

# TAX ALERT

## THE AMERICAN RECOVERY AND REINVESTMENT TAX ACT OF 2009

Now that it is signed into law, the American Recovery and Reinvestment Tax Act of 2009 ("Act") provides new tax provisions, along with enhancements to existing provisions, for businesses and individuals. In addition, the Act provides new energy incentives and help for state/local governments. This Alert summarizes the major provisions of the Act.

### BUSINESS TAX PROVISIONS

#### Bonus Depreciation

The Act extends the 50-percent, first-year bonus depreciation through December 31, 2009, retroactive to January 1, 2009. Also extended for bonus depreciation purposes, the dollar cap for new vehicles placed in service in 2009 is raised again by \$8,000.

#### Code Sec. 179 Expense

The Act extends the 2008 increased Code Sec. 179 expense amounts to 2009. The increased Section 179 expense is \$250,000 and the increased threshold for reducing the Section 179 expense is \$800,000.

#### Net Operating Loss Carryback

The Act provides a five-year carryback of 2008 net operating losses (NOLs) for qualified small businesses with average gross receipts of \$15 million or less. The new law gives these businesses the choice to carry back NOLs three, four, or five years. There is an election available to fiscal-year taxpayers to treat tax years beginning in 2008 as an applicable 2008 NOL year instead of tax years ending in 2008.

#### Refundable Credits in Lieu of Bonus Depreciation

The Act extends the 2008 law allowing businesses to elect to claim unused AMT and R&D credits in lieu of the 50 percent bonus depreciation. The Act's extension applies to all property qualifying for bonus depreciation placed in service through 2009. The credit amount allowed is increased by the bonus depreciation amount, which is 20 percent of the difference between depreciation claimed on eligible property with and without the bonus depreciation, subject to certain limits.

#### Work Opportunity Tax Credit

Two new categories of targeted groups under the existing Work Opportunity Tax Credit are created under the Act – unemployed veterans and

disconnected youth. These new categories apply to individuals who are hired and begin work in 2009 or 2010.

### Cancellation of Indebtedness

Certain businesses will be eligible to elect to recognize cancellation of indebtedness income over five years, beginning in 2014, for specified types of business debt repurchased by the business after December 31, 2008, and before January 1, 2011, under the Act. The specified types of business debt include a bond, debenture, note, certificate, or any other instrument constituting indebtedness issued by a C corporation or any other person in connection with the conduct of a trade or business by such person.

### NOL Limitations on Banks Reinstated

Notice 2008-83 is repealed under the Act, effective for ownership changes after January 16, 2009. The repealed provision allowed banks to exclude certain losses from the Code Sec. 382 loss limitations.

### Qualified Small Business Stock

The Act increases the exclusion of gain from the sale of certain small business stock acquired and held for more than five years from 50 percent of the gain to 75 percent for stock acquired after enactment of the Act and before January 1, 2011. A small business cannot have assets over \$50 million and must conduct an active trade or business.

### S Corp Built-In Gain Period

The holding period for assets subject to the built-in gains tax after a C corp elects S corp status is temporarily shortened, from ten to seven years. The seven-year period applies to S corp conversions in tax years beginning in 2009 and 2010.

### Estimated Taxes

Certain individuals whose primary source of income is from a small business are allowed to make

smaller quarterly estimated tax payments in 2009 under the Act. The reduced estimated tax payments can be based on 90 percent of 2008 taxes instead of 100 percent. To qualify for the reduced tax estimates, the individual's AGI must be less than \$500,000 and he/she must certify that more than 50 percent of the gross income for the prior year was income from a small business (average number of employees must be no more than 500).

### New Markets Tax Credit (NMTC)

The Act increases the NMTC program by authorizing additional allocations of \$5 billion for 2008 and 2009.

### COBRA Benefits

Individuals who are involuntarily separated from employment between September 1, 2008, and January 1, 2010 may elect to pay 35 percent of his/her COBRA coverage and have it treated as paying the full amount under the Act. The remaining 65 percent will be paid by the former employer. The former employer will be reimbursed for these payments with credits against income tax withholding and payroll taxes remitted.

## **INDIVIDUAL TAX PROVISIONS**

### Making Work Pay Credit

The Act allows a credit against income tax in an amount equal to the lesser of 6.2 percent of an individual's earned income or \$400 (\$800 for married couples filing jointly). This credit applies retroactively to the start of 2009 and extends through 2010. The credit is phased out, beginning at modified adjusted gross income of \$75,000 (\$150,000 for married couples filing jointly). Only individuals with earned income would qualify for this credit. The credit is, in effect, an offset to the

individual's share of FICA payroll taxes on the first \$6,452 in earnings (\$12,904 for couples). The employer's share of the FICA remains unchanged.

### [\\$250 Economic Recovery Payment](#)

One-time payments of \$250 to individuals on fixed income (primarily Social Security recipients, railroad retirees, and disabled veterans) are provided by the Act. These payments will reduce any Making Work Pay Credit that the individual would otherwise be entitled to. How these payments are to be distributed has not yet been announced.

### [AMT Patch](#)

The new Alternative Minimum Tax (AMT) "patch" provided for under the Act raises the 2009 AMT exemption slightly above the 2008 levels. The 2009 AMT exemption amounts are: \$70,950 for joint filers and surviving spouses and \$46,700 for singles and heads of households.

### [First Time Homebuyer Tax Credit](#)

Under the Act, the maximum first-time homebuyer tax credit is raised to \$8,000, and is extended through November 30, 2009. The original requirement that this credit be repaid to the IRS is also eliminated under the Act after 36 months in the home. These changes apply to purchases of a principal residence by first-time homebuyers after December 31, 2008. The original requirements apply to purchases on or after April 9, 2008, and before January 1, 2009. The original phaseouts still apply, starting at AGI in excess of \$75,000 (\$150,000 for joint filers).

