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**BANKRUPTCY PREFERENCE CLAIMS:  
WHAT'S MINE IS MINE AND WHAT'S YOURS IS MINE**

SPRING 2009  
**ISSUE**

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## THE 2009 RECOVERY ACT: INDIVIDUAL AND BUSINESS TAX PROVISIONS

BY BRIAN T. LOVETT, CPA, JD, TAX MANAGER



While the recently enacted American Recovery and Reinvestment Act of 2009 (the "2009 Recovery Act" or the "Act") contains many spending programs designed to stimulate the economy, the 2009 Recovery Act includes tax provisions that will provide some relief to both individual and business taxpayers alike. The following highlights some of the most widely applicable provisions contained in the Act.



### INDIVIDUAL TAX PROVISIONS

The 2009 Recovery Act modified certain provisions of the first-time homebuyer credit. The maximum amount of the credit increased from \$7,500 to \$8,000, and the original requirement that the credit be recaptured was removed. Under the Act, no recapture of the credit is required unless the residence ceases to be the taxpayer's primary residence during the 36-month period beginning on the date of the purchase. Under the Act, a purchase made between January 1 and December 1, 2009, can be treated as occurring on December 31, 2008, by an electing taxpayer.

The 2009 Recovery Act provides a deduction for sales and use taxes paid on the purchase of qualifying motor vehicles. In order to qualify, the motor vehicle purchased must be a passenger automobile, light truck or motorcycle with a gross vehicle weight rating of 8,500 pounds or less or a motor home. Original use of the vehicle must begin with the taxpayer, and the deduction is limited to taxes paid on the first \$49,500 of the purchase price. The amount of the deduction phases out at modified adjusted gross income ("modified AGI") between \$125,000 and \$135,000 (\$250,000 and \$260,000 for joint filers).

(continued, overleaf)



## THE 2009 RECOVERY ACT: INDIVIDUAL AND BUSINESS TAX PROVISIONS (CONTINUED FROM FRONT PAGE)

**Under the Act, small businesses with \$15,000,000 or less in average gross receipts over the past three years may elect to carry an applicable 2008 NOL back a number of years (more than two and less than six).**

The Act also modifies and renames the hope credit. The new American opportunity tax credit allows a maximum credit of \$2,400 per student for the first four years of post-secondary education in a degree or certificate program. This credit can be claimed against alternative minimum tax ("AMT") and up to 40% of the credit can be refunded. The Act expands the definition of qualified tuition and related expenses to include course materials. This new credit is phased out ratably for taxpayers with modified AGI between \$80,000 and \$90,000 (\$160,000 and \$180,000 for joint returns).

### **BUSINESS TAX PROVISIONS**

The 2009 Recovery Act extends the net operating loss ("NOL") carryback period for certain taxpayers. Under the Act, small businesses with \$15,000,000 or less in average gross receipts over the past three years may elect to carry an applicable 2008 NOL back a number of years (more than two and less than six). The Act makes no changes to the carryforward period. This extended carryback period will allow eligible taxpayers to claim refunds of taxes paid in prior years.

The Act also extends certain depreciation allowances that expired on December 31, 2008. The Act extends the 50% bonus depreciation allowance to eligible property placed in service on or before December 31, 2009. The election that allows corporations to forego bonus depreciation in exchange for converting certain carryforward credits into refundable tax credits is extended as well. This election may allow taxpayers

to claim cash refunds in lieu of depreciation expenses. The Section 179 deduction limitation of \$250,000 and phaseout limitation of \$800,000 have been extended to tax years beginning in 2009. Last, the Act extended the additional \$8,000 first-year depreciation allowance for passenger automobiles placed in service before December 31, 2009.

Another provision of the 2009 Recovery Act allows for the deferral of debt discharge income from the reacquisition of certain debt in the 2009 and 2010 years. The income is then includible ratably over a five-year period. The inclusion period is the 2014 through 2018 tax years, inclusive, allowing for a deferral of five years for debt reacquired in 2009 and four years for debt reacquired in 2010. If an election is made under this provision, the exclusions provided in Sec. 108 for excluding debt discharge income will not apply to the debt discharge income during the inclusion period.

In addition to the provisions detailed above, the 2009 Recovery Act contains numerous other provisions including:

- Modifications to the earned income tax credit designed to make the credit more available;
- An increase in the AMT exemption amount and the ability for certain nonrefundable personal credits to offset AMT liability;
- Tax credits for certain energy saving vehicles;
- An increase and extension of the nonbusiness energy credit;
- A shortening of the burn-off period for built-in gain after a conversion from a C-corporation to a S-corporation from ten to seven years; and
- The new work opportunity credit, which provides businesses with a \$2,400 tax credit for employees hired in certain targeted groups, including unemployed veterans and disconnected youths.

