

Real Estate Forecast 2010 Tax Update

Peter J. Chudyk, CPA, JD

John R. Funk, CPA



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Recent Tax Legislation

- American Recovery and Reinvestment Act (ARRA)
- The Worker, Homeownership and Business Assistance Act of 2009 (WHBAA)
- Tax Extenders Act of 2009 (Pending)



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First-time Homebuyer Credit

- ARRA extended and expanded the credit for homes purchased after 12/31/08.
- Credit increased to lesser of 10% of the purchase price up to \$8,000 and is refundable. Must meet 3 year residence requirement.
- Originally intended only for first-time homebuyer. New law extends a lesser credit of \$6,500 to “long-time residents”. Must meet 5 consecutive year residence requirement of prior 8 years.



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First-time Homebuyer Credit (Continued)

- WHBAA has extended the deadline. Now, taxpayers who have a binding contract to purchase a home before May 1, 2010, are eligible for the credit. Buyers must close on the home before July 1, 2010.



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First-time Homebuyer Credit (Continued)

- Pre 11/7/09, phase-out of credit begins at modified AGI of \$75,000 (\$150,000 MFJ).
- Post 11/6/09, phase-out of credit begins at modified AGI of \$125,000 (\$225,000 MFJ).
- WHBAA includes corrections to prior law.



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Energy Incentives (Nonbusiness)

- Previously, the Energy Act established a nonrefundable 10% credit on the purchase of qualified energy-efficiency improvements to existing homes.
- ARRA increased the 10% credit to a 30% credit. Credit limit is \$1,500 for 2009 and 2010.
- Generally for building envelope components (e.g. windows, insulation, exterior door) & residential property (e.g. A/C, furnaces, water heater).



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Energy Incentives (Business)

- The section 179D deduction was extended through 12/31/13.
- Energy efficiency property consists of three systems – lighting, HVAC, building envelope.
- Must reduce energy costs by 50% or more as compared to a reference building.



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Energy Incentives (Business) (Continued)

- Amount of the deduction is the cost of the energy efficient property subject to a cap of \$1.80 psf.
- A partial deduction is allowable for meeting the requirements of one of the three systems. (e.g. lighting can qualify for a deduction of \$0.30 psf to \$0.60psf subject to certain rules).



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Energy Incentives (Business) (Continued)

- The deduction on Federal, State or Local government buildings can be allocated to the primary designer.
- Certification is required by a qualified engineer or contractor licensed in the jurisdiction in which the building is located.



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Section 179 Deduction

- ARRA extended the 2008 limitation on the Section 179 Deduction.
- 2009 maximum expense amount for qualifying property is \$250,000 reduced by amount of qualifying property placed in service in excess of \$800,000.



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Section 179 Deduction (Continued)

- 2010 maximum expense amount for qualifying property is \$134,000 reduced by amount of qualifying property placed in service in excess of \$530,000.
- No extension of the 2009 amounts is in the House version of the Tax Extenders Act of 2009.



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Bonus Depreciation

- ARRA extended 50% “bonus depreciation” for qualifying property generally placed in service during 2009.
- Bonus depreciation expired 12/31/09, and is not included the House version of the Tax Extenders Act of 2009.



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Depreciation for Qualified Improvements

- Previous law allowed a 15-year recovery period for certain qualified leasehold improvement property, restaurant building and improvement property and retail improvement property.
- Applies to qualified property placed in service before 01/01/10.



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Depreciation for Qualified Improvements (Continued)

- Included in the House version of the Tax Extenders Act of 2009 to be extended for property placed in service before 01/01/11.
- Note – this provision was included in the Tax Extenders Act of 2009 where the Section 179 expense at enhanced levels and Bonus Depreciation is not included.



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New Markets Tax Credit

- The NMTC provides for a federal tax credit for making equity investments in CDEs. Credits are realized over a 7 year period.
- The NMTC expired 12/31/09. The Tax Extenders Act of 2009 extends the program through 2010.



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Carried Interests

- The Tax Extenders Act of 2009 contains a provision to tax income from partnership “carried interests” at ordinary rates and subject to self-employment taxes.
- Applies to partners providing investment, management, financial services regarding securities, ***real estate***, interests in partnerships or commodities.



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Alternative Minimum Tax Patch

- ARRA included an AMT patch.
- 2009 AMT exemption amount \$70,950 MFJ, \$35,475 MFS, \$46,700 for unmarried individuals.
- For 2009, individuals may offset the entire regular tax liability and AMT liability by nonrefundable personal credits. For 2010, certain nonrefundable credits may offset the regular tax liability and AMT liability.



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Cancellation of Indebtedness Income

- Generally, CODI will result in taxable income unless the taxpayer qualifies under an exception.
- ARRA permits, at the election of the taxpayer, deferral of CODI arising from a reacquisition of an applicable debt instrument after 12/31/08 and before 01/01/11.



Cancellation of Indebtedness Income (Continued)

- Income deferred is recognized ratably over a five year period beginning in the fifth year (for 2009) or fourth year (for 2010). For calendar year taxpayers this equates to recognition in years 2014 – 2018.



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Cancellation of Indebtedness Income (Continued)

- An exception to the recognition of CODI is the discharge of qualified real property business indebtedness.
- May elect to reduce the tax attributes and reduce its basis in the real property.



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Net Operating Losses

- Prior law generally allowed for a two year carryback and 20 year carryforward of NOLs.
- ARRA allowed “eligible small businesses” to carryback 2008 NOL from more than two years and less than six.
- Taxpayer needs to elect to carryback 2008 NOL for the extended carryback period.



Net Operating Losses (Continued)

- WHBAA expanded the special carryback provision for NOLs.
- Applies to NOLs for taxable year ending after 12/31/07 and before 01/01/10.
- Election can be made for only one taxable year.
- Election permits carryback of 3 to 5 years.



Net Operating Losses (Continued)

- Generally no limitation based on size of business (expands compared to ARRA).
- NOL carried back to 5th year shall not exceed 50% of taxpayer income for such year.



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Roth IRA Conversion

- From 1998 to 2009, only individuals whose adjusted gross income (AGI) was less than \$100,000 and whose filing status was not "married filing separately" were eligible to make a Roth IRA conversion.
- Effective January 1, 2010, both of these restrictions are removed and anyone with a traditional IRA will be able to convert it to a Roth IRA.



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Roth IRA Conversion (Continued)

- Income tax must be paid on the conversion.
- For 2010 conversions, half the income is reported in 2011, and the remaining half in 2012.
Alternatively, the taxpayer can elect to tax all of it in 2010.
- Conversions made after 2010 will not receive this special tax treatment; the entire conversion will be taxed in the year of conversion.



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Federal Estate Tax

- The Federal Estate Tax sunset 12/31/09. Currently, the estate tax has been repealed for 2010.
- Under current law, the Federal Estate Tax returns 01/01/11 on property greater than \$1,000,000 with a maximum tax rate of 55%.



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Federal Estate Tax (Continued)

- It is expected that the estate tax will be reinstated retroactively for 2010.
- The Federal Gift Tax was not repealed. For 2010, the lifetime gift exemption is \$1,000,000. Gifts are taxed at the highest individual income tax rate (currently 35% for 2010)



Miscellaneous

- Generally, deduction for DPAD increases to 9% for tax years beginning after 2009.
- Increased penalties for failure to file partnership or S-Corp returns (\$195 per partner or shareholder).
- S-Corp Built-in Gains Relief for 2009 and 2010.
- Ohio will not require FT-1120S to be filed for 2010 (S-Corps).



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