

Senate's Stimulus Bill Contains Limited Tax Relief for Cancellation of Debt Income, S Corporation Built-In Gains and NOL Carrybacks

Today, the U.S. Senate passed its version of the stimulus bill previously passed by the House of Representatives (The American Recovery and Reinvestment Act of 2009). The Senate version of the bill includes limited tax relief for cancellation of debt income (CODI) and S corporation built-in gains, and extends the net operating loss (NOL) carryback period for most corporate taxpayers.

CODI Relief

The Senate's version of the bill provides the same CODI relief as the Senate Finance Committee's (SFC) markup described in our recent [Alert](#). Under the Senate provision, taxpayers who repurchase their debt for cash in 2009 or 2010 can elect to spread any related CODI over an eight-year period beginning in 2011. The Senate provision applies to debt purchased for cash by issuers or related parties, but it currently does not apply to CODI that arises from debt-for-debt exchanges or debt modifications. Senator Baucus (D-MT), Chairman of the SFC, reportedly may attempt to broaden the CODI provision to cover these cases during the House/Senate conference process.

S Corporation Built-In Gains

The Senate's version of the bill eliminates corporate-level tax on most "built-in gains" recognized by an S corporation in taxable years beginning in 2009 or 2010 if the corporation was an S corporation for at least seven taxable years before the year in which such gains are recognized. The provision does not apply to built-in gains recognized as a result of an S corporation's distribution of appreciated assets.

NOL Carrybacks

The Senate's version of the bill allows most corporate taxpayers to elect to carry back NOLs realized in taxable years that begin in or end in 2008 or 2009 for up to five taxable years. This relief would not be available to certain recipients of capital invested by the government pursuant to the Emergency Economic Stabilization Act of 2008.

Next Steps

The House and Senate conferees will be meeting to resolve differences between the two chambers' versions of the stimulus bill, with the goal of completing their work by February 16 (Presidents' Day). As the conference process continues, Ropes & Gray will alert you to further developments. If you have any questions, please contact a member of the [Tax & Benefits Department](#).

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