	**758,886**	**707,982**
Exclusion Preferences & Adjustments	**59,151**	**38,556**	**40,356**	**43,056**	**43,560**
Total Exclusion Prefs & Adjs	**59,151**	**38,556**	**40,356**	**43,056**	**43,560**
AMTI W/ Only Exclusion Prefs & Adjs	**208,811**	**1,251,942**	**1,071,942**	**801,942**	**751,542**
Exemption	**-51,547**	**0**	**0**	**0**	**0**
Taxable Excess	**157,264**	**1,251,942**	**1,071,942**	**801,942**	**751,542**
Tent Min Tax from Schedule	**40,889**	**347,044**	**296,644**	**221,044**	**206,932**
Tent Min Alt Cap Gains Tax	**17,220**	**180,038**	**151,026**	**110,526**	**102,966**
Foreign Earned Inc Tent Min Tax	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
Tentative Minimum Tax W/ Only Excl	**17,220**	**180,038**	**151,026**	**110,526**	**102,966**
Regular Tax	**-16,079**	**-172,243**	**-144,973**	**-104,068**	**-96,432**
Net Min Tax With Only Exclusion Pref	**1,141**	**7,795**	**6,053**	**6,458**	**6,534**
Net Minimum Tax	**1,141**	**7,795**	**6,053**	**6,458**	**6,534**
Net Minimum Tax With Only Exclusion Preferences	**1,141**	**7,795**	**6,053**	**6,458**	**6,534**
Credit Generated	**0**	**0**	**0**	**0**	**0**
Credit Attributable - 2nd Prior Year	10,503	0	0	0	0
Credit Attributable - 3rd Prior Year	0	10,503	10,503	10,503	10,503
Total Credit	**10,503**	**10,503**	**10,503**	**10,503**	**10,503**
Total Credit After Adjustment	**10,503**	**10,503**	**10,503**	**10,503**	**10,503**
AMT Refundable Credit Amount:					
$5000 Minimum (2007 only)	**5,000**	**N/A**	**N/A**	**N/A**	**N/A**
Prior Year LT Credit Amount	N/A	0	0	0	0
Tentative Refundable Credit Amount	**0**	**0**	**0**	**0**	**0**
Refundable Credit Amount	**0**	**0**	**0**	**0**	**0**
Adj for Prior Yr ISO Int & Penalty	**0**	**0**	**0**	**0**	**0**
Total Refundable Credit Amount	**0**	**0**	**0**	**0**	**0**

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Thomas and Marsha Topka #4

Minimum Tax Credit

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
Nonrefundable Credit Allowed	0	0	0	0	0
Refundable Credit Allowed	0	0	0	0	0
Credits Attributable - 3rd & 4th Pr	0	10,503	10,503	10,503	10,503
Carried to Next Year	0	10,503	10,503	10,503	10,503
Credit Attributable to 2nd Prior Yr	10,503	0	0	0	0
Carried to Next Year	10,503	0	0	0	0
Total Carried to Future Years	10,503	10,503	10,503	10,503	10,503
Apply 2004 Technical Correction?	N/A	N/A	N/A	N/A	N/A

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Thomas and Marsha Topka #4

State Tax - Main Worksheet: Minnesota

	2007 No Invest	2008 No Invest	2008 $200K Invest	2008 $500K Invest	2008 $556K Invest (MAX)
State Filing Status	Joint	Joint	Joint	Joint	Joint
Number of Personal Exemptions	2	2	2	2	2
Federal AGI	**221,064**	**1,262,980**	**1,082,980**	**812,980**	**762,580**
Adjustments for State AGI	-221,064	-12,325	-12,325	-12,325	-12,325
State AGI	**0**	**1,250,655**	**1,070,655**	**800,655**	**750,255**
State Itemized Deductions	58,480	30,636	32,436	35,136	35,640
State Standard Deduction	10,700	10,900	10,900	10,900	10,900
State Personal Exemption Deduction	**6,800**	**4,666**	**4,666**	**4,666**	**4,666**
State Taxable Income	**-65,280**	**1,215,353**	**1,033,553**	**760,853**	**709,949**
State Regular Tax	**0**	**93,851**	**79,580**	**58,173**	**54,177**
State Minimum Tax	11,283	0	0	0	0
Total State Tax	**11,283**	**93,851**	**79,580**	**58,173**	**54,177**

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Table of Contents

State taxes are used for estimating federal itemized deduction only, please do not rely on this planner to estimate your state taxes. Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with limited adjustments for known variances for 2008. Actual results can vary.

Thomas and Marsha Topka #4

Index

State taxes are used for estimating federal itemized deduction only,
please do not rely on this planner to estimate your state taxes.
Consult a CPA familiar with your state income taxes.

This is a projection only based on 2007 income tax figures with
limited adjustments for known variances for 2008.
Actual results can vary.

