collateral as security for the loans. The timing of the alleged loans during the startup period of the dealership is indicative of an equity transaction. The use of the funds for capital asset acquisition is indicative of an equity interest. The loan agreements are due on demand notes which is indicative of an equity interest.

Thus based upon the above mentioned factors the amounts treated on the balance sheet of Don Signer Buick Inc. as loans from shareholders are characterized as capital contributions per IRC 385, Shea V Comm, US V Henderson, Fin Hay Realty Co V US and Joseph Lupowitz Sons, Inc. V Comm.

Hence the bad debt deduction claimed by Mr. Signer on his 200512 form 1040 is disallowed. The transaction is characterized as an equity interest and entitles taxpayer to capital loss deduction subject to the $3,000 per year limitation.

Secondly the corporation has been defunct since 1995 with no ability to repay the loans. If these are loans the bad debt deduction should have been taken in 1995. The regular statute of limitations expired long ago on about 04/15/1999. Thus taxpayer's bad debt deduction is disallowed.

TAXPAYER'S POSITION:

The taxpayer claims that these were bona fide loans and the bad debt deduction is allowable by Mr. Signer in the year 2005 when the agent disallowed the management fee transaction.

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