

The American Recovery and Reinvestment Act of 2009

The following is an excerpt from the American Chamber of Commerce Executives and RSM McGladrey Tax Digest describing briefly the key tax provisions in President Obama's Stimulus Package as it pertains to Business and Individuals.

BUSINESS INCENTIVES

Bonus depreciation

The bonus depreciation provision allowing additional first-year depreciation of 50 percent of the cost of the asset was extended through 2009. We believe this provision will help many businesses, whether they are struggling to compete or trying to grow their operations. This provision applies to middle market companies, large companies, and small businesses in a variety of industries. The \$8,000 increase in the first-year luxury passenger auto limitation was also extended through 2009 to reflect the continued availability of bonus depreciation and to allow vehicles to continue to be depreciated at a higher level.

Monetization of AMT and R&D credit carry-forwards

Corporations that elect out of bonus depreciation can instead convert part of their alternative minimum tax and research and development tax credit carry-forwards into currently refundable credits. This provision, which generally applies to C corporations but can have applicability to some S corporations, has been extended through 2009. This represents a significant opportunity for certain businesses to convert existing carry-forwards into cash refunds. [Read more.](#)

NOL carry-back for small businesses

Taxpayers with net operating losses can carry the losses back and apply for refunds of taxes previously paid. The Act increases the carry-back period to five years from two years for 2008 tax losses incurred by small business taxpayers with \$15 million or less of gross receipts. By extending the carry-back period, the Act allows these taxpayers to recover additional taxes previously paid. It was extremely disappointing that the conference committee took this opportunity to recoup taxes previously paid away from middle market and larger businesses after both the House and Senate bills had included it.

S corporation built-in gains holding period

S corporations that were previously C corporations often have built-in gains on assets that appreciated in value during the C corporation period. S corporations were required to hold those assets for ten years or be taxed, but the Act now temporarily reduces the holding period to seven years.

Debt cancellation income

Taxpayers that repurchase debt (with cash, for new debt, or for stock) at a discount are subject to income tax on such transactions. The Act has given such taxpayers a period of five years, beginning in 2014, to pay the tax for debt repurchases occurring in 2009 and 2010. This results in a five-year tax holiday on 2009 repurchases and a four-year holiday for 2010 repurchases. The Act provides an additional five years after this deferral period to pay the income tax in equal annual installments.

Work Opportunity Tax Credit

The Work Opportunity Tax Credit essentially provides businesses with a \$2,400 credit for each employee they hire in certain targeted groups. This was expanded to include unemployed veterans and certain disconnected youth.

Loss limitations for banks

Last year in a notice specifically directed at banks, the IRS eased the rules limiting the use of certain deductions and losses to offset income after an ownership change. For bank ownership changes occurring after Jan. 16, 2009, that notice is revoked, and the use of certain deductions and losses may be limited. However, banks that experience an ownership change as a result of certain deals that were announced by Jan. 16, 2009 will still be able to rely on the notice.

Loss limitations for restructured businesses

The rules limiting the use of losses to offset income after an ownership change have been substantially relaxed for businesses restructured under the Emergency Economic Stabilization Act. However, if such restructured businesses are acquired (50 percent or greater ownership), this relief does not apply.

Section 179 expensing for capital expenditures

Certain businesses making limited amounts of investments can write-off the entire cost of up to \$250,000 of capital expenditures incurred in 2008. The Act extended the \$250,000 amount for capital expenditures incurred in 2009.

Qualified small business stock gain exclusion

Certain non-corporate investors owning qualified small business stock receive a portion of the gain tax-free when they sell it, provided they held the stock for five years or more. The Act increases the tax-free portion of the gain from 50 percent to 75 percent.

Withholding on government contractor payments delayed

Governments were expected to begin withholding three percent on payments to government contractors starting in 2010, but this has been delayed to 2011.

Employer-provided transportation

Under the Act, the amount that employees may receive as tax-free fringe benefits for employer-provided transportation and van pool arrangements is the same as the amount they may receive tax-free for employer-provided parking.

