NEW YORK
1285 Avenue of the Americas
New York, NY 10019-6064
+1 212 373 3000

WASHINGTON, D.C.
2001 K Street NW
Washington, DC 20006-1047
+1 202 223 7300

LONDON
Alder Castle, 10 Noble Street
London EC2V 7JU
United Kingdom
+44 20 7367 1600

TOKYO
Fukoku Seimei Building, 2nd Floor
2-2, Uchisaiwaicho 2-chome
Chiyoda-ku, Tokyo 100-0011
Japan
+81 3 3597 8101

BEIJING
Unit 3601, Fortune Plaza Office
Tower A
No. 7 Dong Sanhuan Zhonglu
Chao Yang District, Beijing 100020
People's Republic of China
+86 10 5828 6300

HONG KONG
12th Fl., Hong Kong Club Building
3A Chater Road
Central Hong Kong
+852 2536 9933

January 28, 2009

Senate Stimulus Bill Addresses Debt Cancellation and NOL Carrybacks

We thought it would be useful to provide our clients and friends with a brief update on some important tax provisions in the stimulus package that is working its way through Congress.

The Senate version of the bill, reported out today by the Finance Committee, includes a provision that would generally reduce, on a present value basis, the tax cost of recognizing cancellation of debt (COD) income. The proposal would defer recognition of COD income realized in 2009 or 2010 from a cash repurchase of debt by an issuer or a related person and then require recognition of the income over an 8-year period, generally starting in 2011.

A few key points to bear in mind:

- The Senate Finance Committee bill is limited to transactions in which the issuer or a related party purchases the debt. In its current form, it would not apply to debt for debt exchanges, including deemed exchanges resulting, for example, from modification of debt terms. There is some sentiment in the Senate to expand the provision to cover exchanges, but there is also concern that doing so will prohibitively increase the cost to the government.

- There are also competing proposals, including another proposal in the Senate for a gross income exclusion for a portion (up to 50%) of the COD income. This may well be viewed as adding too much to the cost of the legislation, but a corresponding attribute reduction proposal (similar to current provisions relating to COD in a bankruptcy context) could mitigate that problem.

- There are no details yet on a number of technical issues, such as issues relating to the post-acquisition treatment of related party acquisitions and whether there may be different rules for issuers with NOLs (for whom the spread might not be beneficial under certain circumstances).

Most importantly, it should be noted that there is no COD provision in the House version of the bill (also reported out of committee today), and thus it is not clear what the final bill will provide, if anything. The issue is expected to be dealt with in conference, but it is possible that the COD income relief will be viewed as costing too much and will be left out of the final legislation. We are continuing to monitor developments.

On another issue, it seems quite likely that Congress will allow NOL carrybacks for up to 5 years (instead of 2 under current law). Both the House and Senate bills include this change with a limited carve out relating to recipients of TARP funds. The House version of this provision imposes a 10% reduction in NOLs on any corporation that elects the extended carryback, while the Senate version has the same extended carryback, but does not impose a 10% haircut on NOLs.

*   *   *   *

We have been following these issues closely and have spoken with many of you about debt buybacks, debt exchanges and other strategies available given the current state of the markets and the economy in general. This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. If you have any questions, or would like to pursue any of these strategies further, please feel free to call any of the Paul, Weiss Tax Partners:

Richard J. Bronstein
rbronstein@paulweiss.com
(212) 373-3744

Jeffrey B. Samuels
jsamuels@paulweiss.com
(212) 373-3112

David W. Mayo
dmayo@paulweiss.com
(212) 373-3324

David R. Sicular
dsicular@paulweiss.com
(212) 373-3082

Peter J. Rothenberg
rothenberg@paulweiss.com
(212) 373-3154