



## AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

### Special Report

#### Highlights:

- ✓ *New Making Work Pay Credit*
- ✓ *Enhanced Child Tax Credit*
- ✓ *American Opportunity Tax Credit for Education*
- ✓ *Expand Homebuyer Tax Credit*
- ✓ *Extended Bonus Depreciation and Code Sec. 179 Expensing*
- ✓ *Five-Year Carryback of NOLs*
- ✓ *Extensions/Increases of Many Energy Tax Incentives*
- ✓ *Recovery Zone Bonds and Related Relief*

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## Congress Passes Massive Stimulus Bill; Nearly \$300 Billion in Tax Relief

*The much-anticipated economic stimulus package, the American Recovery and Reinvestment Act of 2009, has won approval in the House and Senate. The House voted 246 to 183, followed by passage in the Senate 60-38. President Obama immediately promised to sign the roughly \$800 billion stimulus act, which contains nearly \$300 billion in tax relief. The White House later announced a February 17 signing ceremony. The new law sets in motion a wave of direct spending and tax incentives to jump start the U.S. economy out of recession.*

**T**he tax title in the new law — the *American Recovery and Reinvestment Tax Act of 2009*—is itself a massive piece of legislation. The tax provisions add many new tax breaks and significant enhancements to existing deductions and credits. Major provisions include a new Making Work Pay credit, enhancements to the child tax credit and first-time homebuyer credit, a 2009 alternative minimum tax (AMT) patch, taxpayer-friendly additions to many energy incentives, extensions of 2008 bonus depreciation and increased Code Sec. 179 expensing, along with a five-year net operating loss (NOL) carryback for small businesses, state and local government relief, and more. In all, the new law makes over 300 changes to the Internal Revenue Code.

**Impact** *The new law provides immediate relief to both individuals and businesses. Most of the tax incentives in the new law are retroactive to January 1, 2009. What's more, over \$280 billion in tax relief is concentrated within the next two years.*

**Caution** *While the overall size of the new law remains massive, those who have been following the bill over the past month will note that some House and Senate provisions were pared back or otherwise modified in final negotiations. To win passage of the package, lawmakers reduced the Making Work Pay credit, placed a limit on the new five-year NOL carryback to small businesses, cut back on proposals to raise and extend the first-time homebuyers credit, as well as proposals to create a higher new car buyers deduction. Nevertheless, tax cuts remain a large part of the overall stimulus package, comprising over 35 percent of its final price tag.*

### INDIVIDUAL INCENTIVES

#### Making Work Pay Credit

The new law includes President Obama's signature provision aimed at individual tax relief: the Making Work Pay credit. The

Making Work Pay credit allows a credit against income tax in an amount equal to the lesser of 6.2 percent of the individual's earned income or \$400 (\$800 for married couples filing jointly). The credit applies retroactively to the start of 2009 and will be repeated again in 2010.

The credit applies in full for individuals whose modified adjusted gross income (MAGI) does not exceed \$75,000 or \$150,000 in the case of married couples filing jointly. The credit is phased out at a two percent rate above that limit.

The employer's share of FICA, or its 6.2 percent equivalent to be more precise, would remain unchanged. Qualified taxpayers would take this credit through a reduction in wage withholding or in a lump sum when filing their returns for the tax year. Earnings from self-employment also qualify to the extent they are taken into account in computing taxable income. Individuals who do not provide a Social Security number on their returns, however, are ineligible.

**Impact** *Only individuals with earned income would qualify for the Making Work Pay credit, which would effectively offset an individual's share of FICA payroll taxes for the first \$6,452 in earnings (\$12,904 for couples).*

**Comment** *MAGI is equal to adjusted gross income increased by certain exclusions for income earned outside the U.S. Individuals in Puerto Rico and U.S. possessions would receive a mirror benefit.*

**Caution** *Excluded from the Making Work Pay credit are nonresident aliens, Code Sec. 151 dependents, and any estate or trust.*

### **\$250 Economic Recovery Payment**

The new law provides a one-time payment of \$250—for 2009 only—for individuals on fixed incomes (primar-

ily Social Security recipients, railroad retirees, and disabled veterans). Retired government workers, who generally are ineligible for Social Security, also will receive one-time payments of \$250. These payments will reduce any Making Work Pay credit to which the individual would otherwise be entitled.

**Impact** *The logistics for distributing the \$250 checks have not yet been announced. The assumption, however, is that the IRS will follow a distribution plan similar to the 2008 stimulus payments.*

**The final stimulus package frontloads at least \$280 billion in tax breaks within the first two years: 2009 and 2010. In all, more than 50 major provisions have been rolled up into this massive tax recovery package.**

### **AMT Patch**

The new law includes an alternative minimum tax (AMT) patch for 2009. The AMT patch for 2009 raises exemption amounts slightly above the 2008 patch levels. The 2009 AMT exemption amounts are: \$70,950 for joint filers and surviving spouses (up from \$69,950 in 2008); and \$46,700 for singles and heads of households (up from \$46,200).