US Energy - Omega 1 - 2009

U.S. ENERGY DEVELOPMENT CORPORATION

Ωmega

2009 Drilling Program

FAST FACT SHEET

- **U.S. Energy makes a substantial investment equal to 30%** of the total amount invested by the participants.
- **Preferential Return to the Investor** – U.S. Energy subordinates **both** its 30% working interest AND its overriding royalty to an annual return to the Investor of at least **12% average cumulative cash on cash return** for five years.
- **90% Tax Write-Off of invested dollars;** 90% (applied to payment of intangible drilling costs) in 2009 with the remaining 10% (applied to payment of equipment costs) generating depreciation deductions commencing when the partnership wells are placed into production.
- **Monthly Distributions** – For the first year[1].
- **Tax Free Income** – Internal Revenue Code allows for Percentage Depletion which shelters between 15% and 24% of ongoing cash flow every year.
- Investors Pay **NO** Commissions, Lease Costs or Offering Costs.
- **Expertise** – U.S. Energy has acted as operator with respect to the drilling of more than 1,800 wells.
- **Program Diversity** – Maximum well count, Diversified commodity mix of Oil & Natural Gas.
- Focus on **Developmental** Oil wells, which frequently have associated Natural Gas Production.
- **Liquidity Available after 3 Years** – Repurchase Feature (the program also known as Presentment Feature)-Subject to Limitations.

Joe Del Monte - x 282
Internal Wholesaler - **West Coast**

Cynthia Padula - x 207
Internal Wholesaler - **Mid West**

Jon Neyerlin - x 273
Internal Wholesaler - **East Coast**

Jay Keener - x 276
External Wholesaler - **West Coast**

Tony Mazza - x 228
External Wholesaler - **Mid West**

Richard Walton - x 204
External Wholesaler - **East Coast**

Matthew Iak - x 287
National Sales Director

Judith Jayson - x 203
External Wholesaler - **Florida**

1-800-636-7606
www.usenergydevcorp.com

[1]See page 11 in the Private Placement Memorandum

Sample K-1 showing IDC Deduction

651108

☐ Final K-1 ☐ Amended K-1 OMB No. 1545-0099

Schedule K-1 (Form 1065) **2008**

Department of the Treasury Internal Revenue Service

For calendar year 2008, or tax year beginning ________, 2008 ending ________, ____

Partner's Share of Income, Deductions, Credits, etc.

► See separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number

[redacted]

B Partnership's name, address, city, state, and ZIP code

PLATINUM ENERGY PARTNERS 2008 C, LP
2350 NORTH FOREST RD SUITE 14A
GETZVILLE, NY 14068

C IRS Center where partnership filed return

OGDEN, UT

D ☐ Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number

[redacted]

F Partner's name, address, city, state, and ZIP code

THOMAS E. & MARSHA L. TOPKA
[redacted]

G ☒ General partner or LLC member-manager ☐ Limited partner or other LLC member

H ☒ Domestic partner ☐ Foreign partner

I What type of entity is this partner? INDIVIDUAL

J Partner's share of profit, loss, and capital (see instructions):

	Beginning	Ending
Profit	%	2.30323769 %
Loss	%	3.29033956 %
Capital	%	3.29034 %

K Partner's share of liabilities at year end:

Nonrecourse	$
Qualified nonrecourse financing	$
Recourse	$

L Partner's capital account analysis:

Beginning capital account	$ 0.
Capital contributed during the year	$ 500,000.
Current year increase (decrease)	$ -450,000.
Withdrawals and distributions	$
Ending capital account	$ 50,000.

☒ Tax basis ☐ GAAP ☐ Section 704(b) book ☐ Other (explain)

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss)	
2	Net rental real estate income (loss)	
3	Other net rental income (loss)	
4	Guaranteed payments	
5	Interest income	
6a	Ordinary dividends	
6b	Qualified dividends	
7	Royalties	
8	Net short-term capital gain (loss)	
9a	Net long-term capital gain (loss)	
9b	Collectibles (28%) gain (loss)	
9c	Unrecaptured section 1250 gain	
10	Net section 1231 gain (loss)	
11	Other income (loss)	
12	Section 179 deduction	
13	Other deductions	
J*	STMT	
14	Self-employment earnings (loss)	
A		-450,000.
15	Credits	
16	Foreign transactions	
17	Alternative minimum tax (AMT) items	
18	Tax-exempt income and nondeductible expenses	
19	Distributions	
20	Other information	

*See attached statement for additional information.

FOR IRS USE ONLY

BAA For Paperwork Reduction Act Notice, see Instructions for Form 1065.

PARTNER 37

PTPA0312L 12/15/08

PLATINUM ENERGY PARTNERS 2008 C, LP [redacted]

BOX 13
OTHER DEDUCTIONS

*** DESCRIPTIVE INFORMATION**

J	INTANGIBLE DRILLING COSTS	$ 450,000.

