Presidential Fiscal Year 2010 Revenue Proposals

President Releases Fiscal Year 2010 Corporate and Partnership Taxation Proposals

SUMMARY

On May 11, 2009, the Obama Administration (the “Administration”) released the “General Explanations of the Administration’s Revenue Proposals” (the “Green Book”). Although the Administration has not released proposed statutory language, the Green Book includes significant detail about the Administration’s Fiscal Year 2010 budget proposals (the “Proposal”). The Proposal, if enacted in its current form, would affect many aspects of U.S. federal income taxation, including individual, corporate, partnership and international taxation. This memorandum discusses key aspects of the Proposal that relate to corporate and partnership taxation. We recently distributed memoranda addressing the Proposal relating to individual taxation and international taxation that we anticipate may be of interest to our clients, which you may obtain by following the instructions at the end of this memorandum.

The Proposal would (1) tax carried interests as ordinary income and as net earnings from self-employment, (2) codify the economic substance doctrine, (3) repeal the last-in, first-out, and the lower-of-cost-or-market inventory accounting methods, (4) require income to be accrued on the forward sale of a corporation’s own stock, (5) require certain dealers of derivatives and commodities to treat all income earned through such activities as ordinary, (6) expand the definition of “control” for purposes of disallowing or limiting an issuer’s deduction for a premium paid to repurchase a debt instrument that is convertible into its own stock, or into stock of a corporation in control of or controlled by the issuer, (7) limit the dividends-received deduction for life insurance company separate accounts, (8) expand the disallowance of interest deductions for corporate-owned life insurance contracts, (9) repeal certain oil and gas company preferences, (10) disallow deductions for punitive damages, (11) extend the statute of
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limitations for federal tax liabilities in certain situations, (12) require reporting of payments by rental income recipients to service providers, (13) require information reporting for private separate accounts of life insurance companies, and (14) require information reporting on payments to corporations and electronic filings by certain large organizations. The Proposal would also provide several tax reductions for business by (1) eliminating capital gains taxation on investment in small business stock, (2) making the research and experimentation tax credit permanent, (3) extending the net operating loss carryback, and (4) extending certain expiring provisions through calendar year 2010.

DISCUSSION

A. REVENUE PROVISIONS

Major revenue provisions in the Proposal affecting corporate and partnership taxation that we anticipate will be significant to our clients are discussed below.

1. Taxation of Carried Interests as Ordinary Income and as Net Earnings from Self-Employment

Carried interests are typically interests in partnership profits granted to the managers or sponsors of a partnership. Carried interests may be granted without an obligation to invest capital, or with interests in profits that are significantly disproportionate to contributed capital. Although the term “carried interest” generally refers to an interest in a fund, such as a private equity fund, hedge fund or real estate fund, partnerships that operate a single business or project may also issue carried interests to their sponsors or managing members. Under current law, carried interests are generally considered “profits interests”\(^1\) in the partnerships, and the character of income from the partnership flows through to the holders of the carried interests.\(^2\) As a result, capital gains, as well as some items of interest and dividend income of a partnership that are allocated to a carried interest, retain their character and are not considered net earnings from self employment for purposes of the Federal Insurance Contributions Act (“FICA”). Additionally, because a carried interest is a partnership interest, gain recognized on the sale of a carried interest is generally treated as capital gain except to the extent such gain is attributable to the inventory or unrealized receivables of the Partnership.\(^3\)

Following several previous congressional proposals,\(^4\) the Proposal would generally characterize income derived from, and gain upon the sale of, a “services partnership interest” as ordinary income, regardless

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1 A profits interest is an interest in a partnership that does not have any current liquidation value at the time of receipt. See Rev. Proc. 93-27, 1993-2 C.B. 343.
2 I.R.C. § 702(b).
3 See I.R.C. § 751.
4 See, e.g., H. R. 2834 (110th Cong. 1st Sess.).
of the character of the income or assets at the partnership level. The Proposal would define a “services partnership interest” as “a carried interest held by a person who provides services to the partnership.” An exemption from “services partnership interest” status would apply to the extent a partner contributes “invested capital” and the partnership “reasonably” makes an allocation of income and loss between the carried interest and the capital interest. “Invested capital” would not include loans or advances guaranteed by any partner or the partnership. The Proposal would also treat any income or gain from a “service partnership interest” as net earnings from self employment for FICA purposes, and thus subject to Social Security and Medicare tax. The Green Book indicates that the Administration does not intend this aspect of the Proposal to have an adverse impact on the ability of an entity that owns a carried interest in a real estate partnership to qualify as a real estate investment trust.

