

**To:** jeevacation@gmail.com[jeevacation@gmail.com]  
**From:** Lesley Groff  
**Sent:** Fri 4/24/2009 1:20:30 AM  
**Subject:** Fw: Elias

-----Original Message-----

From: david [REDACTED]  
To: Lesley Groff [REDACTED]  
Sent: Thu Apr 23 17:54:18 2009  
Subject: Fw: Elias

Thanks for arranging my meeting yesterday

Please make sure Jeffrey sees the email as this gets his questions (first draft), answered Much thanks,

DM, , ,

Sent via BlackBerry from T-Mobile

David Mitchell

NOTE NEW ADDRESS

41 E. 60th Street - 6th Floor

New York NY 10022

[REDACTED] Office

[REDACTED] Fax

[REDACTED] Cell

-----Original Message-----

From: "Zuckerman, Elias M." [REDACTED]

Date: Thu, 23 Apr 2009 17:23:14

To: [REDACTED]

Cc: Amengual, Randolph [REDACTED]

Subject: FW: Elias

David:

Per our discussion this afternoon, I am sending you this email to summarize my responses to your questions below, based upon my research to date:

1. First, income earned by the Company from advance of funds to holders of insurance policies secured by pledges of such policies is interest income for tax purposes inasmuch as the income is compensation for the use of money.
2. For those members of the Company who materially participate in the Company, the interest income would appear to be characterized as interest income derived in the ordinary course of a trade of business rather than investment income. Such members should be able to use losses from other businesses in which they materially participate to offset such income.
3. In the case of members of the Company who do not materially participate in the Company (and thus are subject to the passive activity loss rules), the situation is more complicated than we discussed over the telephone. The Treasury regulations provide a special rule to recharacterize interest income derived from a trade or business as investment income in a case in which the business operates with very little leverage. (See Reg. Section 1.469-2T(f)(4)) The purpose of this special rule was apparently to stop equity syndication of mortgage pools,

pursuant to which passive income was thought to have been generated by virtue of making loans in the ordinary course of business. Thus, in the present case, although the Company will derive interest income in the ordinary course of a trade or business, because the Company will operate with very little leverage, its interest income will be characterized as investment income with respect to those members who do not materially participate in the business. Of course, passive members of the Company can still offset their share of the net interest income of the Company with their investment interest expense or losses from businesses in which they do materially participate.

4. In the event that the Company "forecloses" on a policy and acquires the policy in a private or public sale, the Company would recognize a net gain or loss equal to the difference between the fair market value of the policy and the amount of the advance (including accrued but unpaid interest reported for tax purposes). This can actually become a two-part calculation which we can discuss further at your convenience.

5. As we discussed this afternoon, if the insured dies after the Company becomes the owner of a policy following a foreclosure, then the Company would most likely recognize ordinary income in an amount equal to the difference between the proceeds paid by the insurance company and the Company's adjusted basis for the policy. Assuming that the Company recognized no gain or loss in connection with its foreclosure of the policy, the Company's adjusted basis would equal the sum of (i) the unpaid advance made by the Company to the policy holder (including accrued but unpaid interest, if any, reported for tax purposes) and (ii) any premiums paid by the Company to keep the policy in force. Obviously, if the Company had recognized a loss or gain in connection with its "foreclosure" of the policy, appropriate adjustment would be made to the basis calculation.

If you have any questions or comments, please do not hesitate to contact me.

Regards,  
Elias

-----Original Message-----

From: Amengual, Randolph  
Sent: Wednesday, April 22, 2009 2:35 PM  
To: Zuckerman, Elias M.  
Subject: FW: Elias

Let's discuss

-----Original Message-----

From: david [mailto: ]  
Sent: Wednesday, April 22, 2009 1:05 PM  
To: Amengual, Randolph  
Subject: Elias

Want to know on AdvanceStar  
How to turn interest income into ordinary income

Also need to know if we by illustration end up with 100 policies at a cost of x and somebody dies and we get 10 million dollars the next day how is that treated

Maybe Sarah will send business plan  
Sent via BlackBerry from T-Mobile  
David Mitchell  
NOTE NEW ADDRESS

41 E. 60th Street - 6th Floor  
New York NY 10022

Office

Fax

Cell

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