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American Recovery and Reinvestment Act of 2009

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On Feb. 17, 2009, the President signed into law the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, H.R. 1, 111th Cong., 1st Sess. (2009). The legislation contains tax provisions (in Division B, Title I) and is part of a larger bill designed to stimulate the economy out of the deep recession now gripping the country. This article summarizes the major tax provisions in that portion of the bill. Provisions not found in Title I of Division B are marked as in Title II or Title III.

Business provisions

Expense Method Depreciation.

The Act extends the 2008 level of expense method depreciation under I.R.C. § 179 (\$250,000) to 2009 with the phase-out beginning at \$800,000 as was the case in 2008. Act § 1202, amending I.R.C. § 179(b)(7).

“Bonus” Depreciation. The Act extends the 50 percent bonus depreciation through Dec. 31, 2009, for new property (the original use of

which commences with the taxpayer), retroactive to Jan. 1, 2009.

The legislation raises the regular dollar cap for new vehicles placed in service in 2009 by \$8,000 which elevates the maximum amount of first year depreciation for passenger automobiles to \$10,960 (\$11,160 for trucks and vans). Act § 1201, amending I.R.C. § 168(k)(2).

NOL Carryback. The 2009 legislation provides for a three, four or five year carryback of 2008 net operating losses (the choice is up to the taxpayer) but only for qualified small businesses with average gross receipts of \$15 million or less. This provision is effective for tax years beginning or ending in 2008. Unless changed further, the regular two-year carryback returns for 2009. Businesses that had made an election applicable to its NOL can revoke that election within 60 days to take advantage of the longer three, four or five year carryback. Act § 1211, amending I.R.C. § 172(b)(1)(H).

The provision does not change the five year carryback for “farming losses.”

Handbook updates

For those of you subscribing to the handbook, the following updates are included.

Historical Corn Yields by County – A1-12 (10 pages)

Historical Soybean Yields by County – A1-13 (10 pages)

Iowa Corn and Soybean County Yields – A1-14 (4 pages)

2009 Iowa Custom Rate Survey – A3-10 (2 pages)

Please add these files to your handbook and remove the out-of-date material.

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Work Opportunity Tax Credit. The 2009 Act creates two new categories of target groups under the Work Opportunity Tax Credit – unemployed veterans and disconnected youth (ages 16 through 24), applicable to individuals who are hired and begin work in 2009 or 2010. Act § 1221, amending I.R.C. § 51(d)(14).

Discharge of Indebtedness. The 2009 Act permits eligible businesses to elect, irrevocably, to recognize discharge of indebtedness income over five years, beginning in 2014, for specified types of business debt repurchased by the business after Dec. 31, 2008 and before Jan. 1, 2011. The provision is for bonds, debentures, notes, certificates or other instruments constituting indebtedness issued by a C corporation or any other person in connection with the conduct of a trade or business carried on by the person. The Act also provides for the acceleration of deferred items under certain circumstances (such as liquidation, sale of substantially all of the assets of the taxpayer or cessation of business by the taxpayer. Act § 1231, adding I.R.C. § 108(i).

Qualified Small Business Stock. The 2009 legislation increases the exclusion for qualified small business stock from 50 percent of the gain on sale to 75 percent for stock acquired after the date of enactment (Feb. 17, 2009) and before Jan. 1, 2011. For this purpose, a “small business” cannot have assets over \$50 million and must be conducting an active trade or business. Act § 1241, amending I.R.C. § 1202(a)(3).

Decreased Estimated Tax Payments. Owners of qualifying small businesses are eligible for reduced estimated tax payments for 2009 (substituting 90 percent for 100 percent) if the owner’s adjusted gross income is less than \$500,000 and more than 50 percent of the gross income was from a small business. Act § 1212, amending I.R.C. § 6654(d)(1)(D).

S Corporation Built-In Gains. The 2009 Act shortens, temporarily, from ten to seven years, the holding period for assets subject to the built-in gains tax imposed when a C corporation elects to become an S corporation. The provision applies to C corporations converting to S corporation status where the seventh taxable year (in the 10-year recognition period) preceded the taxable year (2009 or 2010). Act § 1251, amending I.R.C. § 1374(d)(7).

NOL Limitations on Banks. The 2009 law reinstates the net operating loss limitations in effect before the

issuance of Notice 2008-83, 2008-2 C.B. 905. That notice provided relief from the net operating loss limitations for corporations acquiring a financially-strapped bank despite the I.R.C. § 382 limitations. Members of Congress registered objections with the result that the IRS action was reversed. However, the provision states that the Notice is effective for ownership changes occurring on or before Jan. 16, 2009, or that were pursuant to a binding written contract on that date. Act § 1261.