### [New Car Deduction](#)

Purchasers of new vehicles are allowed an above-the-line deduction for state and local sales taxes or excise taxes paid on purchases made in 2009, after the date of enactment of the Act. The deduction is based on the sales or excise taxes paid on the first

\$49,500 of the purchase price and is phased out for any tax year in which the purchaser had adjusted gross income exceeding \$125,000 (\$250,000 for joint returns). Any newly purchased vehicle weighing no more than 8,500 gross pounds first used by the taxpayer generally qualifies for the deduction. Sales taxes paid on a lease agreement do not qualify.

### [Child Tax Credit](#)

The Act increases the refundable portion of the child tax credit for 2009 and 2010 by setting the income threshold at \$3,000.

### [Education Tax Credit](#)

The Act makes several temporary enhancements to the existing HOPE education credit. The amount of the credit is increased to \$2,500 per year. The credit is extended to all four years of college and adds course materials to qualifying expenses. The phaseout level is also increased, to \$80,000 (\$160,000 for joint filers). The credit is also renamed under the Act and is now the "American Opportunity Tax Credit." These changes are made retroactively to January 1, 2009.

### [Earned Income Tax Credit \(EITC\)](#)

A temporary increase in the EITC for 2009 and 2010 is provided by the Act. This temporary change increases the credit percentage for taxpayers with two or more qualifying children to 45 percent of the first \$12,570 of earned income. The EITC phaseout range has also been increased by \$1,880 for joint filers.

### [Unemployment Compensation](#)

The Act temporarily excludes up to \$2,400 of unemployment compensation from a recipient's gross income for 2009 for federal tax purposes.

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## Qualified Tuition Programs

For 2009 and 2010, the Act allows beneficiaries of qualified tuition programs (529 plans) to use tax-free distributions to pay for computers and computer technology, including Internet access.

## Transit Benefits

The Act increases the qualified transportation fringe benefit exclusion for transit passes and van-pooling to \$230 per month for 2009, starting in March 2009. This increase continues through 2010 with an inflation adjustment.

## **ENERGY INCENTIVES**

### Residential Energy Property Credit

Effective for eligible property placed in service after December 31, 2008, and before January 1, 2011, the Code Sec. 25C residential energy property tax credit is increased from 10 percent to 30 percent. The maximum cap is increased to a \$1,500 aggregate amount for 2009 and 2010 installations, and the \$500 lifetime cap is eliminated. The improvements eligible for the Code Sec. 25C credit includes insulation materials, exterior windows, skylights, exterior doors, central air conditioners, natural gas, propane or oil water heaters or furnaces, hot water boilers, electric heat pump water heaters, certain metal roofs, stoves, and advanced main air circulating fans.

### Residential Energy Efficient Property Credit

The Act removes the individual dollar caps under the Code Sec. 25D residential energy efficient property credit for solar hot water property, geothermal heat pumps, and wind energy property. A \$500 credit cap on qualified fuel cell property expenditures is included under the Act.

## Alternative Fuel Pump Tax Credit

The Act increases the credit for alternative fuel vehicle refueling property for commercial and retail refueling stations for 2009 and 2010. The credit is increased to 50 percent of the cost of property placed in service at each location in 2009 and 2010 (capped at \$50,000). For individuals, the credit is also increased to 50 percent (capped at \$2,000). The 30-percent credit continues to apply to hydrogen refueling property, but the maximum credit is increased to \$200,000.

## Renewable Electricity Production Credit

The Code Sec. 45 credit for electricity produced from renewable sources is generally extended through 2013. The credit for wind facilities is extended through 2012.

## Energy Investment Credit

The Act removes the credit cap for qualified small wind-energy property under the Code Sec. 48 energy investment credit.

## Investment Credit Election

The Act generally allows producers eligible for the Code Sec. 45 production tax credit to elect to treat certain qualified alternative energy facilities as energy property eligible for a 30-percent investment credit under Code Sec. 48.

## **HELP FOR STATE/LOCAL GOVERNMENTS**

### AMT Limits on Municipal Bonds

The Act excludes interest on all private activity bonds issued in 2009 and 2010 from treatment as a tax-preference item subject to an individual's AMT.

In addition, there is generally no adjustment to a corporation's adjusted current earnings (ACE) for tax-exempt interest on bonds issued after December 31, 2008 and before January 1, 2011.

#### Tax-Exempt Interest Paid to Financial Institutions

A de minimis safe harbor for financial institutions deducting interest expense allocable to investment in tax-exempt municipal bonds issued in 2009 and 2010 is provided for under the Act.

#### Enhancement of Existing Bond Programs and Creation of New Programs

The Act temporarily provides for new categories of tax-exempt bonds - Recovery Zone bonds, Build America bonds, Qualified School Construction bonds, and Tribal Economic Development bonds. The Act also enhances the scope of existing bond programs - Industrial Development bonds, Qualified Zone Academy bonds, and High-Speed Rail bonds.

#### Low-Income Housing Credit

The Act authorizes the federal government to make grants for low-income housing projects in lieu of low-income housing credit allocations for 2009.

#### IRS CIRCULAR 230 DISCLOSURE

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#### **Questions?**

If you wish to discuss any of the above items, please contact either Charles Marston or Rich Pacella at (724) 934-0344, or email at [cmarston@srsnodgrass.com](mailto:cmarston@srsnodgrass.com) or [rpacella@srsnodgrass.com](mailto:rpacella@srsnodgrass.com).