Additionally, the Proposal would include an anti-avoidance rule intended to prevent the Proposal’s carried interest provisions from being circumvented through non-partnership compensatory arrangements. Under the Proposal’s anti-avoidance rule, any person who performs services for an entity and holds a “disqualified interest” in the entity (including a convertible or contingent debt instrument, an option and a derivative) would also be subject to ordinary income tax on any income or gain received with respect to the disqualified interest.

The Proposal’s provisions affecting carried interests would take effect for taxable years beginning after December 31, 2010. The Green Book does not address whether pre-existing arrangements will be grandfathered.

2. Codification of the Economic Substance Doctrine

The “economic substance” doctrine has long been applied by courts and the IRS to disallow certain aspects or consequences of tax-motivated transactions that may technically satisfy the requirements of the Internal Revenue Code of 1986, as amended (the “Code”). As a common law doctrine, however, “economic substance” is not uniformly interpreted through the federal judicial system. Some circuit courts apply the so-called “conjunctive test,” which requires that a transaction both (1) objectively have economic consequences to the taxpayer independent of tax benefits and (2) be motivated by a subjective business purpose. Other circuit courts apply a so-called “disjunctive test,” under which a transaction lacks economic substance only if it both (1) objectively lacks economic effect and (2) lacks a subjective

See, e.g., Pasternak v. Comm’r, 990 F.2d 893, 898 (6th Cir. 1993) (“The threshold question is whether the transaction has economic substance. If the answer is yes, the question becomes whether the taxpayer was motivated by profit to participate in the transaction . . . . If, however, the court determines that the transaction is a sham, the entire transaction is disallowed for federal tax purposes, and the second inquiry is never made.”).
business motivation.\textsuperscript{6} Still other courts consider objective economic substance and subjective business purpose to be only two factors in a general investigation into whether a transaction has economic effects other than tax benefits.\textsuperscript{7}

The Proposal would codify the economic substance doctrine using the “conjunctive test.” Specifically, a transaction would have economic substance under the Proposal only if (1) “it changes in a meaningful way (apart from federal tax effects) a taxpayer’s economic position” and (2) “the taxpayer has a substantial purpose (other than a federal tax purpose) for entering into the transaction.” Under the economic substance provisions of the Proposal, the potential for a profit would also not cause a transaction to have economic substance if the anticipated pretax profit is not “substantial in relation to the present value of the net federal tax benefits arising from the transaction.” The Proposal would also, if enacted, permit the IRS to issue regulations to further define the scope of the economic substance doctrine.

The Proposal would also impose new penalties intended to discourage taxpayers from engaging in transactions that may lack economic substance. In particular, taxpayers would be assessed a 30% penalty (determined by reference to the amount by which a taxpayer’s tax liability was under-reported) for understating tax liability because of a transaction that was disallowed on economic substance grounds. If a taxpayer made “adequate disclosure of the relevant facts” on the relevant tax return, this penalty would be reduced to 20%. The proposed economic substance penalty could be imposed by the IRS in the absence of a court determination that a transaction lacked economic substance and could also be abated by the IRS in a manner that is “proportionate to the abatement of the underlying tax liability.” This new penalty would be “in lieu of other accuracy-related penalties that might be levied with respect to the tax understatement, although any understatement arising from a lack of economic substance would be taken into account in determining whether there is a substantial understatement of income tax under current law.” Additionally, the Proposal would deny taxpayers deductions for interest attributable to tax understatements arising from the application of the economic substance doctrine.

\textsuperscript{6} See, e.g., Rice’s Toyota World Inc. v. Comm’r, 752 F.2d 89 (4th Cir. 1985) (“To treat a transaction as a sham, the court must find that the taxpayer was motivated by no business purposes other than obtaining tax benefits in entering into the transaction, and that the transaction has no economic substance because no reasonable possibility of a profit exists.”).

\textsuperscript{7} Casebeer v. Comm’r, 909 F.2d 1360, 1363 (9th Cir. 1990) (observing that “Frank Lyon was not intended to outline a rigid two-step analysis,” but rather “the consideration of business purpose and economic substance are simply more precise factors to consider in the application of this court’s traditional sham analysis; that is, whether the transaction had any practical economic effects other than the creation of income tax losses”).