PARTNER 37: THOMAS E. & MARSHA L. TOPKA [redacted]

The Tax Codes

Internal Revenue Code

§ 263 Capital expenditures.

(a) General rule.
No deduction shall be allowed for—

(1) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. This paragraph shall not apply to—

(A) expenditures for the development of mines or deposits deductible under section 616 ,

(B) research and experimental expenditures deductible under section 174 ,

(C) soil and water conservation expenditures deductible under section 175 ,

(D) expenditures by farmers for fertilizer, etc., deductible under section 180 ,

(E) expenditures for removal of architectural and transportation barriers to the handicapped and elderly which the taxpayer elects to deduct under section 190 ,

(F) expenditures for tertiary injectants with respect to which a deduction is allowed under section 193 ,

(G) expenditures for which a deduction is allowed under section 179 ,

(H) expenditures for which a deduction is allowed under section 179A ,

(I) expenditures for which a deduction is allowed under section 179B ,

(J) expenditures for which a deduction is allowed under section 179C ,

(K) expenditures for which a deduction is allowed under section 179D , or

(L) expenditures for which a deduction is allowed under section 179E .

(2) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

(b) Repealed.

(c) Intangible drilling and development costs in the case of oil and gas wells and geothermal wells.
Notwithstanding subsection (a) , and except as provided in subsection (i) , regulations shall be prescribed by the Secretary under this subtitle corresponding to the regulations which granted the

option to deduct as expenses intangible drilling and development costs in the case of oil and gas wells and which were recognized and approved by the Congress in House Concurrent Resolution 50, Seventy-ninth Congress. Such regulations shall also grant the option to deduct as expenses intangible drilling and development costs in the case of wells drilled for any geothermal deposit (as defined in section 613(e)(2)) to the same extent and in the same manner as such expenses are deductible in the case of oil and gas wells. This subsection shall not apply with respect to any costs to which any deduction is allowed under section 59(e) or 291 .

(d) Expenditures in connection with certain railroad rolling stock.
In the case of expenditures in connection with the rehabilitation of a unit of railroad rolling stock (except a locomotive) used by a domestic common carrier by railroad which would, but for this subsection , be properly chargeable to capital account, such expenditures, if during any 12-month period they do not exceed an amount equal to 20 percent of the basis of such unit in the hands of the taxpayer, shall, at the election of the taxpayer, be treated (notwithstanding subsection (a)) as deductible repairs under section 162 or 212 . An election under this subsection shall be made for any taxable year at such time and in such manner as the Secretary prescribes by regulations. An election may not be made under this subsection for any taxable year to which an election under subsection (e) applies to railroad rolling stock (other than locomotives).

(e) Repealed.

(f) Railroad ties.
In the case of a domestic common carrier by rail (including a railroad switching or terminal company) which uses the retirement-replacement method of accounting for depreciation of its railroad track, expenditures for acquiring and installing replacement ties of any material (and fastenings related to such ties) shall be accorded the same tax accounting treatment as expenditures for replacement ties of wood (and fastenings related to such ties).

(g) Certain interest and carrying costs in the case of straddles.

(1) General rule.
No deduction shall be allowed for interest and carrying charges properly allocable to personal property which is part of a straddle (as defined in section 1092(c)). Any amount not allowed as a deduction by reason of the preceding sentence shall be chargeable to the capital account with respect to the personal property to which such amount relates.

(2) Interest and carrying charges defined.
For purposes of paragraph (1) , the term “interest and carrying charges” means the excess of—

(A) the sum of—

(i) interest on indebtedness incurred or continued to purchase or carry the personal property, and

(ii) all other amounts (including charges to insure, store, or transport the personal property) paid or incurred to carry the personal property, over

(B) the sum of—

(i) the amount of interest (including original issue discount) includible in gross income for the taxable year with respect to the property described in subparagraph (A) ,

(ii) any amount treated as ordinary income under section 1271(a)(3)(A) , 1276 , or 1281(a) with respect to such property for the taxable year,

(iii) the excess of any dividends includible in gross income with respect to such property for the taxable year over the amount of any deduction allowable with respect to such dividends under section 243 , 244 , or 245 , and

(iv) any amount which is a payment with respect to a security loan (within the meaning of section 512(a)(5)) includible in gross income with respect to such property for the taxable year.

For purposes of subparagraph (A) , the term “interest” includes any amount paid or incurred in connection with personal property used in a short sale.

(3) Exception for hedging transactions.
This subsection shall not apply in the case of any hedging transaction (as defined in section 1256 (e)).

(4) Application with other provisions.

(A) Subsection (c) . In the case of any short sale, this subsection shall be applied after subsection (h) .

(B) Section 1277 or 1282 . In the case of any obligation to which section 1277 or 1282 applies, this subsection shall be applied after section 1277 or 1282 .

(h) Payments in lieu of dividends in connection with short sales.

