

2009 Recovery Act

FEBRUARY 17, 2009

BE IN A POSITION OF STRENGTH

The recently enacted "American Recovery and Reinvestment Act of 2009" (the "2009 Economic Stimulus Act") contains a wide-ranging tax package that includes tax relief for both individuals and businesses. In addition, the 2009 Economic Stimulus Act includes incentives to encourage investments in renewable energy projects or more-efficient technologies.

INDIVIDUAL TAX PROVISIONS

"Making Work Pay" credit. The new law provides an individual tax credit in the amount of 6.2 percent of earned income not to exceed \$400 for single returns and \$800 for joint returns in 2009 and 2010. The credit is phased out at adjusted gross income (AGI) in excess of \$75,000 (\$150,000 for married couples filing jointly). The credit can be claimed as a reduction in the amount of income tax that is withheld from a paycheck, or through a credit on a tax return. Under the credit, workers can expect to see perhaps \$13 a week less withheld from their paychecks starting around June. Next year, the extra take-home pay will go down to around \$9 per week.

Economic recovery payment. The new law provides for a one-time payment of \$250 to retirees, disabled individuals and Social Security beneficiaries and SSI recipients receiving benefits from the Social Security Administration and Railroad Retirement beneficiaries, and to veterans receiving disability compensation and pension benefits from the U.S. Department of Veterans' Affairs. The one-time payment is a reduction to any allowable Making Work Pay credit.

Refundable credit for certain federal and state pensioners. The new law provides a one-time refundable tax credit of \$250 in 2009 to certain government retirees who are not eligible for Social Security benefits. This one-time credit is a reduction to any allowable Making Work Pay credit.

THE 2009 ECONOMIC STIMULUS ACT PROVIDES TAX RELIEF FOR INDIVIDUALS AND BUSINESSES, AS WELL AS INCENTIVES FOR INVESTMENT IN ENERGY TECHNOLOGY.

Questions or comments?

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Unemployment compensation exclusion. A provision temporarily suspends federal income tax on the first \$2,400 of unemployment benefits received by a recipient in 2009.

Expanded earned income tax credit. The new law provides tax relief to families with three or more children and increases marriage penalty relief. The changes apply for 2009 and 2010.

Expanded child tax credit. A measure increases the eligibility for the refundable child tax credit in 2009 and 2010 by lowering the threshold to \$3,000 (from \$8,500 in 2008).

Expanded and revised higher education tax credit. The new law creates a \$2,500 higher education tax credit that is available for the first four years of college. The credit is based on 100% of the first \$2,000 of tuition and related expenses (including books) paid during the tax year and 25% of the next \$2,000 of tuition and related expenses paid during the tax year, subject to a phase-out for AGI in excess of \$80,000 (\$160,000 for married couples filing jointly). Forty percent of the credit is refundable. The new credit temporarily replaces the Hope credit.

Computers as an education expense. A provision permits computers and computer technology to qualify as qualified education expenses in 529 education plans for tax years beginning in 2009 and 2010.

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Expanded first-time credit for first-time home buyers. Last year, Congress provided taxpayers with a refundable tax credit that was equivalent to an interest-free loan equal to 10% of the purchase of a home (up to \$75,000) by first-time home buyers. The provision applied to homes purchased on or after April 9, 2008 and before July 1, 2009. Taxpayers receiving this tax credit were required to repay any amount received under this provision back to the government over 15 years in equal installments (or earlier if the home was sold). The credit phases out for taxpayers with adjusted gross income in excess of \$75,000 (\$150,000 in the case of a joint return). The new law enhances the credit by eliminating the repayment obligation for taxpayers that purchase homes on or after January 1, 2009. It also extends the credit through the end of November 2009, and bumps up the maximum value of the credit from \$7,500 to \$8,000.

Tax break for new car purchasers. The new law allows taxpayers to deduct state and local sales taxes paid on the purchase of a new automobile, including light trucks, SUVs, motorcycles, and motor homes. The tax break phases out starting with taxpayers earning \$125,000 per year (\$250,000 for joint returns). The deduction is allowed to both those who itemize their deductions as well as to non-itemizers. However, the deduction cannot be taken by a taxpayer who elects to deduct state and local sales taxes in lieu of state and local income taxes.

Alternative minimum tax (AMT) patch. To hold the number of taxpayers subject to the AMT at bay, the new law increases the AMT exemption amounts for 2009 to \$46,700 for individuals and \$70,950 for joint returns, and allows the personal credits against the AMT.

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BUSINESS TAX PROVISIONS

Extension of bonus depreciation. Last year, Congress temporarily allowed business to recover the costs of capital expenditures made in 2008 faster than the ordinary depreciation schedule would allow by permitting these businesses to immediately write off 50% of the cost of depreciable property acquired in 2008 for use in the United States. The new law extends this temporary benefit for qualifying property purchased and placed into service in 2009.

