

¶ 1406. Business tax changes in the American Recovery and Reinvestment Act of 2009

This is an overview of the key tax changes affecting business in the recently enacted "American Recovery and Reinvestment Act of 2009" (the 2009 economic stimulus act).

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 expense 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.

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.

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.

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.