

Economic Stimulus Bill Tax Provisions for Businesses*

President Obama signed into law the American Recovery and Reinvestment Act of 2009 (the Act) on February 17, 2009. This package consists of \$790 billion dollars in stimulus through direct federal spending, aide to states and localities and over \$326 billion dollars in tax relief. This publication highlights some of the tax changes that benefit the business community.

1) Delayed Recognition of Cancellation-of-Debt Income

Generally, a debtor has to include in gross income an amount of discharge of indebtedness when it is realized by the debtor repurchasing its debt. The amount of discharge of indebtedness on a repurchase is the excess of the adjusted issue price of the debt over the repurchase price. In the current economic climate this additional income subject to tax can be devastating. As a result, the Act allows the deferral of cancellation-of-indebtedness income when the taxpayer or a party related to the taxpayer repurchases a debt issued by the taxpayer. This allows a deferral of the indebtedness income for five years if the transaction takes place in 2009 and a deferral of four years if the transaction takes place in 2010. Once the deferral period has elapsed 20% of the income would be included in each of the following five taxable years. There are a number of caveats that the taxpayer and his or her tax advisors should examine prior to making the election because the deferral is an irrevocable election which must be made on the debtor taxpayer's return for the taxable year of the reacquisition.

2) Temporary Extension of Net Operating Loss (NOL) Carryback for Small Business

Small business taxpayers who have gross receipts of \$15 million or less are allowed to elect to extend the NOL carryback period for losses arising in 2008 for up to five years. The extended carryback election applies either to NOL's arising in a taxable year ending in 2008 or NOL's arising in a taxable year beginning in 2008. The businesses this would benefit would be businesses with losses in 2008 or who anticipate losses in a taxable year ending in 2009 and have profits in previous years. An election under this provision may only be made with respect to one year. A business is only eligible for the extended NOL carryback treatment if their gross receipts do not exceed \$15 million. The taxpayer should contact his or her tax advisors to determine if they qualify for this provision and if the election is advantageous to their business.

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3) Reduction of S-Corporation Built-in Gains Holding Period

The Act also reduces the holding period for S corporation built-in gains to seven years from the current ten years for taxable years beginning in 2009 and 2010. This provision is particularly attractive to S corporations and REIT's that are interested in divesting certain business assets.

4) Small Business Owners Decrease in Required Estimated Tax Payments

The Act allows individuals who reported adjusted gross income below \$500,000 in 2008 to estimate 90 percent of their prior year's tax for 2009. More than 50 percent of the gross income on the taxpayer's return must have been derived from the small business in order to qualify. In addition, the small business must have an average number of employees below 500.

5) Unemployed Veterans and Disconnected Youth Hiring Incentives

The Work Opportunity Tax Credit has been extended to employers that hire disconnected youth and unemployed or recently discharged veterans during 2009 and 2010. The veterans must be certified by a designated agency as discharged or released from the armed services during a five-year period ending on the hiring date and they must have collected unemployment compensation for four weeks or more during the one-year period prior to the hiring date. The youth must be certified by the designated local agency as being between the ages of 16 and 24, not regularly attending school during the six months preceding the hiring date, not regularly employed during the six months prior to the hiring date and not readily employable due to a lack of a sufficient number of basic skills.

For more information please contact Peter King, HAUSWIESNER FRITZ KING LLP, 8300 Greensboro Drive, Suite 990 McLean, VA 22102 (703) 992-6790 peter@hfkllp.com or visit our website at www.hfkllp.com

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