

## Re: 2009 Recovery Act: Businesses

On February 17, President Obama signed a massive \$800 billion economic stimulus package, which Congress had passed a few days earlier. The American Recovery and Reinvestment Act (2009 Recovery Act) is a mixture of tax incentives, including business tax cuts, and direct spending. Although the business tax cuts are not as numerous as many taxpayers may have hoped, they are nonetheless valuable. In this letter, we'll highlight the key incentives targeted to businesses. As always, please contact our office if you have any questions.

***Bonus depreciation.*** Bonus depreciation is back for 2009. The 2009 Recovery Act extends the 50 percent bonus depreciation authorized by the Economic Stimulus Act of 2008, which generally expired at the end of 2008. Businesses can take advantage of bonus depreciation throughout 2009 (and longer for certain types of property). Bonus depreciation is taken on top of regular depreciation. Keep in mind that a large current depreciation deduction results in smaller future deductions so careful planning is an absolute must. To allow vehicles to continue to be depreciated at a higher level, the 2009 Recovery Act also adds \$8,000 to the "caps" ordinarily placed on such deductions. Especially useful to businesses with accumulated AMT and research tax credits on their tax books, the 2009 Recovery Act also allows eligible businesses to monetize these credits in lieu of taking bonus depreciation for 2009.

***Code Sec. 179 expensing.*** Increased Code Sec. 179 expensing is also back for 2009. The Economic Stimulus Act of 2008 increased Code Sec. 179 expensing for 2008 to \$250,000 and the threshold for reducing the deduction to \$800,000. However, the enhanced provision expired at the end of 2008. The 2009 Recovery Act revives it for 2009.

***Net operating losses.*** Many taxpayers expected Congress to extend the carryback period for net operating losses (NOLs) to five years. The 2009 Recovery Act does so, but limits this important relief for qualified small businesses (businesses with average gross receipts of \$15 million or less). The treatment is also temporary and only applies to NOLs for any tax year beginning or ending in 2008. Qualified businesses can choose to carry back NOLs three, four or five years. Immediate refunds are available to businesses that qualify. Taxpayers that previously elected to forego the two-year carryback for 2008 NOLs can revoke that election and make a new election to claim the extended carryback under the new law. However, the revocation had to have been made by April 17, 2009.

***Cancellation of indebtedness.*** Many taxpayers also expected Congress to provide tax relief for companies that purchase their own or related party debt at a discount. The 2009 Recovery Act addresses cancellation of indebtedness but not as generously as many taxpayers had hoped. Eligible businesses will be able to recognize cancellation of certain indebtedness over five years, beginning in 2014, under the new law. This treatment applies to specified types of business debt repurchased or forgiven by the business after December 31, 2008 and before January 1, 2011.

***Work Opportunity Tax Credit.*** Congress has taken a special interest in the Work Opportunity Tax Credit (WOTC) as a mechanism to encourage employers to hire individuals who are economically-challenged. The 2009 Recovery Act modifies the definitions of eligible veterans and disconnected youth to bring more individuals under the WOTC. This treatment is temporary.

***S corporations.*** A built-in gains tax applies to corporations that make an S corporation election. The tax is computed by applying the highest corporate tax rate to the net recognized built-in gain of the S corporation for the tax year. The 2009 Recovery Act reduces the recognition period for assets subject to the built-in gains tax from 10 to seven years, for dispositions in tax years beginning in 2009 and 2010.

***Small business stock.*** Generally, an investor other than an entity doing business as a C corporation, may exclude 50 percent of the gain from the sale or exchange of "qualified small business stock." The 2009 Recovery Act new law raises the 50 percent exclusion to 75 percent. However, the increase is temporary and applies to stock acquired after the date of enactment and before January 1, 2011. Holding period rules also apply.

***Executive compensation.*** The economic slowdown cast a spotlight on the executive compensation practices of Wall Street firms and many lawmakers are unhappy with what they see as "excessive" compensation. The 2009 Recovery Act reflects the changing mood in Congress. Lawmakers especially singled-out expenditures for luxury items by companies receiving financial assistance from the government's Troubled Asset Relief Program (TARP) for more regulation. Congress also directed the Treasury Secretary to review bonuses, awards and other incentives paid to senior executives at these firms and determine if the payments were contrary to public interest.

***COBRA.*** Individuals who are involuntarily separated from employment between September 1, 2008 and January 1, 2010 can elect to pay 35 percent of their premiums for COBRA coverage and will be treated under the new law as paying the full amount. The former employer will pay the remaining 65 percent of the premium. In return, the employer will be able to credit its share of this temporary COBRA subsidy against wage withholdings and payroll taxes. The COBRA subsidy is generally only available for nine months. The Department of Labor has issued model notices that employers can send to former employees who are eligible for the COBRA subsidy. The IRS has also issued guidance on what qualifies as involuntary termination for purposes of the COBRA subsidy.

***Energy incentives.*** Producers of alternative and renewable energy are definite winners under the 2009 Recovery Act. Congress has rewarded them with significant increases in energy tax incentives. Among the incentives are an enhanced renewable electricity production tax credit, an expanded energy investment tax credit, an increased alternative fuel pump tax credit, and an investment credit election. The incentives are temporary.

***First-time homebuyer credit.*** While the first-time homebuyer credit is thought of as being targeted to individuals, it will impact businesses, especially home construction. The U.S. housing market is in one of its steepest slumps in recent memory. The 2009 Recovery Act extends the first-time homebuyer tax credit to include purchases made before December 1, 2009. The 2009 Recovery Act also raises the credit to \$8,000 and eliminates the repayment requirement. Home builders, sellers and others in the housing industry need to market this credit aggressively.

***More incentives.*** The 2009 Recovery Act also prospectively revokes a controversial IRS notice affecting NOL limitations on banks and expands the health coverage tax credit for eligible taxpayers. The new law also increases the New Markets Tax Credit program, modifies the low income housing credit, decreases estimated tax payments for certain individuals whose incomes come from small businesses and delays withholding on government contractors. For the auto industry and consumers alike, the new law allows the sales tax paid on a new vehicle purchase from February 17, 2009 through December 31, 2009 as a deduction whether or not an individual itemizes deductions. Congress also enhanced many tax-exempt and tax-credit bond rules to help states and local governments generate revenue.

This letter is just a brief snapshot of the business incentives. As you've noted, most are temporary. Don't delay in contacting our office to learn more about these tax incentives. We're ready to help you maximize your tax savings.