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February 26, 2001

Enron Corp.
1400 Smith Street
Houston, Texas 77002

Ladies and Gentlemen:

You have requested our opinion with respect to certain federal income tax consequences relating to (i) the formation of RMT Chiricahua V LLC, a Delaware limited liability company ("Chiricahua"), (ii) the entering into of the ISDA Master Agreement dated December 20, 2000 between Risk Management and Trading Corp. and Chiricahua and the associated confirmation dated December 27, 2000 (the "RMT Swap") and (iii) the entering into of the ISDA Master Agreement dated December 20, 2000 between RMT and Tularosa LLC, a Delaware limited liability company ("Tularosa") and the associated confirmation dated December 27, 2000 (the "Tularosa Swap") with respect to RMT's member interest in Chiricahua. Specifically, you have requested our opinion as to whether the Tularosa Swap results in a constructive sale of RMT's member interest in Chiricahua under section 1259 of the Internal Revenue Code of 1986, as amended.[1]

In connection with this opinion, we have reviewed (i) the Limited Liability Company Agreement of Chiricahua dated December 20, 2000, (ii) the Limited Liability Company Agreement of Tularosa dated December 20, 2000, (iii) the RMT Swap and (iv) the Tularosa Swap.

The Transactions

Enron North America Corp. ("ENA") enters into a variety of financial positions with third parties relating to the price of natural gas. These positions include swaps, futures contracts, options and forward contracts. ENA, in turn, enters into offsetting positions with RMT pursuant to the ISDA Master Agreement dated March 31, 1997 and the periodic confirmations executed in association with that agreement (collectively, the "ENA Master Swap"). Whether a particular position taken by RMT pursuant to the ENA Master Swap represents an asset (*i.e.*, the position is "in the money") or a

[1] All section references are to the Internal Revenue Code of 1986, as amended.

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liability (*i.e*, the position is "out of the money") depends upon the terms of the position and the current and projected price of natural gas.

Chiricahua was formed on December 20, 2000. FS 360 Corp., a wholly-owned subsidiary of RMT ("FS 360 Corp.") is the managing member of Chiricahua owning a .01% interest in capital, profits and losses. RMT is also a member of Chiricahua owning a 99.99% interest in capital, profits and losses. FS 360 Corp. acquired its interest in exchange for a cash contribution of $159,982. RMT acquired its interest in exchange for a cash contribution of $159,982 and its agreement to enter into the RMT Swap, which represents offsetting positions with respect to certain of the contracts held by RMT. The RMT Swap is substantially "in the money" and represents a transfer of value by RMT to Chiricahua of approximately $1,825,512,753. The amount of the net cash payments required to be made under the RMT Swap to Chiricahua will be based upon the specific terms set forth in the associated confirmation based on the notional volumes and prices set forth therein. While it is possible on any particular payment date that a payment may be required to be made by Chiricahua to RMT, it is anticipated that a substantial net payment will be made by RMT to Chiricahua over the life of the RMT Swap. Moreover, under the terms of the RMT Swap, Chiricahua is not required to make net payments in the aggregate to RMT.

Following the execution of the RMT Swap, RMT entered into the Tularosa Swap with Tularosa. The members of Tularosa are ENA and Mangas I Corp., a wholly-owned subsidiary of ENA. Pursuant to the Tularosa Swap, RMT will be entitled to receive from Tularosa on the settlement date a fixed sum equal to the fair market value of the member interest in Chiricahua on the contract date and RMT will be required to pay to Tularosa the fair market value of the member interest in Chiricahua on the settlement date plus the amount of any distributions received from Chiricahua during the contract term. The contract date for the Tularosa Swap is December27, 2000, and the settlement date is January 2, 2002. Tularosa's obligations under Tularosa Swap are guaranteed by Enron Corp.[2]

Representations

In connection with your request for our opinion, you have made the following representations with respect to certain facts associated with the transactions. We have relied upon the accuracy of these representations in rendering our opinion on these matters.

1. Neither Chiricahua nor Tularosa will elect to be treated as a corporation for federal income tax purposes.

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[2] In addition to Chiricahua, RMT and FS360 formed 13 other Delaware limited liability companies having similar capital structures and assets. RMT entered into financial contracts having terms similar to the Tularosa Swap with respect to its member interests in each of these other companies.

2. It is not expected that the transactions described above will result in a substantial reduction in the present value of the aggregate federal income tax liabilities of the Enron consolidated group or any of its members.

3. The Tularosa Swap will not be closed in a manner described in section 1259(c)(3) of the Code.

4. At the time of the execution of the RMT Swap, it was anticipated that RMT would be required to make net payments under the RMT Swap having a present value of approximately $1,825,512,753 and the possibility that RMT would not be required to make substantial payments to Chiricahua under the RMT Swap was remote.