(1) In general.
If—

(A) a taxpayer makes any payment with respect to any stock used by such taxpayer in a short sale and such payment is in lieu of a dividend payment on such stock, and

(B) the closing of such short sale occurs on or before the 45th day after the date of such short sale,

then no deduction shall be allowed for such payment. The basis of the stock used to close the short sale shall be increased by the amount not allowed as a deduction by reason of the preceding sentence.

(2) Longer period in case of extraordinary dividends.
If the payment described in paragraph (1)(A) is in respect of an extraordinary dividend, paragraph (1)(B) shall be applied by substituting “the day 1 year after the date of such short sale” for “the 45th day after the date of such short sale”.

(3) Extraordinary dividend.
For purposes of this subsection , the term “extraordinary dividend” has the meaning given to such term by section 1059(c) ; except that such section shall be applied by treating the amount realized by the taxpayer in the short sale as his adjusted basis in the stock.

(4) Special rule where risk of loss diminished.
The running of any period of time applicable under paragraph (1)(B) (as modified by paragraph (2)) shall be suspended during any period in which—

(A) the taxpayer holds, has an option to buy, or is under a contractual obligation to buy, substantially identical stock or securities, or

(B) under regulations prescribed by the Secretary, a taxpayer has diminished his risk of loss by holding 1 or more other positions with respect to substantially similar or related property.

(5) Deduction allowable to extent of ordinary income from amounts paid by lending broker for use of collateral.

(A) In general. Paragraph (1) shall apply only to the extent that the payments or distributions with respect to any short sale exceed the amount which—

(i) is treated as ordinary income by the taxpayer, and

(ii) is received by the taxpayer as compensation for the use of any collateral with respect to any stock used in such short sale.

(B) Exception not to apply to extraordinary dividends. Subparagraph (A) shall not apply if one or more payments or distributions is in respect of an extraordinary dividend.

(6) Application of this subsection with subsection (g) .
In the case of any short sale, this subsection shall be applied before subsection (g) .

(i) Special rules for intangible drilling and development costs incurred outside the United States.
In the case of intangible drilling and development costs paid or incurred with respect to an oil, gas, or geothermal well located outside the United States—

(1) subsection (c) shall not apply, and

(2) such costs shall—

(A) at the election of the taxpayer, be included in adjusted basis for purposes of computing the amount of any deduction allowable under section 611 (determined without regard to section 613), or

(B) if subparagraph (A) does not apply, be allowed as a deduction ratably over the 10-taxable year period beginning with the taxable year in which such costs were paid or incurred.

This subsection shall not apply to costs paid or incurred with respect to a nonproductive well.

END OF DOCUMENT -

Internal Revenue Code

§ 469 Passive activity losses and credits limited.

(a) Disallowance.

(1) In general.
If for any taxable year the taxpayer is described in paragraph (2) , neither—

(A) the passive activity loss, nor

(B) the passive activity credit,

for the taxable year shall be allowed.

(2) Persons described.
The following are described in this paragraph:

(A) any individual, estate, or trust,

(B) any closely held C corporation, and

(C) any personal service corporation.

(b) Disallowed loss or credit carried to next year.
Except as otherwise provided in this section , any loss or credit from an activity which is disallowed under subsection (a) shall be treated as a deduction or credit allocable to such activity in the next taxable year.

(c) Passive activity defined.
For purposes of this section —

(1) In general.
The term “passive activity” means any activity—

(A) which involves the conduct of any trade or business, and

(B) in which the taxpayer does not materially participate.

(2) Passive activity includes any rental activity.
Except as provided in paragraph (7) , the term “passive activity” includes any rental activity.

(3) Working interests in oil and gas property.

(A) In general. The term “passive activity” shall not include any working interest in any oil or gas property which the taxpayer holds directly or through an entity which does not limit the liability of the taxpayer with respect to such interest.

(B) Income in subsequent years. If any taxpayer has any loss for any taxable year from a working interest in any oil or gas property which is treated as a loss which is not from a passive activity, then any net income from such property (or any property the basis of which is determined in whole or in part by reference to the basis of such property) for any succeeding taxable year shall be treated as income of the taxpayer which is not from a passive activity. If the preceding sentence applies to the net income from any property for any taxable year, any credits allowable under Subpart B (other than section 27(a)) or D of part IV of subchapter A for such taxable year which are attributable to such property shall be treated as credits not from a passive activity to the extent the amount of such credits does not exceed the regular tax liability of the taxpayer for the taxable year which is allocable to such net income.

(4) Material participation not required for paragraphs (2) and (3) .
Paragraphs (2) and (3) shall be applied without regard to whether or not the taxpayer materially participates in the activity.

(5) Trade or business includes research and experimentation activity.
For purposes of paragraph (1)(A) , the term “trade or business” includes any activity involving research or experimentation (within the meaning of section 174).