***To learn how the 2009 Recovery Act will directly affect you and your business, please contact your local WS+B tax advisor.***

With some planning and effective review of the facts and circumstances, the financial ramifications can be minimized.

## BANKRUPTCY PREFERENCE CLAIMS: WHAT'S MINE IS MINE AND WHAT'S YOURS IS MINE



BY KENNETH J. DEGRAW, CPA, CFP®, CRFA®, PARTNER

A customer has filed for bankruptcy. You're scrambling to assess the damage and evaluate the financial impact to your business, and then the letter arrives:



*Dear former vendor,*

*Kindly remit back to the debtor all monies received in the 90 days prior to their filing for bankruptcy.*

*Best regards,  
Bankruptcy Counsel*

Unfortunately, the request is all too real and in this economy will become an even more frequent occurrence. The request, however, will fail to mention that there may be statutory exceptions available that could mitigate or even eliminate the need to repay the monies.

If a major customer files for bankruptcy, the best course of action is to contact and retain a bankruptcy professional who can evaluate the situation and properly advise you. That advice is critical to success, not only with preference claims, but in several other instances where at first glance, the odds are stacked against you.

In the case of preference claims, the financial and collection records of the relationship with the customer are critical to defending and mitigating the claim. Compounding the situation is that a debtor has two years to file preference claims. Several criteria enter into the evaluation of the monies that must be repaid, including:

- Shipments of goods or providing of services during the preference period

**As the saying goes, the best defense is a good offense; the same is true with troubled customers. There are several proactive steps that can be taken when a customer is having financial difficulties.**

- Historical payment history for the 12 months preceding the preference period
- Form of payment
- Collection correspondence including email

As the saying goes, the best defense is a good offense; the same is true with troubled customers. There are several proactive steps that can be taken when a customer is having financial difficulties, which will in most cases provide an effective defense to a claim.

The strategies include:

- Use of a letter of credit
- COD for ongoing purchases
- Maintaining similar payment terms and methods
- Avoid unusual collection demands
- Avoid post-dated checks if this is not normal practice

Preference claims are unavoidable. However, with some planning and effective review of the facts and circumstances, the financial ramifications can be minimized.

***For assistance in evaluating your unique circumstances related to bankruptcy, please contact your local WS+B advisor.***

There's a bright spot in these very difficult times, and family-owned businesses can come out as winners.

## SUCCESSION PLANNING: A SILVER LINING FOR FAMILY-OWNED BUSINESSES



BY WILLIAM R. HAGAMAN, JR., CPA, PARTNER

With business valuations currently low, the acceleration of an internal succession plan can yield significant financial windfalls. Succession plans are a silver lining during a downturn economy. We're seeing valuations down an estimated 30-50% from a year ago, and while that makes a

poor climate for mergers and acquisitions, it is excellent news for family-owned businesses that are willing to consider an exit strategy that involves passing the business to the next generation.

Sometimes this is easier said than done. Business owners need to assess their personal readiness to exit as well as whether the next generations are prepared to handle the immediate needs of the company. This can be an emotional process for some owners. Naming a qualified successor, adopting a slower pace of life, and the current economic considerations are often factors of concern. Accordingly, the energy and stress associated with navigating a business in these troubled times makes the incumbent management's experience even more important to the company.

Even in a steady economy, it's desirable to assign a low valuation in family-owned business succession plans. In doing so, the business owner minimizes their own estate and gift or capital gains taxes due on the transaction, while enabling their family members a reduced cash layout versus the company's historical fair market value. Though a common type of transaction, the IRS places incredible scrutiny on these valuations and makes them audit-prone if not executed carefully. In a recession like this, there is simply no mirage. We're seeing a substantial fair market value dip significantly this year, due to real estate value declines, reduced credit availability, low cash flow and the effects of the public markets. Compound these factors with sluggish sales and weak earnings, and a ripe opportunity is created for closely-held businesses.

What if the owner is not ready to exit completely? There

**Creating a blueprint to successfully plan the financial future of you and your business allows you to be incredibly nimble when the economy takes a turn —up or down.**

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are a few options. Management and ownership are not necessarily one in the same. There are tax strategies involving trusts, restricted stock or the use of voting proxies that can help you maintain some leadership in the company while you transfer ownership to your children. Basically you can freeze your interest. Through some reorganization or trust tactics, you can pass all future capital appreciation and income tax liability to your children while you retain control and access to the current value of the business.

Even if you're not ready to exit, preparation is key in times like these. Business owners should still know the value of their businesses long before they decide to sell. Creating a blueprint to successfully plan the financial future of you and your business allows you to be incredibly nimble when the economy takes a turn —up or down. Understanding the value of your most important asset—your business—makes sense at all times.