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Under the Proposal, the codified definition of economic substance would apply to transactions entered into after the date of enactment and the denial of the deduction for interest would be effective in taxable years after the date of enactment only for transactions entered into after the date of enactment.

3. Repeal of Last-In, First-Out (“LIFO”) and Lower-of-Cost-or-Market Inventory (“LCM”) Accounting Methods

Current law permits U.S. taxpayers to elect one of several methods of accounting for inventory, including LIFO accounting.\(^8\) Using the LIFO method to account for inventory for tax purposes can be advantageous because it can permit taxpayers to determine the cost of goods sold using recent inventory, in which taxpayers often have a higher basis. A taxpayer that uses LIFO accounting for U.S. federal income tax purposes is also required to use the LIFO method to account for its inventory on its financial reports.

The Proposal would disallow the use of LIFO inventory accounting in the affected taxpayers’ first taxable year beginning after December 31, 2011. In that year, taxpayers currently using LIFO accounting would be required to revalue their inventory on a first-in, first-out basis and include this one-time increase in gross income ratably over that year and the next seven taxable years.

Under current law, certain taxpayers not using a LIFO method may write down the carrying values of their inventories by applying the lower-of-cost-or-market, or LCM method.\(^9\) Additionally, current law permits taxpayers to write-down the value of subnormal goods that either cannot be sold at normal prices or are otherwise unusable in the normal way because of damage, imperfection or other similar causes.\(^10\) The Green Book asserts that both the LCM method and current provisions permitting taxpayers to write down “subnormal” inventory create distortions that permit taxpayers to understate their taxable income. Accordingly, the Proposal would statutorily prohibit the use of the LCM and subnormal goods methods. Appropriate wash-sale rules would also be included to prevent taxpayers from circumventing the prohibition. The Proposal would also require taxpayers electing to use the retail method (which adjusts inventory costs based on prevailing retail prices) to employ the same method for financial accounting purposes. The Proposal would be treated as a change in the method of accounting for inventories, and any resulting adjustment generally would be included in income ratably over a four-year period beginning with the year of change. This would be effective for taxable years beginning after 12 months from the date of enactment.

\(^8\) See generally I.R.C. §§ 471-475.
4. Accrual of Income on Forward Sale of Corporate Stock

Currently, a corporation making a forward sale of its own stock does not recognize gain or loss.\textsuperscript{11} In contrast, if a corporation currently issues stock in exchange for deferred payments, the corporation accrues interest income on the deferred payments.\textsuperscript{12} The Green Book argues that a forward sale of a corporation’s own stock and a current sale of such stock for deferred payment are economically equivalent transactions and that both transactions should be taxed similarly. Accordingly, the Proposal would require a corporation that enters into a forward contract to issue its stock to treat a portion of the payment on the forward issuance as payment of interest. If enacted, this new rule would apply to forward contracts entered into after December 31, 2010.

5. Ordinary Treatment for Certain Dealers of Derivatives and Commodities

Under current law, commodities dealers, commodities derivative dealers, dealers in securities and options dealers treat 60\% of their income or loss from certain dealer activities as long-term capital gain or loss and 40\% of their income or loss as short-term capital gain or loss.\textsuperscript{13} The Green Book argues that there is no difference between dealers described above and dealers in other types of property and proposes to require commodities dealers, commodities derivative dealers, dealers in securities and options dealers to treat the income from their dealer activities as ordinary in character. Although the Proposal speaks only of income, it is possible that any loss from such dealer activities would also be treated as ordinary. This aspect of the Proposal would become effective in taxable years beginning after the date of enactment.

6. Expansion of Definition of “Control” for Purposes of the Section 249 Deduction Limit

Section 249 of the Code disallows or limits the issuer’s deduction for a premium paid to repurchase a debt instrument that is convertible into its own stock, or into stock of a corporation in control of or controlled by the issuer. “Control” is determined for this purpose by reference to Section 368(c) of the Code, which encompasses only direct relationships and does not include indirectly owned entities such as second-tier subsidiaries.\textsuperscript{14} Under the Proposal, the definition of “control” in Section 249(b)(2) of the Code would be amended to incorporate indirect control relationships, “of the nature described in Section 1563(a)(1).” I.R.C. § 1563(a)(1) defines “Parent-subsidiary controlled group” as “one or more chains of corporations connected through stock ownership with a common parent corporation” if (i) stock possessing at least 80\% of the total combined voting power of all classes of stock entitled to vote or at least 80\% of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one or more of the other corporations; and (ii) the common parent corporation owns stock possessing at least 80\% of the total combined voting power of all classes of stock entitled to vote or at least 80\% of the total value of shares of all classes of stock of at least one of the other

\textsuperscript{11} See generally I.R.C. § 1032(a).