(6) Activity in connection with trade or business or production of income.
To the extent provided in regulations, for purposes of paragraph (1)(A) , the term “trade or business” includes—

(A) any activity in connection with a trade or business, or

(B) any activity with respect to which expenses are allowable as a deduction under section 212 .

(7) Special rules for taxpayers in real property business.

(A) In general. If this paragraph applies to any taxpayer for a taxable year—

(i) paragraph (2) shall not apply to any rental real estate activity of such taxpayer for such taxable year, and

(ii) this section shall be applied as if each interest of the taxpayer in rental real estate were a separate activity.

Notwithstanding clause (ii) , a taxpayer may elect to treat all interests in rental real estate as one activity. Nothing in the preceding provisions of this subparagraph shall be construed as affecting the determination of whether the taxpayer materially participates with respect to any interest in a limited partnership as a limited partner.

(B) Taxpayers to whom paragraph applies. This paragraph shall apply to a taxpayer for a taxable year if—

(i) more than one-half of the personal services performed in trades or businesses by the taxpayer during such taxable year are performed in real property trades or businesses in which the taxpayer materially participates, and

(ii) such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates.

In the case of a joint return, the requirements of the preceding sentence are satisfied if and only if either spouse separately satisfies such requirements. For purposes of the preceding sentence, activities in which a spouse materially participates shall be determined under subsection (h) .

(C) Real property trade or business. For purposes of this paragraph , the term “real property trade or business” means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

(D) Special rules for subparagraph (B) .

(i) Closely held C Corporations. In the case of a closely held C corporation, the requirements of subparagraph (B) shall be treated as met for any taxable year if more than 50 percent of the gross receipts of such corporation for such taxable year are derived from real property trades or businesses in which the corporation materially participates.

(ii) Personal services as an employee. For purposes of subparagraph (B) , personal services performed as an employee shall not be treated as performed in real property trades or businesses. The preceding sentence shall not apply if such employee is a 5-percent owner (as defined in section 416(i)(1)(B)) in the employer.

(d) Passive activity loss and credit defined.
For purposes of this section —

(1) Passive activity loss.
The term “passive activity loss” means the amount (if any) by which—

(A) the aggregate losses from all passive activities for the taxable year, exceed

(B) the aggregate income from all passive activities for such year.

(2) Passive activity credit.
The term “passive activity credit” means the amount (if any) by which—

(A) the sum of the credits from all passive activities allowable for the taxable year under—

(i) subpart D of part IV of subchapter A, or

(ii) subpart B (other than section 27(a)) of such part IV, exceeds

(B) the regular tax liability of the taxpayer for the taxable year allocable to all passive activities.

(e) Special rules for determining income or loss from a passive activity.
For purposes of this section —

(1) Certain income not treated as income from passive activity.
In determining the income or loss from any activity—

(A) In general. There shall not be taken into account—

(i) any—

(I) gross income from interest, dividends, annuities, or royalties not derived in the ordinary course of a trade or business,

(II) expenses (other than interest) which are clearly and directly allocable to such gross income, and

(III) interest expense properly allocable to such gross income, and

(ii) gain or loss not derived in the ordinary course of a trade or business which is attributable to the disposition of property—

(I) producing income of a type described in clause (i) , or

(II) held for investment.

For purposes of clause (ii) , any interest in a passive activity shall not be treated as property held for investment.

(B) Return on working capital. For purposes of subparagraph (A) , any income, gain, or loss which is attributable to an investment of working capital shall be treated as not derived in the ordinary course of a trade or business.

(2) Passive losses of certain closely held corporations may offset active income.

(A) In general. If a closely held C corporation (other than a personal service corporation) has net active income for any taxable year, the passive activity loss of such taxpayer for such taxable year (determined without regard to this paragraph)—

(i) shall be allowable as a deduction against net active income, and

(ii) shall not be taken into account under subsection (a) to the extent so allowable as a deduction.

A similar rule shall apply in the case of any passive activity credit of the taxpayer.

(B) Net active income. For purposes of this paragraph , the term “net active income” means the taxable income of the taxpayer for the taxable year determined without regard to—

(i) any income or loss from a passive activity, and

(ii) any item of gross income, expense, gain, or loss described in paragraph (1)(A) .

(3) Compensation for personal services.
Earned income (within the meaning of section 911(d)(2)(A)) shall not be taken into account in computing the income or loss from a passive activity for any taxable year.

(4) Dividends reduced by dividends received deduction.
For purposes of paragraphs (1) and (2) , income from dividends shall be reduced by the amount of any dividends received deduction under section 243 , 244 , or 245 .

(f) Treatment of former passive activities.
For purposes of this section —

(1) In general.
If an activity is a former passive activity for any taxable year—

(A) any unused deduction allocable to such activity under subsection (b) shall be offset against the income from such activity for the taxable year,

(B) any unused credit allocable to such activity under subsection (b) shall be offset against the regular tax liability (computed after the application of paragraph (1)) allocable to such activity for the taxable year, and

(C) any such deduction or credit remaining after the application of subparagraphs (A) and (B) shall continue to be treated as arising from a passive activity.

