

TAX Update

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

Recent Changes to Tax Law May Permit Immediate Cash Benefits

November 13, 2009

On November 6, 2009, President Obama signed into law the Worker, Homeownership, and Business Assistance Act of 2009 (Act). The Act provides tax planning opportunities for eligible businesses to generate tax refunds by taking losses incurred in tax years beginning or ending in 2008 or 2009 and applying any resulting net operating loss (NOL) against taxes paid in the prior five years. An NOL generally represents the amount by which a taxpayer's business deductions exceed its gross income. Taxpayers generally are permitted to carryback an NOL to the two years preceding the NOL and to carryforward the remainder for 20 years to offset taxable income in such years. The enactment of the American Recovery and Reinvestment Act of 2009 (ARRA) earlier this year expanded the NOL carryback period from two years to up to five years for eligible small businesses (businesses with gross receipts of \$15 million or less) that incurred an NOL during a tax year beginning or ending in 2008.

The Act expands the NOL carryback provisions in the ARRA by allowing all businesses (except those that received funds under the Troubled Asset Relief Program) to elect to carryback an NOL for up to five years for losses incurred in a tax year beginning or ending in either 2008 or 2009. The election, however, generally can be made only with respect to a single tax year. A business can offset its NOL against 100 percent of its taxable income reported in its first through fourth prior years and against 50 percent of its taxable income reported in its fifth prior year.

A taxpayer may wish to dispose of a loss asset prior to the end of 2009 to benefit from the expanded carryback period provided in the Act. Assets that produce capital losses (rather than ordinary losses) will not produce an NOL that may be carried back under the expanded rules in the Act.

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Our Nashville office is moving.

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