The current pressure all businesses are under creates an opportunity not only to create a succession plan, but also to look at and evaluate your current management team to determine if the best long-term interests of the company will be served by this group. The profits and wealth of the next economic upturn will be created by the difficult decisions you make for your company today.

***For more information on implementing a succession plan for your family-owned business, please contact your local WS+B advisor.***

Different companies and supervisors generally have their own way of doing things. However, as with all issues, some techniques work better than others.

## EFFECTIVE TRAINING TECHNIQUES: A NEW EMPLOYEE'S PERSPECTIVE

BY BRAD CARUSO, STAFF ACCOUNTANT

A common issue in small businesses and other organizations is how to efficiently and effectively train new employees. Different companies and supervisors generally have their own way of doing things. However, as with all issues, some techniques work better than others.

My career at WithumSmith+Brown began in January 2006. The training I received was direct, meaningful and substantive. After three years, I am transitioning from protégée to mentor and have adopted techniques I learned from my previous managers that are being applied to younger staff.

A positive attitude is essential when working with new staff. Portraying apathy or a lack of interest will project a negative message. Also, it is important to ease communication by letting the employee you are training know that he or she should always quickly approach you about any issues encountered. If a person does not feel comfortable talking to you, he may try to solve the problem without assistance, spending unnecessary time. On the other hand, if the staff person felt comfortable and immediately approached you, the problem could have been solved in a timelier manner.

Next, it is important to explain the task briefly and to the point. Assuming the average attention span of an entry level staff person is about three minutes, adding verbiage and stories and digressing from what you want accomplished will cause the staff person to tune you

out or misunderstand your directions. After explaining an assignment, have the new employee repeat the task to you. This will allow the staff person to think about the task at hand and give you a chance to clarify your instructions.

Lastly, it is important to properly motivate employees. Setting realistic deadlines offers guidance and prevents the staff from feeling overwhelmed with the job. Assigning short tasks and breaking a bigger assignment into segments makes the project easier for both the assignor and assignee. Also, it is crucial to communicate results so problems and issues can be resolved early. Providing frequent and detailed feedback can be beneficial for the staff. It is important to encourage employees and offer them praise for completing a task correctly.

In conclusion, once the art of training employees is mastered, the company as a whole operates more efficiently and effectively. The responsibility is taken from a higher level and passed to the younger staff, which enables them to learn and develop their management skills. Although training is not easy, it is essential, and the benefits that can be obtained from properly utilizing good practices are immense to both the company and the new employee.

*To learn more about techniques for training new employees, please contact your local WS+B advisor.*

### WS+B WELCOMES FOUR NEW PARTNERS



- In January 2009, Serluco & Co., L.L.C. merged with WS+B's Red Bank office, bringing several staff members along with partners, **Richard J. Serluco, CPA** and **Michael A. Serluco, CPA** to the Firm. Together, Richard and Michael offer over 60 years of combined experience in accounting, auditing, tax, financial and reimbursement consulting services to healthcare and not-for-profit organizations.
- **Jeffrey Blumengold, CPA, FHFMA** has joined the Red Bank office as a Partner in the Healthcare Services Group. Jeff has over 30 years of accounting and consulting experience in the healthcare industry and specializes in healthcare financial, regulatory compliance, reimbursement, litigation support and operational activities.
- Joining the firm as practice leader of WS+B's Business Advisory Services Group and as Partner-in-Charge of the New York City office, **Bernard Leone, CPA** brings over 35 years of professional experience to WS+B. He specializes in working with a diverse group of entrepreneurial companies, CEOs and business owners in a broad range of industries.



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## WS+B CLIENT PORTAL SYSTEM —GET SET UP TODAY



Through WS+B's highly-secure Client Portal, clients now have 24/7 access to their financial information from virtually anywhere.

Privacy and confidentiality of clients' personal information is a top priority at WS+B. We want to make clients aware of this useful feature that many are not currently taking advantage of.

No longer will clients have to wait for copies of their financial statements or tax returns to be mailed —or worry about confidential information falling into the wrong hands. WS+B's Client Portal makes these documents immediately accessible in electronic format.

Maintained by WS+B's innovative technology staff, this encrypted and secure system can be accessed via the [www.withum.com](http://www.withum.com) web site. Using your personal login name and password, the documents posted to your account are readily available to read and print.

In addition to its ease and convenience, this technology infrastructure eliminates the risk of loss due to fire, water damage or natural disasters. WS+B clients who are already using the Client Portal are very pleased with the results. "The possibility of checking all the information in our file in a safe environment will be very helpful for myself and my accounting department," says one satisfied client who is located in Italy, but owns and manages a company based in Pennsylvania. "Great service! Thank you very much!"

***Please contact your WS+B advisor to set up your Client Portal account today.***