**Impact** *The patch is designed to insulate approximately 26 million middle-income taxpayers from the reach of the AMT. The AMT patch costs roughly \$70 billion.*

### **First-Time Homebuyer Tax Credit**

The new law raises the current maximum \$7,500 first-time homebuyer tax credit to \$8,000, and extends it at that level through November 30, 2009. It also eliminates any required repayment to the IRS after 36 months in the home. These enhancements apply to purchases of a principal residence by a first-time homebuyer after December 31, 2008. Purchases on or after April 9, 2008, and before January 1, 2009, continue to be governed by the original first-time homebuyer credit enacted last year. The credit phase-outs that start for taxpayers with AGI in excess of \$75,000 (\$150,000 for joint filers) continue to apply to both years.

**Comment** *The effective date for the new law's no pay-back provision is keyed to "residences purchased after December 31, 2008." A purchase takes place when title closes rather than when a contract of sale is executed.*

**Comment** *The Senate had proposed raising the credit to \$15,000 and making it applicable to all home purchasers and regardless of income level. Those enhancements were rejected during conference negotiations.*

### **New Car Deduction**

A surprise provision arriving late in drafting the stimulus package allows purchasers of new vehicles for the rest of 2009 an above-the-line deduction for state and local sales taxes or excise taxes paid on the purchase. The new law puts two limits on this new deduction:

- (1) Deductible sales or excise taxes cannot exceed the portion of the tax attributable to the first \$49,500 of the purchase price of any one vehicle; and
- (2) Any deduction will be phased out to the extent the purchaser has adjusted gross income exceeding \$125,000 (\$250,000 for joint returns).

Any newly purchased vehicle, including cars, SUVs, light trucks or motorcycles, first used by the taxpayer that weighs no more than 8,500 gross pounds generally qualifies. Motor homes also qualify.

**Impact** *Both domestic and foreign made vehicles qualify. However, sales taxes paid on a lease agreement are not included. Assuming a four percent sales tax on a \$40,000 vehicle, the above-the-line deduction would equal \$1,600.*

**Caution** *The new car deduction is effective only for purchases “on or after date of enactment,” which takes place only when President Obama signs the legislation.*

### Education Credit

The new law temporarily enhances the existing HOPE education credit—for 2009 and 2010 only—in amount (from a maximum \$1,800 to \$2,500 per year), in scope (extending it to all four years of college and adding course materials to qualifying expenses), and in phase-out level (to \$80,000/\$160,000 joint filers). The new law renames the credit the “American Opportunity Tax Credit” and makes 40 percent of the credit refundable. Under the new credit, the maximum \$2,500 per year would be allowed on \$4,000 in qualifying payments (100 percent of the first \$2,000 and 25 percent of the next \$2,000).

**Comment** *Although this credit would be made retroactive to January 1, 2009, it does not automatically apply to a college semester that begins in 2009. Tuition paid late in 2008 for an upcoming 2009 semester qualifies only for a 2008 credit under existing rules.*

**Comment** *The new law instructs the Treasury Department to study how to better coordi-*

*inate the education credits with the federal Pell Grant program and the feasibility of requiring students to perform community service for purposes of the education credits.*

### Child Tax Credit

The new law increases the refundable portion of the child tax credit for 2009 and 2010. The agreement does so by setting the income threshold at \$3,000.

**Impact** *The child tax credit currently gives individuals with dependent children under age 17 at the close of a calendar year a \$1,000 per child credit through 2010. The Emergency Economic Stabilization Act of 2008 (EESA) enhanced the credit for 2008. Taxpayers in 2008 were eligible for a refundable credit equal to 15 percent of their earned income in excess of a \$8,500 threshold up to the child credit amount if the total amount of their allowable credit exceeds their total tax liability (regular and AMT).*

### Earned Income Tax Credit

The new law provides a temporary increase in the *Earned Income Tax Credit (EITC)* for 2009 and 2010. Prior to this change, the credit percentage for the EITC for a taxpayer with two or more qualifying children was 40 percent of the first \$12,570 of earned income. The new law increases the percentage to 45 percent of the first \$12,570 of earned income for taxpayers with three or more qualifying children. The EITC phase-out range has also been adjusted upward by \$1,880 for joint filers to eliminate any marriage penalty.

**Planning Tip** *Eligible individuals may elect to receive advance payment of the EITC from their employer. This is handled through the withholding system.*

### Unemployment Compensation

Currently, unemployment benefits are included in a recipient’s gross income for federal income tax purposes. The new law temporarily excludes up to \$2,400 of unemployment compensation from a recipient’s gross income for 2009.