\textsuperscript{12} In this case, the corporation is deemed to have issued a loan to the purchasing party in the deferred-payment sale and is taxed on the interest income derived from the deemed loan.

\textsuperscript{13} See I.R.C. § 1256; I.R.C. § 475(c)(2).

\textsuperscript{14} The Proposal provides that Section 249(b)(2) would be amended to incorporate indirect control relationships, “of the nature described in Section 1563(a)(1).” I.R.C. § 1563(a)(1) defines “Parent-subsidiary controlled group” as “one or more chains of corporations connected through stock ownership with a common parent corporation” if (i) stock possessing at least 80\% of the total combined voting power of all classes of stock entitled to vote or at least 80\% of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one or more of the other corporations; and (ii) the common parent corporation owns stock possessing at least 80\% of the total combined voting power of all classes of stock entitled to vote or at least 80\% of the total value of shares of all classes of stock of at least one of the other

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7. Limitation on Dividends-Received Deduction for Life Insurance Company Separate Accounts

Under current law, a life insurance company is entitled to a dividends-received deduction ("DRD") only for a portion of dividends received on stocks held in either the life insurance company's general account or in any separate account established to support variable life insurance and variable annuity contracts, the assets of which are legally segregated from those in the general account. With respect to a separate account, the DRD is only allowed to the extent of the life insurance company's "share" of the dividends attributable to each separate account, which is the percentage of (i) the company's "share" of net investment income of that separate account for the taxable year, divided by (ii) the total net investment income of that separate account for the taxable year.

The life insurance company's "share" of net investment income of a separate account is calculated by a proration method, which requires, among other things, subtracting the "required interest" for the life insurance contracts from the net investment income. The "required interest" with regard to a separate account is currently calculated by multiplying a specified account earnings rate ("ER") by the mean of the reserves with regard to the account for the taxable year. The Green Book expresses concern that this

(footnote continued)

15 See generally I.R.C. § 817(c). For purposes of I.R.C. §§ 801-818 (excluding I.R.C. § 809 before its repeal), a life insurance company issuing variable contracts is required to account separately for the various income, exclusion, deduction, asset, reserve, and other liability items properly attributable to various contracts.

16 See I.R.C. § 812(a)(1).

17 See I.R.C. § 812(b), which provides that the company share of net investment income equals the excess (if any) of net investment income over the sum of (i) policy interest, and (ii) gross investment income's proportionate share of policyholder dividends for the taxable year. I.R.C. § 812(b) further provides that policy interest consists of the sum of the following items: (i) "required interest" for reserve items described in I.R.C. § 807(c), (ii) the deductible portion of excess interest, and (iii) the deduction portion (not otherwise taken into account as required interest or excess interest) of amounts credited to a policyholder's fund under a pension plan contract for employees not yet retired or under a deferred annuity contract prior to the annuity starting date. I.R.C. § 812(b) provides that net investment income is 95% of gross investment income attributable to assets held in a separate account under variable life insurance contracts.

18 Under current law, ER is the interest rate used in determining the contract's reserve. See I.R.C. § 812(b). Such interest rate can be either (i) the greater of the applicable federal interest rate or the prevailing state assumed interest rate for the contract, or (ii) another appropriate rate. See I.R.C. § 812(b), Rev. Rul. 2003-120, 2003-2 C.B. 1154. In some situations, "another appropriate rate" for a

(footnote continued on next page)
formula will, in many cases, overstate the company’s actual economic interest in a separate account’s investment income.

Accordingly, the Proposal would set the ER of each separate account of a life insurance company to be equal to a gross earnings rate (net investment income of the account divided by the mean of the account’s assets), minus a company-retained percentage (amounts retained by the company from the account’s net investment income, if any, divided by the mean of reserves). The Green Book states that this formula is intended to produce a company’s “share” of dividends attributable to a separate account that bears a more direct relationship to the company’s actual economic interest in the separate account. This aspect of the Proposal would be effective for taxable years beginning after December 31, 2010.