New Markets Tax Credit. The 2009 tax bill increases the authorization for additional allocations of \$5 billion for 2008 and \$5 billion for 2009 for the New Markets Tax Credit. Act § 1403, amending I.R.C. § 45D(f)(1).

COBRA Premium Cost Sharing. The 2009 law reduces the premium payment for laid-off workers to 35 percent of the premium with the former employer responsible for the remaining amount (65 percent). The legislation allows employers to credit their share of the premium payment against wage withholding and payroll taxes. The premium is limited to those with incomes of less than \$125,000 for singles, \$250,000 for married filing jointly.

The loss of the job must have occurred between Sept. 1, 2008 and Dec. 31, 2009. For those who lost their jobs after Sept. 1, 2008, and declined COBRA coverage, they have another chance to benefit from the new provision. Act § 3001, Title III,

Individual tax incentives

Making Work Pay Credit. The Making Work Pay provisions allows a refundable credit against income tax in an amount equal to the lesser of 6.2 percent of earned income or \$400 (\$800 for married taxpayers filing jointly). The credit is retroactive to Jan. 1, 2009 and extends through 2010. The credit phases out above \$75,000 (\$150,000 on a joint return). The provision effectively offsets an individual’s share of FICA payroll taxes for the first \$6452 in earnings (\$12,904 for married filing jointly). The credit applies to employers and self-employed individuals. Act § 1001, adding I.R.C. § 36A.

The credit is not available to non-resident aliens, estates and trusts, and any individual who may be claimed as a dependent by another taxpayer. Id.

Economic Recovery Payment (\$250). The 2009 Act provides for a one-time payment of \$250 to individuals

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on fixed incomes (e.g., social security recipients, railroad retirees, disabled veterans and retired government employees). The credit reduces the Making Work Pay credit to which the individual is entitled. The payment is to arrive within 120 days after the date of enactment (Feb. 17, 2009). Act §§ 2201, 2202, Title II.

Alternative Minimum Tax. The 2009 law raises the alternative minimum tax exemption levels for 2009 to \$70,950 for joint filers and surviving spouses, up from \$69,950 for 2008 and to \$46,700 for singles and heads of households (up from \$46,200). Act § 1012, amending I.R.C. § 55(d)(1).

First-Time Home Buyers. The 2009 law increases the current maximum 10 percent first-time home buyer tax credit from \$7,500 to \$8,000 and eliminates any required payment after 36 months in the home. The provision applies to purchases of a principal residence by a first-time home buyer after Dec. 31, 2008, and before Dec. 1, 2009.

The phase-out limits beginning at \$75,000 (\$150,000 for joint filers) continue to apply to both credits. Act § 1006, amending I.R.C. § 36.

New Car Deduction for Taxes. The 2009 bill allows an above the-line deduction for purchases of new (not used) vehicles on or after Feb. 17, 2009, for state and local sales taxes or excise taxes paid on the purchase. The deduction is limited by the portion of the tax attributable to the first \$49,500 of the purchase price of any one vehicle and by an income phase-out beginning at \$125,000 (\$250,000 on a joint return).

The deduction applies to domestic and foreign automobiles, SUVs, light trucks, motor homes and motorcycles, weighing not more than 8,500 pounds gross weight. Taxes on a lease agreement do not qualify. Act § 1008, adding I.R.C. § 164(a)(6).

Education Tax Credit. The HOPE education credit, renamed the American Opportunity Tax Credit, is increased from \$1,800 to \$2,500 per year effective in 2009 and extended to four years of post-secondary education. The provision added course materials to qualifying expenses. The phase-out level is increased to \$80,000 (\$160,000 for joint filers). The credit is made 40 percent refundable. Under the new credit, the maximum credit of \$2,500 per year is allowed on \$4,000 of qualifying payments (100 percent of the first \$2,000, 25 percent of the next \$2,000). Act § 1004, amending I.R.C. § 25A(i).

Child Tax Credit. The 2009 Act reduces the \$8,500 income threshold for 2009 and 2010 to \$3,000 (in 2008, taxpayers were allowed a refundable credit equal to 15 percent of their earned income in excess of \$8,500 up to the child credit amount). Act § 1003, amending I.R.C. § 24(d)(4).

Earned Income Credit. The 2009 law increases the earned income credit for 2009 and 2010 to 45 percent of the first \$12,570 of earned income for taxpayers with three or more qualifying children. The phase-out is adjusted upward for joint filers to eliminate any marriage penalty. Act § 1002, amending I.R.C. § 32(b).

