The American Recovery and Reinvestment Act of 2009

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The American Recovery and Reinvestment Act of 2009

-by Neil E. Harl*

On February 17, 2009, the President signed into law the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-___, 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 December 31, 2009, for new property (the original use of which commences with the taxpayer), retroactive to January 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.”

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).

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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 December 31, 2008 and before January 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 (February 17, 2009) and before January 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 January 16, 2009, or that were pursuant to a binding written contract on that date. Act § 1261.


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 September 1, 2008 and December 31, 2009. For those who lost their jobs after September 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 allow 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 January 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 $6,452 in earnings ($12,904 for married filing jointly). The credit applies to employers and to 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 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 (February 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 $8,400 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 December 31, 2008, and before December 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 February 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
The 2009 Act increases the earned 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).


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 December 31, 2008, and before January 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; 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 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 renewable 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.


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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