

New Rules for Purchases, Savings, Investments, And Business Incentives (2009-10) – Part IV

In these extraordinary times, the economic landscape is changing dramatically. To help you journey through this landscape, we have authored a four-part series called “New Rules for Purchases, Savings, Investments, and Business Incentives,” summarizing some of the more important developments and their likely impact. We hope you find these helpful.

We conclude below with the fourth and final part of the four-part series.

PART 4

4. New Rules for Business Incentives.

New tax law changes provide certain benefits to businesses which can help contribute to the bottom line.

4.1 Section 179 Accelerated Expense Allowance. Businesses can elect to write off, as deductible for federal income tax purposes, 100% of the cost of business equipment and certain off-the-shelf computer software acquired during 2009. However, the deduction is limited to \$250,000 (applied per taxpayer, which means at the entity level as well as the individual level), and no more than \$800,000 of such property may be acquired during the year, because any more than \$800,000 spent reduces \$1 for \$1 the \$250,000 deductible allowance. These higher limits expire on December 31, 2009, and afterwards, will probably be re-set at around \$133,000 (instead of \$250,000) for the maximum deduction and \$530,000 (instead of \$800,000) for the investment limit.

4.2 Bonus Depreciation. For businesses thinking of acquiring new depreciable business equipment (not real estate and not used property), generally 50% of its cost can be deducted for federal income tax purposes in the year acquired, regardless of when during the year it is acquired. Such property must be acquired after December 31, 2007 and placed in service before January 1, 2010 (i.e., a contract to purchase may have been entered into during 2008, but

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delivery did not take place until 2009). The normal MACRS depreciation rules apply to the rest of the undepreciated income tax basis.

TIP: *Both the accelerated expense allowance (4.1), and bonus depreciation (4.2) on the remaining depreciated basis are available in 2009, which presents a huge tax incentive to acquire new business equipment before the 2009 year end, if the business otherwise needs it.*

4.3 NOL Carryback. Normally, a business can carry back a net operating loss no more than 2 years. If a net operating loss of a “small business” is incurred in a fiscal year that begins in 2008 and ends in 2009, such loss can be carried back 3, 4, or 5 years instead of the normal 2 years. An election must be made by the time for filing the applicable fiscal year 2008 return (including extensions). “Small business” for this purpose means a business whose gross receipts average not more than \$15,000,000 for the applicable 2008 tax year and the 2 immediately preceding tax years.

TIP: *This provision, while generous, has severely limited the class of businesses eligible. It gave eligible small businesses whose 2008 fiscal years ended in 2008 until April 17, 2009 to elect the extended carryback. Today, only eligible small businesses whose fiscal years began in 2008 and end in 2009 can avail themselves of the carryback. This provision is an opportunity for the right small business to quickly monetize its current loss and recover cash it previously paid in taxes in prior years when it earned profits. The choice of 3, 4, or 5 years to which to carry back requires an analysis to determine which years produce the biggest refunds.*

4.4 Elimination of Double Tax for Certain S Corporations. Generally, if a C Corporation converted to an S Corporation at a time when the C Corporation had “built-in-gain” assets, any sale or disposition of those “built-in-gain” assets during the 10 years that followed the first day of the S election year would result in the dreaded “corporate level tax” which the S election had originally sought to avoid. Recognizing that certain S Corporations were having hard times and might have to raise capital by selling assets, a temporary relief provision allows an S Corporation to avoid the “corporate level tax” for dispositions in 2009 or 2010 if “the seventh tax year in the recognition period” preceded the 2009 or 2010 tax year.

TIP: *For example, a C Corporation that elected S Corporation status in 2002 (or earlier) would have completed 7 tax years at (or prior to) the end of 2008 and could dispose of its built-in-gain assets in 2009 free of the corporate level tax; or a C Corporation that*

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elected S Corporation status in 2003 would have completed 7 tax years at the end of 2009 and could dispose of its built-in-gain assets in 2010 free of the corporate level tax.

4.5 Federal Subsidy of COBRA Premium Assistance. To address the severity of job loss in this recession, Congress mandated that certain terminated employees receive a 65% subsidy from their employers for payment of COBRA premiums. Congress likewise provided federal reimbursement to those employers who must pay the subsidy by means of a credit against payroll taxes. The employees who qualify for the COBRA subsidy from their employers are employees who are involuntarily terminated from employment between September 1, 2008 and December 31, 2009. The subsidy lasts for a maximum of 9 months or until the employee is eligible for Medicare or any other employer-sponsored health plan.

TIP: *There are detailed notice requirements imposed on employers and employees; insurance companies who sponsor group health plans should be able to help employers administer the notice requirements.*



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