**Caution** *Amounts in excess of \$2,400 remain fully taxable.*

### Transit Benefits Parity

Qualified transportation fringe benefits, such as transit passes, van pooling and qualified parking, are not included in an employee’s income up to specified dollar amounts. The new law increases the current \$120 per month income exclusion amount for transit passes and van pooling to \$230 per month for 2009 (starting in March 2009), and continues it through 2010 with an inflation adjustment.

**Impact** *The new law in effect equalizes the \$230/month amount now permitted for parking, with similar inflation adjustments for 2010. These benefits are a tax-free fringe if provided by an employer. If paid for by the employee, they can qualify as a pre-tax deduction from wages provided a plan is in place. In either case, the employer must take the initiative by sponsoring a plan.*

### Qualified Tuition Programs

Qualified tuition program (aka “529 plan”) distributions used to pay a beneficiary’s qualified education expenses are tax-free. Other distributions are included in the beneficiary’s income and are subject to a penalty. For 2009 and 2010 the new law allows beneficiaries of qualified tuition programs to use tax-free distributions to pay for computers and computer technology, including internet access.

**Impact** *Laptops and computers are required for most first-year students at colleges, universi-*

*ties and other postsecondary education institutions so the change is very practical. As long as the student uses the technology, the new law allows other family members to use it without allocation.*

## BUSINESS INCENTIVES

The new law showers businesses with over \$75 billion in tax benefits for 2009 and 2010 alone. It does so by extending bonus depreciation, increasing Code Sec. 179 expensing, allowing a five-year carryback of net operating losses (NOLs) to small businesses, and providing other business-related incentives.

### Bonus Depreciation

The new law extends the 50-percent first-year bonus depreciation allowed under the *2008 Economic Stimulus Act* through December 31, 2009. The extension is retroactive to January 1, 2009. The new law also extends, through 2010, the additional year of bonus depreciation allowed under the *2008 Economic Stimulus Act* for property with a recovery period of 10 years or longer, for transportation property (tangible personal property used to transport people or property), and for certain aircraft.

**Planning Tip** *50-percent bonus depreciation is taken on top of the regular depreciation reported for the year the property is placed in service. As with any accelerated depreciation, however, a large current depreciation deduction results in smaller future deductions.*

### Higher Caps on Vehicle Depreciation.

Also extended for bonus depreciation purposes, the regular dollar cap for new vehicles placed in service in 2009 is raised again by \$8,000, effective January 1, 2009. This increase mirrors the temporary 2008 cap increase. For 2008, the regular first-year depreciation dollar cap of \$2,960 for autos was raised to \$10,960

if bonus depreciation is elected (\$11,160 for light trucks and vans).

### Code Sec. 179 Expensing

The new law extends the increased 2008 Code Sec. 179 expensing (aka, small business expensing) amounts to 2009. The *2008 Economic Stimulus Act* increased the amount of Code Sec. 179 expensing for 2008 to \$250,000 and increased the threshold for reducing the deduction to \$800,000. Without the 2009 extension, businesses placing property in service in 2009 would have been limited to a \$125,000 inflation adjusted maximum deduction with a \$500,000 cap.

**Impact** *Unlike bonus depreciation, Code Sec. 179 expensing is available on new or used property. However, the \$800,000 qualifying property ceiling effectively limits Code Sec. 179 expensing to small businesses.*

### NOL Carryback

The new law provides a five-year carryback of 2008 NOLs but only for qualified small businesses with average gross receipts of \$15 million or less. The new law gives these businesses the choice to carry back NOLs three, four or five years. The new treatment will apply only to NOLs for any tax year beginning or ending in 2008. The normal NOL carryback period, which is two years for all businesses, returns for NOLs incurred in 2009.

**Impact** *Earlier versions of the bill provided NOL relief to all businesses and covered both 2008 and 2009.*

**Planning Tip** *As soon as a taxpayer has filed a 2008 return containing an NOL, it can begin the process of claiming a refund to get cash back into its pockets. The amount of the refund for a carryback year is computed on page 1 of Form 1045 in the case of an individual*

*and on page 1 of Form 1139 in the case of a corporation. The NOL is computed by making specified modifications to taxable income.*

### Work Opportunity Tax Credit

The new law creates two new categories of targeted groups under the existing Work Opportunity Tax Credit (WOTC): unemployed veterans and disconnected youth. These new categories apply to individuals who are hired and begin work in 2009 or 2010.

