



## Provisions to Help Small Business in The American Recovery and Reinvestment Act

The following is a summary on the benefits to small business contained in the recent economic stimulus bill, which we had reviewed by one our members who is an accountant. We strongly urge that you consult with your accountant regarding the applicability to your specific corporation and operation before making financial decisions based on this summary. Some of the benefits are only available to certain types of corporate entities and others are only of benefit if you are profitable.

**Bonus depreciation:** IRC section 168(k) is amended to extend the 50% first-year bonus depreciation through 2009 (through 2010 for certain transportation property and aircraft).

The election to accelerate AMT and research credits in lieu of taking the bonus depreciation (which had been introduced last year by the Housing Assistance Tax Act, P.L. 110-289) is also extended to qualifying property placed in service through 2009. Special rules apply to taxpayers who had already made this election for property placed in service in 2008. This provision will allow businesses to accelerate income protection in 2008 and 2009 if the economic decline hasn't hit you yet, but you project that it will in the future. You can move expenses that would have been spread out in the future into the current operating year.

**Section 179 expensing:** The increase in the section 179 expensing amount to \$250,000 and the increase in the phase-out threshold to \$800,000 are both extended through 2009. The amounts had originally been temporarily increased (for 2008) by the Economic Stimulus Act of 2008, P.L. 110-185. This keeps the writing off of large equipment and livestock purchases as an expense in the year purchased alive for at least a couple more years. Again this is an effective acceleration technique in anticipation of poor income performance in the future.

**Carryback of small business NOLs:** Eligible small businesses are allowed to carry their 2008 net operating losses (NOLs) back for five years (section 172(b)(1)(H)). An eligible small business is one that has average gross receipts of \$15 million or less (using the gross receipts test from section 448(c)). The act gives Treasury authority to publish anti-abuse rules relating to this provision. This provision could be huge boon to some small businesses. Essentially, a net operating loss carryback simply allows you to take a loss generated in one year and move it back to offset income earned in another year. So, if you had a few really good years 5 or less years ago, and you have already felt the pinch of the slowdown in 2008 numbers, you will be now able to carry the loss back five years instead of just three. These are new found tax refund dollars not previously available. Congress was urged to extend this benefit to the operating losses in 2009 and 2010 but did not do so.

**Small business estimated taxes:** Qualified individuals are allowed (for 2009 only) to make estimated tax payments that equal only 90% of their preceding tax year liability instead of 100% (under section 6654(d)(1)). To be a qualified individual, the taxpayer must have adjusted gross income (AGI) of less than \$500,000 and more than 50% of the individual's gross income must come from a small business (a business with an average of fewer than 500 employees). Essentially this provision is allowing a more accurate payment of taxes as you go in anticipation of having less taxable income at the end of the year. However it should be noted that this is not a



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tax break, it is a cash flow break. Your rates remain the same you just don't have to pay 100% of the liability equal to last year throughout the year.

**Work opportunity tax credit:** The act creates two new targeted groups for the work opportunity tax credit, "disconnected youth" and unemployed veterans (section 51(d)(14)). Employers who hire members of these groups during 2009 or 2010 may be eligible to take the credit. Remember on all tax credits, you have to have generated taxable income to take advantage of credits

**Discharge of business indebtedness:** The act allows certain businesses to recognize cancellation of indebtedness income over five years, starting in 2014, if the business repurchases specific types of debt in 2009 or 2010 (section 108(i)). Essentially this takes the "bite" out of phantom income hitting you all at the time of debt forgiveness by spreading it out.

**Qualified small business stock:** The section 1202 exclusion of gain from the sale of qualified small business stock is increased from 50% to 75%, for stock acquired after the enactment date and before Jan. 1, 2011. This is an attempt to get small business that are for sale and are sold on a stock sale basis to not be as taxable. The problem is no one ever does stock purchases of small businesses because of the liability associated with it.

**S corporations:** The recognition period for assets subject to the built-in gains tax is reduced from 10 years to seven years for S corporation tax years beginning in 2009 and 2010 (Section 1374(d)(7)). Again this is a measure to relieve some of the penalty out of selling businesses that are held in a Sup Chapter S format.

**Energy credits:** The act also includes a number of energy incentives aimed at both individuals and businesses, including increases in the section 25C residential energy property credit, the section 25D residential energy efficiency property credit, and the energy investment credit under section 48.

We will be investigating the potential for earning energy credits, which may of increasing importance especially for those businesses that are operating in national parks