New Markets Tax Credit

Investors in low-income communities receive an income tax credit for these investments. The Act increases the annual maximum national amount for the New Markets Tax Credit from \$3.5 billion to \$5 billion for 2008 and 2009.

Original issue discount on high-yield debt obligations

Issuers of debt instruments with original issue discount (OID) can usually deduct the OID in the year the debt is issued. This deduction is substantially limited for high-yield obligations (referred to by some as "junk" bonds). Issuers of debt exchanged for debt between Sept. 2008 and the end of 2009 can now take this deduction.

COBRA premium assistance

Involuntarily terminated employees are, by federal law (called "COBRA"), entitled to continue certain insurance coverage (most notably health insurance) previously provided by their employers for a limited period of time, provided they pay the premiums for that coverage. The Act temporarily subsidizes such premiums by 65%, crediting employers paying the subsidy against their payroll taxes. Persons eligible for this subsidy are those terminated from September 1, 2008 through December 31, 2009. The temporary subsidy ends on the earlier of nine months after the subsidy starts, or whenever normal COBRA protection would end.

Executive compensation limits for TARP recipients

Included in the non-tax provisions of the Act are additional restrictions regarding the payment of bonuses and golden parachutes to senior executive officers of companies receiving taxpayer money under the TARP program.

INDIVIDUAL INCENTIVES

AMT patch

The Act increases the amount of income exempt from the alternative minimum tax (AMT) from \$33,750 (single)/\$45,000 (married filing jointly) to \$46,700 (single)/\$70,950 (married filing jointly) and extends the AMT creditability of certain non-refundable, personal tax credits into 2009.

Estimated tax relief

Individual taxpayers who pay less than 90 percent of their current year tax obligation during the year, through withholding or estimated taxes, may be subject to a penalty. A safe harbor for relief from this penalty has been available to taxpayers who pay at least 100 percent of their prior year's liability. That safe harbor has been reduced to 90 percent of the prior year's liability for those small business owners with income less than \$500,000, at least 50 percent of which comes from a small business with fewer than 500 employees.

New Making Work Pay income tax credit

This is a credit in the amount of the lesser of 6.2 percent of earned income or \$400 (\$800 married filing jointly), phasing out over modified adjusted gross income of \$70,000 (single) and \$140,000 (married filing jointly). This credit ends after 2010.

American Opportunity Tax Credit

The American Opportunity Tax Credit has been added to the Hope Scholarship credit, creating a new \$2,500 higher education (available for the first four years of post-secondary education) tax credit, of which a portion is refundable. Income levels for this credit have been increased as well, and the credit is now allowed against the alternative minimum tax. Required course materials are allowed, as well as tuition and fees.

New homebuyer credit

For purchases of new principal residences made within one year of the Act, the maximum allowable for this 10 percent credit has been increased to \$8,000 (married filing jointly, with a 36-month holding period to avoid credit recapture).

Deduction for sales and excise taxes on new car purchases

This is a new, above-the-line (meaning non-itemizers can qualify) deduction applying to new cars purchased after Nov. 12, 2008 and before Jan. 1, 2010. Sales and excise taxes on vehicles (applies to SUVs and light trucks as well, but not over \$49,500 in price) qualify. This new deduction phases out at higher income levels (\$125,000 single, \$250,000 married)

Earned income credit

For 2009 and 2010, the earned income credit rate is increased to 45 percent for families with three or more children and is slightly increased for married couples.

Child tax credit

The refundable child tax credit is available to more families for 2009 and 2010 because the “floor” has been lowered to \$8,100.

Health coverage tax credit rate increase

For taxpayers paying their own health insurance premiums, this credit is now 80 percent of premiums for the taxpayer and qualifying family members.

Computers as qualified education expenses

Computers and computer technology (including internet access), indispensable in college today, are qualified education expenses for Section 529 plans in 2009 and 2010.

Average unemployment benefits now exempt from taxation

Under prior law, all unemployment benefits were subject to federal income tax. Average monthly unemployment benefits are \$300, and the Act exempts \$2,400 of such benefits from income tax in 2009.