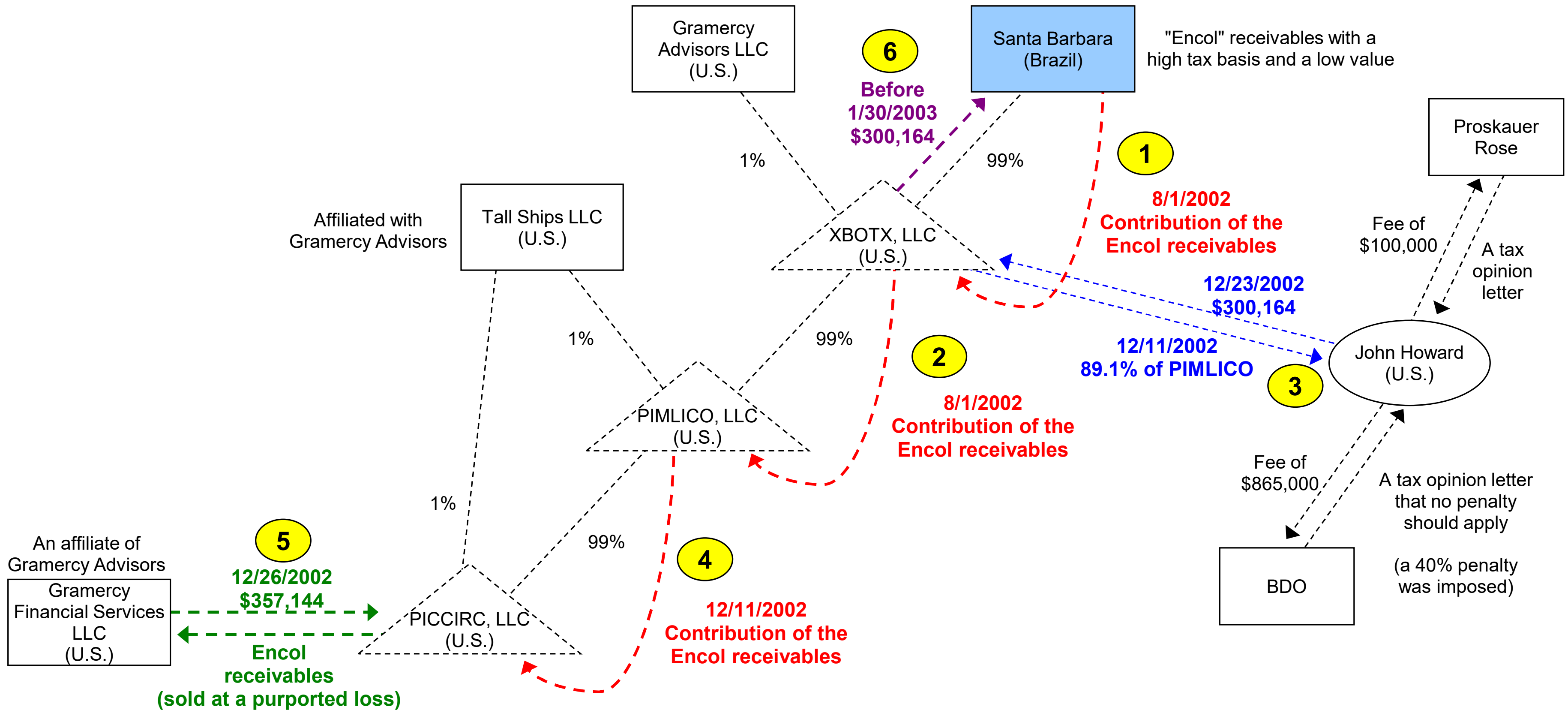
PICCIRC, LLC v. Commr.
T.C. Memo. 2024-50

Disguised Sale and Sham Partnerships



The Tax Court held that the transactions were a disguised sale, and the losses claimed by the partnership were disallowed. The following is an excerpt from the case:

> In general, partners may contribute capital to a partnership tax free and may receive a tax-free return of previously taxed profits through distributions to the extent that a distribution does not exceed adjusted basis. These nonrecognition rules do not apply, however, where the transaction is found in substance to be a disguised sale of property.
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> A disguised sale occurs where a partner contributes property to a partnership and receives a related distribution that is, in effect, consideration for the contributed property. A transaction may be deemed a disguised sale if, on the basis of all the facts and circumstances, (1) the partnership's transfer of money or other consideration to the partner would not have been made but for the partner's transfer of property and (2) if the transfers were not made simultaneously, the subsequent transfer was not dependent on the entrepreneurial risks of partnership operations. The regulations provide that transfers between a partnership and a partner within a two-year period are presumed to be a sale of property to the partnership unless the facts and circumstances "clearly establish" otherwise.
>
> [citations omitted.]

The Tax Court also found that the partnerships violated the partnership antiabuse rules and "were shams".