Unemployment Compensation. The 2009 law temporarily excludes up to \$2,400 in unemployment compensation from a recipient's gross income for taxable years beginning in 2009 only. Act § 1007, amending I.R.C. § 85(e).

Transportation Benefits. The 2009 Act increases the current \$120 per month income exclusion for transit passes and van pooling to \$230 per month (commencing in March of 2009 and running through 2010 with an inflation adjustment for 2010). Act § 1151, amending I.R.C. § 132(f)(2).

Qualified Tuition Programs. The 2009 law allows, for 2009 and 2010, the use of tax-free distributions from qualified tuition programs to pay for computers and computer technology, including internet access. The provision allows other family members to use the technology without allocation so long as the student uses the technology. Act § 1005, amending I.R.C. § 529(e)(3)(A).

Energy provisions

Residential Energy Property Credit. The 2008 legislation increases the I.R.C. § 25C residential energy property tax credit from 10 percent to 30 percent, raises the maximum cap to an aggregate amount of \$1,500 for 2009 and 2010 installations, eliminates the \$500 lifetime cap along with other minor changes. The changes are effective for property placed in service after Dec. 31, 2008, and before Jan. 1, 2011. Pre-2008 credits are not counted toward the \$1,500 maximum. Act § 1121, amending I.R.C. § 25C.

Improvements eligible for the Section 25C credit include insulation material; exterior windows, including skylights; exterior doors; central air conditioners; natural gas, propane or oil water heaters or furnaces;

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hot water boilers; electric heat pump water heaters; some metal roofs; stoves using renewable plant-derived fuels and advanced main circulating fans. Id.

Residential Energy Efficient Property Credit. The 2009 Act removes the individual dollar caps under the I.R.C. § 25D residential energy efficient property credit for solar hot water property, geothermal heat pumps and wind energy property. A \$500 credit cap is placed on qualified fuel cell property expenditures per half kilowatt of capacity. Act § 1122, amending I.R.C. § 25D(b).

Alternative Fuel Pump Tax Credit. The 2009 law increases the credit for alternative fuel vehicle refueling property for commercial and retail refueling stations in 2009 and 2010. The credit is increased from 30 percent to 50 percent and the cap is raised from \$30,000 to \$50,000. For individuals, the credit is also increased to 50 percent but the amount is capped at \$2,000. For hydrogen refueling property, the credit is capped at \$200,000. Act § 1123, amending I.R.C. § 30C(e)(6).

Renewable Electricity Production Credit. The 2009 Act extends the credit for electricity produced from re-

newable sources (such as wind) through 2013 for wind facilities in terms of the placed-in-service dates for qualified facilities. Act § 1101, amending I.R.C. § 45.

Plug-In Electric Vehicles. The 2009 bill modifies the credit for plug-in electric vehicles (base amount of \$2,500) with the credit reduced once the manufacturer reaches its 200,000th sale.

Separate treatment is allowed for low-speed vehicles. Act §§ 1141-1144, amending I.R.C. §§ 30, 30D.

A vehicle eligible for the plug-in credit is not eligible for the qualified hybrid vehicle credit under I.R.C. § 30B.

Increase in the Debt Limit. The 2009 legislation raises the U.S. debt limit to \$12,104,000,000,000. Act § 1604, Title III, amending 31 U.S.C. § 3101(b).

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New Iowa farm custom rate survey available

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The 2009 Iowa Farm Custom Rate Survey followed the recent trend of small, but consistent annual increases in rates. Most tillage operations showed increases of three to five percent over the average rates in the 2008 survey, while harvesting rates were up slightly more than that. Fuel prices soared last summer, causing many custom operators to add an extra charge to their normal rates. While fuel prices have declined since then, the high cost of new equipment and repairs has contributed to higher overall machinery costs.

The values reported on the survey are simply the average of all the responses received for each category. The range of the highest and lowest responses received is also reported. These values are intended only as a guide. There are many reasons why the rate charged

in a particular situation should be above or below the average. These include the timeliness with which operations are performed, quality and special features of the machine, operator skill, size and shape of fields, number of acres contracted, and the condition of the crop for harvesting. The availability of custom operators in a given area will also affect rates.

A total of 255 people responded to this year's survey, 38 percent more than last year. Of this group, 28 percent indicated that they performed custom work, 17 percent indicated that they hired work done, and 55 percent indicated that they did both. Several new operations and services were included in the 2009 survey, including applying liquid manure with a drag line, welding machinery, and using a scale to weigh grain trucks.

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