

CORPORATE AND SECURITIES LAW

Alert

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Deferral of Debt Forgiveness Income on Repurchase of Debt

February 18, 2009

The American Recovery and Reinvestment Act of 2009, signed into law by President Obama on February 17, 2009, includes a tax benefit for corporations that purchase their debt at a discount.

Under prior law, a corporation that purchased its debt at a discount generally was required to recognize taxable debt forgiveness income in the year of the repurchase. The amount of the taxable income generally was equal to the difference in the debt's original issue price and the amount paid to repurchase the debt.

Under the new law, a corporation that repurchases its debt at a discount during 2009 or 2010 can elect to defer the recognition of the taxable debt forgiveness income resulting from such repurchase. A corporation that makes the election generally will recognize the taxable debt forgiveness income from its debt repurchase ratably over the five-year period beginning with 2014.

For purposes of the new law, a debt repurchase can take the form of any of the following: (1) an acquisition of the debt for cash, (2) an exchange of the debt for another debt instrument (including an exchange resulting from a modification of the outstanding debt instrument) and (3) an exchange of the debt for stock.

These new rules will reduce the overall cash needed by a corporation to effect a repurchase of its debt, which may be trading at a significant discount in the current market environment.

Should you have any questions regarding this alert please feel free to contact Todd Ervin at (615) 742-7787.

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