(2) Change in status of closely held C corporation or personal service corporation.
If a taxpayer ceases for any taxable year to be a closely held C corporation or personal service corporation, this section shall continue to apply to losses and credits to which this section applied for any preceding taxable year in the same manner as if such taxpayer continued to be a closely held C corporation or personal service corporation, whichever is applicable.

(3) Former passive activity.
The term “former passive activity” means any activity which, with respect to the taxpayer—

(A) is not a passive activity for the taxable year, but

(B) was a passive activity for any prior taxable year.

(g) Dispositions of entire interest in passive activity.
If during the taxable year a taxpayer disposes of his entire interest in any passive activity (or former passive activity), the following rules shall apply:

(1) Fully taxable transaction.

(A) In general. If all gain or loss realized on such disposition is recognized, the excess of—

(i) any loss from such activity for such taxable year (determined after the application of subsection (b)), over

(ii) any net income or gain for such taxable year from all other passive activities (determined after the application of subsection (b)),

shall be treated as a loss which is not from a passive activity.

(B) Subparagraph (A) not to apply to disposition involving related party. If the taxpayer and the person acquiring the interest bear a relationship to each other described in section 267(b) or section 707(b)(1) , then subparagraph (A) shall not apply to any loss of the taxpayer until the taxable year in which such interest is acquired (in a transaction described in subparagraph (A)) by another person who does not bear such a relationship to the taxpayer.

(C) Income from prior years. To the extent provided in regulations, income or gain from the activity for preceding taxable years shall be taken into account under subparagraph (A)(ii) for the taxable year to the extent necessary to prevent the avoidance of this section .

(2) Disposition by death.
If an interest in the activity is transferred by reason of the death of the taxpayer—

(A) paragraph (1)(A) shall apply to losses described in paragraph (1)(A) to the extent such losses are greater than the excess (if any) of—

(i) the basis of such property in the hands of the transferee, over

(ii) the adjusted basis of such property immediately before the death of the taxpayer, and

(B) any losses to the extent of the excess described in subparagraph (A) shall not be allowed as a deduction for any taxable year.

(3) Installment sale of entire interest.
In the case of an installment sale of an entire interest in an activity to which section 453 applies, paragraph (1) shall apply to the portion of such losses for each taxable year which bears the same ratio to all such losses as the gain recognized on such sale during such taxable year bears to the gross profit from such sale (realized or to be realized when payment is completed).

(h) Material participation defined.
For purposes of this section —

(1) In general.
A taxpayer shall be treated as materially participating in an activity only if the taxpayer is involved in the operations of the activity on a basis which is—

(A) regular,

(B) continuous, and

(C) substantial.

(2) Interests in limited partnerships.
Except as provided in regulations, no interest in a limited partnership as a limited partner shall be treated as an interest with respect to which a taxpayer materially participates.

(3) Treatment of certain retired individuals and surviving spouses.
A taxpayer shall be treated as materially participating in any farming activity for a taxable year if paragraph (4) or (5) of section 2032A(b) would cause the requirements of section 2032A(b)(1)(C)(ii) to be met with respect to real property used in such activity if such taxpayer had died during the taxable year.

(4) Certain closely held C corporations and personal service corporations.
A closely held C corporation or personal service corporation shall be treated as materially participating in an activity only if—

(A) 1 or more shareholders holding stock representing more than 50 percent (by value) of the outstanding stock of such corporation materially participate in such activity, or

(B) in the case of a closely held C corporation (other than a personal service corporation), the requirements of section 465(c)(7)(C) (without regard to clause (iv)) are met with respect to such activity.

(5) Participation by spouse.
In determining whether a taxpayer materially participates, the participation of the spouse of the taxpayer shall be taken into account.

(i) $25,000 offset for rental real estate activities.

(1) In general.
In the case of any natural person, subsection (a) shall not apply to that portion of the passive activity loss or the deduction equivalent (within the meaning of subsection (j)(5)) of the passive activity credit for any taxable year which is attributable to all rental real estate activities with respect to which such individual actively participated in such taxable year (and if any portion of such loss or credit arose in another taxable year, in such other taxable year).

(2) Dollar limitation.
The aggregate amount to which paragraph (1) applies for any taxable year shall not exceed $25,000.

(3) Phase-out of exemption.

(A) In general. In the case of any taxpayer, the $25,000 amount under paragraph (2) shall be reduced (but not below zero) by 50 percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds $100,000.

(B) Special phase-out of rehabilitation credit. In the case of any portion of the passive activity credit for any taxable year which is attributable to the rehabilitation credit determined under section 47 , subparagraph (A) shall be applied by substituting “$200,000” for “$100,000”.