8. Expansion of Pro Rata Interest Expense Disallowance for Corporate-Owned Life Insurance (COLI)

Under current law, to the extent that indebtedness can be traced to a life insurance, endowment or annuity contract, interest on such indebtedness generally is not deductible, unless the insurance contract insures the life of a key person of the business. In addition, the interest deductions of a business other than an insurance company are reduced to the extent such interest is allocable (but not directly traceable) to unborrowed policy cash values (based on a statutory formula) of life insurance, endowment or annuity contracts, unless such contracts cover individuals who are officers, directors, employees or 20-percent owners of the taxpayer. Similar rules apply to life and non-life insurance companies.

The Green Book argues that both exceptions to the interest deduction disallowance rule described in the paragraph above provide leveraged businesses with tax-exempt or tax-deferred income funded by deductible interest expenses. The Proposal, if enacted, would repeal these exceptions for contracts entered into after the date of enactment.

9. Repeal of Certain Oil and Gas Company Preferences

The Proposal would repeal certain tax preferences for oil and gas companies that exist under current law and impose a new surcharge on certain oil and gas companies. In particular, the Proposal would (1) repeal the investment tax credit for enhanced oil recovery projects, (2) repeal the production tax credit for oil and gas from marginal wells, (3) require that intangible drilling costs paid or incurred be capitalized (instead of being deducted) as depreciable or depletable property in accordance with generally applicable rules, (4) discontinue the deduction for qualified tertiary injectant expenses, (5) repeal the exception from

(footnote continued)

taxpayer’s variable separate accounts is determined in accordance with the formula under § 1.801-8(e)(1) with some modifications. See IRS Letter Ruling 200339049 (August 20, 2002).

19 See I.R.C. § 264.
20 Id.
the passive activity loss rules for working interests in oil and gas properties with respect to which the
owner has not limited its liability, (6) disallow percentage depletion with respect to oil and gas wells, and
instead require cost depletion, (7) end the domestic manufacturing deduction for oil and gas production
and (8) increase the amortization period for geological and geophysical expenditures incurred by
independent producers in connection with all oil and gas exploration in the United States from two years
to seven years. Additionally, the Proposal would impose an excise tax on certain oil and gas produced on
the outer continental shelf. These provisions would be generally effective for taxable years beginning
after December 31, 2010.

10. Disallowance of Deduction for Punitive Damages

Under current law, a deduction is allowed for damages paid or incurred as ordinary and necessary
expenses in carrying on any trade or business, regardless of whether such damages are compensatory
or punitive. In contrast, fines, similar penalties and amounts paid to governments and governmental
agencies in respect of certain judgments are not deductible.

The Proposal would disallow deductions for punitive damages and would require that any insurance
payments on account of such punitive damages be included in the gross income of the insured person.
The Proposal would apply to damages paid or incurred after December 31, 2010. The Proposal is not
clear whether this disallowance would also apply to any damages paid after December 31, 2010, if
attributable to events occurring before this date.

11. Extension of Statute of Limitations

Unless a statutory or another exception applies, additional federal tax liabilities in the form of tax, interest,
penalties and additions to tax must be assessed by the IRS within three years after the date a return is
filed. The Proposal would create an additional exception to the three-year statute of limitations for
assessment of Federal tax liabilities attributable to an adjustment to state or local tax liabilities. The
statute of limitations would be extended by the greater of: (1) one year from the date the taxpayer first
files an amended tax return with the IRS reflecting adjustments to the state or local tax return; or (2) two
years from the date the IRS first receives information from the state or local revenue agency under an
information-sharing agreement in place between the IRS and a state or local revenue agency. The
statute of limitations would only be extended with respect to the increase in federal tax attributable to the
state or local tax adjustment. The statute of limitations would not be further extended if the taxpayer files
additional amended returns for the same tax periods as the initial amended return or if the IRS receives
additional information from the state or local revenue agency under an information-sharing agreement.

21 See I.R.C. §§ 162(f) and (g).
22 See generally I.R.C. § 6501.
The statute of limitations on refund claims would also be extended correspondingly. This aspect of the Proposal would be effective for returns required to be filed after December 31, 2009.

12. Reporting of Certain Payments to Service Providers by Recipients of Rental Payments

The Proposal would require that recipients of real estate rental income, that make payments of $600 or more to a service provider in the course of earning rental income, send an information return (generally, Form 1099-MISC) to the IRS and the service provider. Certain exceptions would be made for particularly burdensome situations. If enacted, this provision would be effective for tax years beginning after December 31, 2009.

