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From:

Sent: Tuesday, May 03, 2011 5:44 PM

To:

Cc:

Subject: RE: Rebuttal Review

Hi

Attached is the rebuttal with our recommended changes tracked. Please look it over and let me know if you agree/disagree with the changes or if you have questions. Thanks for your patience.

Also, there is one minor general comment from (which isn't reflected in the Rebuttal document). I am posting this comment below:

Two minor comments:

On the section 165 issue, the taxpayer argues that the losses were evidenced by closed and completed transactions and fixed by an identifiable event. This concerns the timing of a loss deduction, see Reg. § 1.165-1(d), but the issue here is not timing -- the taxpayer is not entitled to a loss deduction at all.

On the section 162 issue, the taxpayer quibbles with the statement in the NOPA that "transaction costs paid to achieve planned tax benefits do not constitute ordinary and necessary business expenses under Section 162(a)." It is true that transaction costs paid in connection with legitimate business transactions are deductible even though the transactions have legitimate tax benefits. However, this is not true with respect to transactions that have no business purposes and are designed solely to obtain fictitious tax losses. See Winn-Dixie, cited in the NOPA.

Attachment 1: Redacted