(C) Exception for commercial revitalization deduction. Subparagraph (A) shall not apply to any portion of the passive activity loss for any taxable year which is attributable to the commercial revitalization deduction under section 1400I.

(D) Exception for low-income housing credit. Subparagraph (A) shall not apply to any portion of the passive activity credit for any taxable year which is attributable to any credit determined under section 42 .

(E) Ordering rules to reflect exceptions and separate phase-outs. If subparagraph (B) , (C) , or (D) applies for a taxable year, paragraph (1) shall be applied—

(i) first to the portion of the passive activity loss to which subparagraph (C) does not apply,

(ii) second to the portion of such loss to which subparagraph (C) applies,

(iii) third to the portion of the passive activity credit to which subparagraph (B) or (D) does not apply,

(iv) fourth to the portion of such credit to which subparagraph (B) applies, and

(v) then to the portion of such credit to which subparagraph (D) applies.

(F) Adjusted gross income. For purposes of this paragraph , adjusted gross income shall be determined without regard to—

(i) any amount includible in gross income under section 86 ,

(ii) the amounts excludable from gross income under sections 135 and 137 ,

(iii) the amounts allowable as a deduction under sections , 219 , 221 , and 222 , and

(iv) any passive activity loss or any loss allowable by reason of subsection (c)(7) .

(4) Special rule for estates.

(A) In general. In the case of taxable years of an estate ending less than 2 years after the date of the death of the decedent, this subsection shall apply to all rental real estate activities with respect to which such decedent actively participated before his death.

(B) Reduction for surviving spouse's exemption. For purposes of subparagraph (A) , the $25,000 amount under paragraph (2) shall be reduced by the amount of the exemption under paragraph (1) (without regard to paragraph (3)) allowable to the surviving spouse of the decedent for the taxable year ending with or within the taxable year of the estate.

(5) Married individuals filing separately.

(A) In general. Except as provided in subparagraph (B) , in the case of any married individual filing a separate return, this subsection shall be applied by substituting—

(i) “$12,500” for “$25,000” each place it appears,

(ii) “$50,000” for “$100,000” in paragraph (3)(A) , and

(iii) “$100,000” for “$200,000” in paragraph (3)(B) .

(B) Taxpayers not living apart. This subsection shall not apply to a taxpayer who—

(i) is a married individual filing a separate return for any taxable year, and

(ii) does not live apart from his spouse at all times during such taxable year.

(6) Active participation.

(A) In general. An individual shall not be treated as actively participating with respect to any interest in any rental real estate activity for any period if, at any time during such period, such interest (including any interest of the spouse of the individual) is less than 10 percent (by value) of all interests in such activity.

(B) No participation requirement for low-income housing, rehabilitation credit, or commercial revitalization deduction. Paragraphs (1) and (4)(A) shall be applied without regard to the active participation requirement in the case of—

(i) any credit determined under section 42 for any taxable year,

(ii) any rehabilitation credit determined under section 47 , or

(iii) any deduction under section 1400I (relating to commercial revitalization deduction).

(C) Interest as a limited partner. Except as provided in regulations, no interest as a limited partner in a limited partnership shall be treated as an interest with respect to which the taxpayer actively participates.

(D) Participation by spouse. In determining whether a taxpayer actively participates, the participation of the spouse of the taxpayer shall be taken into account.

(j) Other definitions and special rules.
For purposes of this section —

(1) Closely held C corporation.
The term “closely held C corporation” means any C corporation described in section 465 (a)(1)(B) .

(2) Personal service corporation.
The term “personal service corporation” has the meaning given such term by section 269A(b)(1) , except that section 269A(b)(2) shall be applied—

(A) by substituting “any” for “more than 10 percent”, and

(B) by substituting “any” for “50 percent or more in value” in section 318(a)(2)(C) .

A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2) , as modified by the preceding sentence).

(3) Regular tax liability.
The term “regular tax liability” has the meaning given such term by section 26(b) .

(4) Allocation of passive activity loss and credit.
The passive activity loss and the passive activity credit (and the $25,000 amount under subsection (i)) shall be allocated to activities, and within activities, on a pro rata basis in such manner as the Secretary may prescribe.

(5) Deduction equivalent.
The deduction equivalent of credits from a passive activity for any taxable year is the amount which (if allowed as a deduction) would reduce the regular tax liability for such taxable year by an amount equal to such credits.

(6) Special rule for gifts.
In the case of a disposition of any interest in a passive activity by gift—

(A) the basis of such interest immediately before the transfer shall be increased by the amount of any passive activity losses allocable to such interest with respect to which a deduction has not been allowed by reason of subsection (a) , and

(B) such losses shall not be allowable as a deduction for any taxable year.

(7) Qualified residence interest.
The passive activity loss of a taxpayer shall be computed without regard to qualified residence interest (within the meaning of section 163(h)(3)).