13. Information Reporting for Private Separate Accounts of Life Insurance Companies

Investments in a variable annuity or life insurance contract held in a separate account through a life insurance company can give rise to either tax-deferred income or life insurance benefits that are paid tax-free to the policyholder. This favorable treatment is not available, however, if the policyholder has so much control over the investments in the separate account that the policyholder, rather than the insurance company, is treated as the owner of those investments (which is often referred to as the “investor control doctrine”).

The Proposal would require life insurance companies to report certain information to the IRS with respect to any life insurance or annuity contract the cash value of which is partially or wholly invested in a private separate account for any portion of the taxable year. This provision is intended to enable the IRS to identify which variable life insurance contracts should be disregarded under the investor control doctrine. The Proposal, if enacted, would require such reporting for any account with respect to which a related group of persons owned policies the cash values of which, in the aggregate, represented at least 10% of the value of the separate account. This aspect of the Proposal would be effective for taxable years beginning after December 31, 2010.


Under current law, payments to corporations are generally exempt from information reporting. Under the Proposal, businesses would be required to file information returns for payments aggregating to $600

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23 See generally I.R.C. § 817.
25 See generally Treas. Reg. § 1.6049-4(c).
or more in a calendar year to any corporation (except a tax-exempt corporation). This aspect of the Proposal would be effective for payments made after December 31, 2009. Additionally, under the Proposal, all corporations and partnerships that are currently required to file a Schedule M-3\(^{26}\) and certain other large taxpayers would be required to file their tax returns electronically for tax years ending after December 31, 2009.

### B. TAX REDUCTIONS FOR BUSINESS

1. **Elimination of Capital Gains Taxation on Investments in Small Business Stock**

   The Proposal would increase the percentage exclusion of gains from the sale by a taxpayer other than a corporation of certain small business stock acquired at original issue and held for at least five years from 50% to 100% and eliminate the alternative minimum tax preference item for gains excluded under this provision. This would be effective for qualified small business stock issued after February 17, 2009.

2. **The Research and Experimentation (R&E) Tax Credit Made Permanent**

   The Proposal would make permanent the Research & Experimentation tax credit, which is currently scheduled to expire on December 31, 2009.

3. **Expansion of Net Operating Loss Carryback**

   A net operating loss (“NOL”) generally is the amount by which a taxpayer’s business deductions exceed its gross income. Before the enactment of the American Recovery and Reinvestment Act of 2009 (“ARRA”), an NOL generally could be carried back two years and carried forward 20 years to offset taxable income in such years.\(^{27}\) Most recently, the ARRA extended the carryback period for applicable 2008 NOLs to up to five years by certain eligible small businesses whose average annual gross receipts do not exceed $15,000,000.

   Without further details, the Proposal expresses the Administration’s desire to work with Congress to expand the NOL carryback period for businesses other than eligible small businesses covered by ARRA. Two bills have recently been introduced in Congress that would extend the carryback period to five years.\(^{28}\) Although both bills would not permit recipients of federal assistance under the Troubled Asset Relief Program to take advantage of the longer carryback period, Representative Richard Neal, who

\(^{26}\) Schedule M-3 “Net Income (Loss) Reconciliation for Corporations with Total Assets of $10 Million or More” is a schedule to I.R.S. Form 1120 “U.S. Corporation Income Tax Return.” Any corporation or U.S. consolidated group that is required to file Form 1120 and that reports on Schedule L of Form 1120 “Balance Sheets per Books”, with total assets at the end of the corporation’s or group’s taxable year of at least $10 million must file Schedule M-3.

\(^{27}\) See I.R.C. § 172.

\(^{28}\) See S. 823 (111th Cong. 1st Sess.); H. R. 2452 (111th Cong. 1st Sess.).
introduced one of these bills, suggested in the introductory statement that the bill’s limits on the ability of taxpayers in “certain industries to claim this relief” may be the subject of further discussion.29

4. Continuation of Certain Expiring Provisions Through Calendar Year 2010
The Proposal would extend certain expiring provisions through December 31, 2010, including, among others, the optional deduction for state and local general sales taxes, Subpart F “active financing” and “look-through” exceptions, and the exclusion from unrelated business income of certain payments to controlling exempt organizations.

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