5. The fair market value of RMT's member interest in Chiricahua is approximately $1,825,672,735.

6. Following its formation, Chiricahua will engage in trading and dealing activities with respect to positions in natural gas.

Opinion and Analysis

While there is no authority directly addressing the federal income tax treatment of the entering into of a complex financial instrument similar to the RMT Swap as a capital contribution to a partnership, and therefore the matter is not free from doubt, in our opinion, the transactions described above should result in (i) a constructive sale of RMT's member interest in Chiricahua under section 1259, (ii) the recognition of gain in an amount equal to the excess of the fair market value of RMT's member interest in Chiricahua over its basis in such interest (which basis should not include any amount with respect to the RMT Swap), and (iii) an increase in RMT's basis in its member interest in Chiricahua in an amount equal to the gain recognized as a result of the constructive sale.

Section 1259(c) provides that a taxpayer will be treated as having made a constructive sale of an appreciated financial position if the taxpayer (or a related person) enters into an offsetting notional principal contract with respect to the same or substantially identical property. Accordingly, the Tularosa Swap will result in a constructive sale of the RMT's member interest in Chiricahua if (i) such member interest constitutes an "appreciated financial position" within the meaning of section 1259(b), and (ii) the Tularosa Swap constitutes an "offsetting notional principal contract" with respect to such interest within the meaning of section 1259(d).

Section 1259(b) defines an "appreciated financial position" to mean any position with respect to "any stock, debt instrument, or partnership interest if there would be gain were such position sold, assigned, or otherwise terminated at its fair market value." RMT's member interest Chiricahua is

a partnership interest with a fair market value of approximately $$1,825,672,735. RMT's basis in its member interest, however, should only reflect the amount of cash contributed to Chiricahua and should not reflect the value of the RMT Swap held by it.

RMT acquired its interest in Chiricahua in exchange for cash and its agreement to enter into the RMT Swap. The RMT Swap is significantly "in the money" and represents an agreement by RMT to make substantial cash payments to Chiricahua over the life of the RMT Swap based on the terms set forth in the associated confirmation.

Section 722 provides that the basis of an interest in a partnership acquired by contribution of property, including money, to the partnership shall be the amount of such money and adjusted basis of such property to the contributing partner at the time of the contribution. Under section 722, if the property contributed to the partnership is an obligation of the contributing partner, the contributing partner's basis in its partnership interest is not increased to reflect the partner's obligation because the partner has no basis in its own obligation. *Gemini Twin Fund III v. Commissioner*, 62 T.C.M. 104 (1991); *Oden v. Commissioner*, 41 T.C.M. 1285 (1981); Rev. Rul. 80-235, 1980-2 C.B. 229; Tech. Adv. Mem. 8702006 (Sept. 26, 1986). Instead, Revenue Ruling 80-235 provides that "payments on the written obligation are added to the partner's basis in the partnership as the payments are actually made." 1980-2 C.B. at 230. This approach is consistent with the capital account rules promulgated under Section 704(b) of the Code. Treas. Reg. § 1.704-1(d)(2) generally provides that if a promissory note is contributed to a partnership by a partner who is the maker of such note, such partner's capital account will be increased with respect to such note only when there is a taxable disposition of such note by the partnership or when the partner makes principal payments on such note.

While there are no authorities that directly address the treatment of entering into a financial contract similar to the RMT Swap in exchange for a partnership interest, we believe it is appropriate to treat the RMT Swap in a manner similar to the contribution of a debt obligation for purposes of determining RMT's basis in its member interest in Chiricahua. Similar to the situation involving the contribution by a partner of its own note to a partnership, RMT entered into the RMT Swap as part of its contribution to Chiricahua in exchange for its interest therein. The RMT Swap represents the obligation of RMT to make cash payments to Chiricahua in the future as determined pursuant to the terms of the contract and RMT has no basis in these obligations. In addition, treating the in the money portion of the RMT Swap as being similar to a debt obligation is consistent with Treasury Regulations promulgated under section 446 relating to the treatment of notional principal contracts.[3] Treas. Reg. § 1.446-3(g)(4) provides that where parties enter into an off market swap that includes

[3] For purposes of these rules, Treas. Reg. § 1.446-3(c)(1)(i) provides that a notional principal contract is a "financial instrument that provides for the payment of amounts by one party to another party at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts." Notional principal contracts include interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, and equity swaps. Treas. Reg. § 1.446-3(c)(1)(i).

CONSEQUENTLY, RMT WOULD NOT RECEIVE ANY TAX BASIS IN ITS CHIRICAHUA PARTNERSHIP INTEREST RELATED TO THE RMT SWAP UNTIL SUCH TIME AS PAYMENTS ARE MADE ON THE RMT SWAP B/C

NOTE

a significant up-front payment, for federal income tax purposes the contract is treated as two separate transactions, an on-market swap and a loan. The up-front payment is treated as borrowed by the recipient and repaid over the life of the contract with excess proceeds from the deemed on-market swap. Applying these principles to RMT's receipt of the Chiricahua member interest would result in RMT being treated as receiving the up-front payment (*i.e.*, the member interest) in exchange for a note. ~~RMT's initial basis in the member interest received in exchange for the note would have no basis because~~ RMT has no basis in its own obligation. Instead, RMT would obtain basis in its partnership interest as deemed payments are received on the on-market swap and paid back to Chiricahua as repayment of its obligation under the ~~deemed~~ note.