(8) Rental activity.
The term “rental activity” means any activity where payments are principally for the use of tangible property.

(9) Election to increase basis of property by amount of disallowed credit.
For purposes of determining gain or loss from a disposition of any property to which subsection (g)(1) applies, the transferor may elect to increase the basis of such property immediately before the transfer by an amount equal to the portion of any unused credit

allowable under this chapter which reduced the basis of such property for the taxable year in which such credit arose. If the taxpayer elects the application of this paragraph, such portion of the passive activity credit of such taxpayer shall not be allowed for any taxable year.

(10) Coordination with section 280A .
If a passive activity involves the use of a dwelling unit to which section 280A(c)(5) applies for any taxable year, any income, deduction, gain, or loss allocable to such use shall not be taken into account for purposes of this section for such taxable year.

(11) Aggregation of members of affiliated groups.
Except as provided in regulations, all members of an affiliated group which files a consolidated return shall be treated as 1 corporation.

(12) Special rule for distributions by estates or trusts.
If any interest in a passive activity is distributed by an estate or trust—

(A) the basis of such interest immediately before such distribution shall be increased by the amount of any passive activity losses allocable to such interest, and

(B) such losses shall not be allowable as a deduction for any taxable year.

(k) Separate application of section in case of publicly traded partnerships.

(1) In general.
This section shall be applied separately with respect to items attributable to each publicly traded partnership (and subsection (i) shall not apply with respect to items attributable to any such partnership). The preceding sentence shall not apply to any credit determined under section 42 , or any rehabilitation credit determined under section 47 , attributable to a publicly traded partnership to the extent the amount of any such credits exceeds the regular tax liability attributable to income from such partnership.

(2) Publicly traded partnership.
For purposes of this section , the term “publicly traded partnership” means any partnership if—

(A) interests in such partnership are traded on an established securities market, or

(B) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

(3) Coordination with subsection (g) .
For purposes of subsection (g) , a taxpayer shall not be treated as having disposed of his entire interest in an activity of a publicly traded partnership until he disposes of his entire interest in such partnership.

(4) Application to regulated investment companies.

For purposes of this section , a regulated investment company (as defined in section 851) holding an interest in a qualified publicly traded partnership (as defined in section 851(h)) shall be treated as a taxpayer described in subsection (a)(2) with respect to items attributable to such interest.

(l) Regulations.
The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out provisions of this section , including regulations—

(1) which specify what constitutes an activity, material participation, or active participation for purposes of this section ,

(2) which provide that certain items of gross income will not be taken into account in determining income or loss from any activity (and the treatment of expenses allocable to such income),

(3) requiring net income or gain from a limited partnership or other passive activity to be treated as not from a passive activity,

(4) which provide for the determination of the allocation of interest expense for purposes of this section , and

(5) which deal with changes in marital status and changes between joint returns and separate returns.

(m) Phase-in of disallowance of losses and credits for interest held before date of enactment.

(1) In general.
In the case of any passive activity loss or passive activity credit for any taxable year beginning in calendar years 1987 through 1990, subsection (a) shall not apply to the applicable percentage of that portion of such loss (or such credit) which is attributable to pre-enactment interests.

(2) Applicable percentage.
For purposes of this subsection , the applicable percentage shall be determined in accordance with the following table:

In the case of taxable years beginning in:	The applicable percentage is:
1987................	65
1988................	40
1989................	20
1990................	10

(3) Portion of loss or credit attributable to pre-enactment interests.
For purposes of this subsection —

(A) In general. The portion of the passive activity loss (or passive activity credit) for any taxable year which is attributable to pre-enactment interests is the lesser of—

(i) the amount of the passive activity loss (or passive activity credit) which is disallowed for the taxable year under subsection (a) (without regard to this subsection), or

(ii) the amount of the passive activity loss (or passive activity credit) which would be disallowed for the taxable year (without regard to this subsection and without regard to any amount allocable to an activity for the taxable year under subsection (b)) taking into account only pre-enactment interests.

(B) Pre-enactment interest.

(i) In general. The term “pre-enactment interest” means any interest in a passive activity held by a taxpayer on the date of the enactment [10/22/86] of the Tax Reform Act of 1986, and at all times thereafter.

(ii) Binding contract exception. For purposes of clause (i) , any interest acquired after such date of enactment pursuant to a written binding contract in effect on such date, and at all times thereafter, shall be treated as held on such date.

(iii) Interest in activities. The term “pre-enactment interest” shall not include an interest in a passive activity unless such activity was being conducted on such date of enactment. The preceding sentence shall not apply to an activity commencing after such date if—

(I) the property used in such activity is acquired pursuant to a written binding contract in effect on August 16, 1986, and at all times thereafter, or

(II) construction of property used in such activity began on or before August 16, 1986.

END OF DOCUMENT -

The Blue Oak Group, LLC
www.theblueoakgroup.com