EXECUTIVE SUMMARY

In 1993, Enron[2] built a barge-mounted electricity generation plant near Puerto Quetzal, on Guatemala's southern coast, and sold the electricity to a government-sponsored utility. The Guatemalan power project (the Guatemala Project) was Enron's first major Latin American operation and served as a model for future Enron infrastructure projects.[3] Enron's initial plan was to focus on power plants, but the plan was later expanded to include gas pipelines and related energy projects.

Enron used U.S. taxpayer support and multilateral organization support to finance the Guatemala Project. The Overseas Private Investment Corporation (OPIC) issued a $50 million investment guarantee in 2000 to expand the capacity of the plant from 110 megawatts to 234 megawatts.[4] The World Bank, through its International Finance Corporation (IFC), approved loans of $71 million.[5] The U.S. Department of Transportation Maritime Administration (MARAD), financed guarantees on the power barge construction for $25 million in 1994 and $73 million in 2000.[6]

After examining this project, IRS international auditors raised a number of questions regarding the proper tax treatment of various project expenses. Specifically, as part of its corporate group, Enron claimed tax deductions attributable to questionable payments made through a subsidiary (Puerto Quetzal Power Corporation (Enron/PQPC)) to a Panamanian corporation known as Sun King Trading Company, Inc. (Sun King) which is owned by four Guatemalans and one U.S. citizen. The payments are not associated with any legitimate service or product associated with the Guatemala Project. Rather, in an effort to conceal taxable income from the Guatemalan tax authorities, the payments were disguised by Enron as add-on fuel charges, and the monies paid to Sun King were routed to a specified bank account in Miami.

The payments in question also reduced Enron/PQPC's tax liability. Enron classified these payments as an intangible asset and claimed amortization expenses (Internal Revenue Code section 197) of $333,000 and $800,000 for tax years 1995 and 1996 respectively.[7] In 1995,

2 Enron Corp.'s subsidiary, Enron Power Development Corp., took the lead on the Guatemala Project. Enron Power Development Corp. was later succeeded by Enron Development Corp. Throughout the report, "Enron/EDC" is used to refer to Enron Power Development Corp. and Enron Development Corp. *See* Letter from Thomas E. White to The Honorable Max Baucus and The Honorable Charles E. Grassley (Oct. 8, 2002) (Exhibit 1) [hereinafter Tom White Letter]; Interview of Rebecca P. Mark, in Houston, TX (Oct. 4, 2002); Letter from Richard A. Lammers, Vice President, Enron Power Development Corp. to International Finance Corporation 4 (Feb. 23, 1993 and March 30, 1993 modification letter) (EC2 000036644 through EC2 000036650, Exhibit 2).

3 Officers of Enron/EDC included Thomas E. White, Chairman & Chief Executive Officer, and Rebecca Mark, President. Kenneth Lay, Chairman and Chief Executive Officer, Enron Corp.; Richard Kinder, Chief Operating Officer, Enron Corp.; and the Enron Board of Directors would have approved the capital commitment for the Guatemala Project. *Id.*

4 Sustainable Energy & Economy Network, Institute for Policy Studies, Enron's Pawns: How Public Institutions Bankrolled Enron's Globalization Game 30-31 (March 22, 2002) [hereinafter Enron's Pawns]. *See also* Letter from Peter S. Watson, President and Chief Executive Officer, Overseas Private Investment Corporation, to The Honorable Max Baucus, Chairman of the Senate Committee on Finance and to The Honorable Charles E. Grassley, Ranking Member of the Senate Committee on Finance 2, Appendix 2B (Feb. 19, 2002) (Exhibit 3) [hereinafter OPIC Letter (Feb.)] (OPIC acknowledged active political risk insurance with Enron equity involvement but did not disclose the amount involved.).

5 Investment Agreement, Puerto Quetzal Power Corp. and International Finance Corporation (Mar. 31, 1993) (EC 000036651 - EC 000036700, Exhibit 4) [hereinafter IFC Investment Agreement].

6 Letter from Bruce J. Carlton, Acting Deputy Maritime Administrator, U.S. Department of Transportation Maritime Administration, to The Honorable Max Baucus, Chairman of the Senate Committee on Finance at 1, 3 (May 22, 2002) (Exhibit 5) [hereinafter MARAD Letter]. *See also* Enron's Pawns, *supra* note 4, at 30-31.

7 Puerto Quetzal Power Corp. v. Commissioner, Docket No. 17311-99 (Nov. 11, 1999) (Exhibit 6) [hereinafter Tax Court Petition].

Enron also claimed $1,534,539 (for the monthly payments of 6 percent from Enron/PQPC to Electricidad Enron de Guatemala, S.A. (Enron/EEG) for eventual payment to Sun King) as a cost of goods sold (Internal Revenue Code section 162).[8] The IRS also found, and Enron agreed, that the $192,681 short-term capital loss claimed on the 1996 sale of Enron/PQPC to Centrans Energy Services (a Cayman Islands company) was a $1,827,828 short-term capital gain.[9]

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8 Tax Court Petition, *supra* note 7.

9 Department of Treasury - Internal Revenue Service, Notice of Proposed Adjustment To Taxpayer During Examination, Enron Corp. & Subsidiaries 1995 & 1996, Entity: Enron International Inc., Issue No. 127 (May 5, 1999) (The Notice of Proposed Adjustment was signed as "Agreed" by Edward R. Coats, Enron Vice President – Tax, Audits. The agreed to adjustment was for $2,020,509.) (Exhibit 7) [hereinafter IRS Notice of Proposed Adjustment].