UNTIL IT MAKES PAYMENTS THEREON

Section 1259(d) defines an "offsetting notional principal contract" to mean an agreement which includes (i) a requirement to pay all or substantially all the investment yield (including appreciation) on property for a specified period, and (ii) a right to be reimbursed for all or substantially all of any decline in the value of such property.

The Tularosa Swap falls within the definition of an "offsetting notional principal contract" under section 1259(d) with respect to RMT's member interest in Chiricahua. The net effect of the the Tularosa Swap is that RMT is required to pay all the investment yield (including appreciation) on its member interest in Chiricahua to Tularosa and Tularosa is required to pay to RMT the amount of any decline in the value of such interest.

Section 1259(c)(3) provides that in applying section 1259, there shall be disregarded any transaction (which would otherwise be treated as a constructive sale) during the taxable year if such transaction is closed before the end of the 30th day after the close of such taxable year, the taxpayer holds the appreciated financial position throughout the 60-day period beginning on the date such transaction is closed and at no time during such 60-day period is the taxpayer's risk of loss with respect to such position reduced by reason of a circumstance which would be described in section 246(c)(4) if references to stock included references to such position. By its terms the Tularosa Swap does not settle within 30-day period described in section 1259(c)(3) and you have represented to us that the Tularosa Swap will not be closed in a manner described in section 1259(c)(3).

Section 1259(a)(1) provides that if there is a constructive sale of an appreciated financial position that the taxpayer shall recognize gain as if such position were sold, assigned or otherwise terminated at its fair market value on the date of such constructive sale (and any gain shall be taken into account for the taxable year which includes such date). Further, section 1259(a)(2) and the legislative history of section 1259 provides that except as provided in Treasury Regulations, an appropriate adjustment in the basis of the appreciated financial position is made in the amount of any gain recognized on the constructive sale, and a new holding period of such position begins as if the taxpayer had acquired the position on the date of the constructive sale. S. Rep. No. 105-33 at 123-124 (1997).

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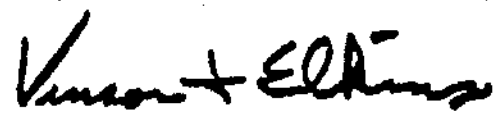
Applying these rules to the Tularosa Swap should result in RMT recognizing gain in an amount equal to the excess of the fair market value of its member interest in Chiricahua over its basis in such interest (*i.e.*, its cash contribution to Chiricahua).

Finally, the gain recognized as a result of the application of section 1259 to the Tularosa Swap should not be deferred under the consolidated return regulations. Treas. Reg. § 1.1502-13 provides rules for the deferral of recognition of gain or loss on sales of property between "corporations that are members of the same consolidated group immediately after the transaction." Treas. Reg. § 1.1502-1(b) defines the term "member" to mean "a corporation (including the common parent) that is included in the group, or as the context may require, a corporation that is included in a subgroup." RMT is a corporation and is a member of the Enron group. Tularosa, however, is a partnership for federal income tax purposes and therefore is not within the definition of a "member" for purposes of the intercompany transaction rules in Treas. Reg. § 1.1502-13.[4]

Our opinion is based upon the existing provisions of the Internal Revenue Code of 1986, as amended, regulations (and administrative pronouncements) promulgated or proposed thereunder, and interpretations thereof by the Internal Revenue Service and the courts, all as of the date hereof, all of which are subject to change with prospective or retroactive effect, and our opinion could be adversely affected or rendered obsolete by such change.

This opinion is given to you by us solely for your use and is not to be quoted or otherwise referred to or furnished to any governmental agency (other than the Internal Revenue Service in connection with an examination of the transactions contemplated herein) or to other persons without our prior written consent.

Very truly yours,



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[4]It should be noted that Treas. Reg. § 1.701-2(b) provides that under certain circumstances the existence of a partnership can be disregarded and its assets and activities will be treated as being owned and conducted by the partners. The application of Treas. Reg. § 1.701-2(b) requires that the partnership in question be "formed or availed of in connection with a transaction a principal purpose of which is to reduce substantially the present value of the partners' aggregate federal income tax liability in a manner that is not consistent with subchapter K." The transactions described above will accelerate the recognition of income and you have represented to us that the transaction will not result in a substantial reduction in the present value of the tax liability of the Enron consolidated group or any of its members. Accordingly, the anti-abuse provisions of Treas. Reg. § 1.701-2(b) should not apply.