Extension of enhanced small business expensing (Section 179). In order to help small businesses quickly recover the cost of certain capital expenses, small business taxpayers may elect to write off the cost of these expenses in the year of acquisition in lieu of recovering these costs over time through depreciation. Last year, Congress temporarily increased the amount that small businesses could write off for capital expenditures incurred in 2008 to \$250,000 and increased the phase-out threshold for 2008 to \$800,000. The new law extends these temporary increases for capital expenditures incurred in 2009.

Expanded loss carryback of net operating losses for small businesses. Under pre-Act law, net operating losses (NOLs) may be carried back to the two years before the year that the loss arises and carried forward to each of the succeeding twenty years after the year that the loss arises. For 2008, the new law extends the maximum NOL carryback period from two years to five years for small businesses with gross receipts of \$15 million or less.

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Incentives to hire unemployed veterans and disconnected youth. Businesses are allowed to claim a work opportunity tax credit equal to 40% of the first \$6,000 of wages paid to employees of one of nine targeted groups. The new law expands the work opportunity tax credit to include two new targeted groups: (1) unemployed veterans; and (2) disconnected youth. Individuals qualify as unemployed veterans if they were discharged or released from active duty from the Armed Forces during 2008, 2009 or 2010 and received unemployment compensation for more than four weeks during the year before being hired. Individuals qualify as disconnected youths if they are between the ages of 16 and 25 and have not been regularly employed or attended school in the past 6 months.

Extension of monetization of accumulated AMT and R&D credits in lieu of bonus depreciation. The new law extends the provision contained in the Foreclosure Prevention Act of 2008 and allows AMT and loss taxpayers in 2009 to receive 20% of the value of their old AMT or research and development (R&D) credits to the extent such taxpayers invest in assets that qualify for bonus depreciation.

Delayed recognition of certain cancellation of debt income. To benefit certain businesses that buy their own debt at a discount, the new law lets the businesses recognize cancellation of debt income ("CODI") over 10 years (defer tax on CODI for the first four or five years and recognize this income ratably over the following five tax years) for specified types of business debt repurchased by the business in 2009 or 2010.

Qualified small business stock. The new law increases the exclusion for gain from the sale of certain small business stock held for more than five years from 50% to 75% for stock issued after the enactment date and before 2011.

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S Corp holding period. The new law temporarily shortens the holding period of assets subject to the built-in gains tax from 10 years to seven years. This provision is generally effective for S elections filed prior to 2004.

Repeal of IRS's built-in loss rules. The new law provides a prospective repeal of Notice 2008-83, the controversial IRS guidance which provided that if a bank recognizes a loss from the disposition of a loan or takes a bad debt deduction under the specific charge-off or reserve methods of accounting after a change in ownership, that loss or deduction will not be treated as a built in loss attributable to the pre-acquisition period.

ENERGY INCENTIVES

Long-term extension and modification of renewable energy production tax credit. The new legislation extends the placed-in-service date for wind facilities for three years (through December 31, 2012). It also extends the placed-in-service date through December 31, 2013 for certain other qualifying facilities: closed-loop biomass; open-loop biomass; geothermal; small irrigation; hydropower; landfill gas; waste-to-energy; and marine renewable facilities.

Temporary election to claim the investment tax credit in lieu of the production tax credit. Facilities that produce electricity from solar facilities are eligible to take a 30% investment tax credit in the year the facility is placed in service. Facilities that produce electricity from wind, closed-loop biomass, open-loop biomass, geothermal, small irrigation, hydropower, landfill gas, waste-to-energy, and marine renewable facilities are eligible for a production tax credit, payable over a ten-year period. The Act provides a temporary election to claim the investment tax credit in lieu of the production tax credit.

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Business energy credit. The new law enhances the business energy credit by eliminating the cap on small wind property and repealing the basis reduction requirement for subsidized energy financing.

Energy-efficient existing homes. The new law extends the tax credits for improvements to energy-efficient existing homes through 2010. For 2009 and 2010, the amount of the tax credit is increased from 10% to 30% of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements during the tax year. The property-by-property dollar caps on the tax credit are also eliminated, and an aggregate \$1,500 cap applies to all property qualifying for the credit.

Residential energy property. The new law removes the dollar limitations on certain energy credits, e.g. for qualified small wind energy property (\$4,000 cap); for qualified solar water heating property (\$2,000 cap); and qualified geothermal heat pumps (\$2,000).

Tax credits for alternative fuel pumps. The new law provides an increase for 2009 and 2010 in the 30% alternative refueling property credit for businesses (capped at \$30,000) to 50% (capped at \$50,000).

Credit for investment in advanced energy facilities. The new law establishes a new manufacturing investment tax credit for investment in advanced energy facilities, such as facilities that manufacture components for the production of renewable energy, advanced battery technology, and other innovative next-generation green technologies.

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Vehicles. The new law provides a tax credit for purchases of plug-in electric drive vehicles ranging from \$2,500 to \$7,500 depending on battery capacity. The new law also restores and updates the electric vehicle credit for plug-in electric vehicles that would not otherwise qualify for the larger plug-in electric drive vehicle credit and provides a tax credit for plug-in electric drive conversion kits.

More funding for bonds. The new law authorizes additional funds for new clean renewable energy bonds and qualified energy conservation bonds.

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