**Comment** *The WOTC is combined with the Welfare-to-Work credit for qualified individuals who begin working for an employer after December 31, 2006, and before September 1, 2011.*

### Refundable Credits in Lieu of Bonus Depreciation

The new law allows businesses to monetize accumulated AMT and R&D credits in lieu of taking bonus depreciation. The election to accelerate these historic AMT and R&D credits originally applied only to 2008, but the new law extends this option to all property qualifying for bonus depreciation placed in service through 2009.

**Comment** *Under the 2008 Economic Stimulus Act, and by extension under the new law, businesses eligible for 50-percent bonus depreciation may instead elect to claim additional research or minimum tax credits that are refundable. The research credit or minimum tax credit is increased by the bonus depreciation amount, which is 20 percent of the difference between depreciation claimed on eligible property with and without bonus depreciation. The bonus depreciation amount is limited to the lesser of (1) \$30 million or (2) research and AMT credits accumulated for years before January 1, 2006.*

**Impact** *The new law also allows a business to change its election from 2008 to 2009, or to make an election in 2009 when no election was made in 2008. This is a sharp difference from recent regulatory guidance issued by the IRS that would make a 2008 election binding on the business for 2009.*

### Cancellation of Indebtedness

The new law will allow certain businesses to elect to recognize cancellation 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. An applicable debt instrument under the new law means a bond, debenture, note, certificate, or any other instrument constituting indebtedness issued by a C corporation or any other "person" in connection with the conduct of a trade or business by such person.

**Caution** *Once made, the election is irrevocable. The new law further provides for acceleration of deferred items in triggering circumstances, such as the liquidation or sale of substantially all of the assets of the taxpayer or the cessation of business by the taxpayer.*

**Comment** *The new law also modifies the rules for original issue discount on certain high yield obligations.*

### Qualified Small Business Stock

Under current law, investors may exclude 50 percent of the gain from the sale of certain small business stock acquired and held for more than five years. The new law increases the exclusion to 75 percent for stock acquired after the date of enactment and before January 1, 2011. A small business cannot have assets over \$50 million and must conduct an active trade or business.

### S Corp Built-In Gain Period

The new law temporarily shortens, from 10 to seven years, the holding period for assets subject to the built-in gains tax imposed after a C corp elects to become an S corp. This reduction applies to C corps that convert to S corps in tax years beginning in 2009 and 2010.

**Impact** *The built-in gains tax prevents C corps from avoiding corporate level tax on the disposition of appreciated assets it acquired while a C corp by first converting to S status. However, these rules also discourage S conversions in situations in which the business may not survive under C corp rules. The new law will give shareholders more flexibility during the current economic crisis.*

### NOL Limitations on Banks Reinstated

The new law repeals Notice 2008-83 effective for ownership changes after January 16, 2009, with respect to which there was no written agreement before that date. In Notice 2008-83, the IRS provided relief from the NOL limitations for corporations acquiring a financially-strapped bank. Consequently, the losses were not limited by the normal Code Sec. 382 loss limitations.

**Impact** *Many lawmakers had criticized the IRS for issuing Notice 2008-83 claiming that the agency over-stepped its authority without giving proper deference to Congress. The new law also clarifies application of Code Sec. 382 for any restructuring required by Treasury.*

**Comment** *The new law amends Code Sec. 382 favorably for certain struggling taxpayers. It does so by providing that the limitation under Code Sec. 382(a) generally will not apply in the case*

*of an ownership change under a restructuring plan required by a loan agreement or line of credit entered into with the Treasury Department under the EESA.*

### Estimated Taxes

The new law decreases required estimated tax payments for individuals whose incomes primarily come from a small business in 2009. Rather than being required to make quarterly estimated tax payments based on 100 percent of their 2008 returns, the new law allows computation based on 90 percent.

**Comment** *The individual's AGI must be less than \$500,000 and he or she must certify that more than 50 percent of the gross income shown on his or her return for the prior tax year was income from a small business. Income from a small business generally means income from a trade or business with an average number of employees of 500 or fewer.*

### New Markets Tax Credit

The new law increases the New Markets Tax Credit (NMTTC) program by authorizing maximum allocations of \$5 billion for 2008 and 2009.

### COBRA Benefits

The new law allows an individual who is involuntarily separated from employment between September 1, 2008, and January 1, 2010, to elect to pay 35 percent of his/her COBRA coverage and have it treated as paying the full amount.

The former employer will be required to pay the remaining 65 percent but, in effect, will be reimbursed by crediting those amounts against income tax withholding and payroll taxes it is otherwise required to remit to the federal government. Income and other limitations on COBRA coverage apply.

## ENERGY INCENTIVES

The energy incentives in the new law are targeted to both individuals and businesses. President Obama has pledged to significantly expand the development and production of alternative sources of energy, such as biomass, solar and wind energy, in part to create new “green collar” jobs. The more significant incentives provided under the new law include:

### Residential Energy Property Credit

The new law increases the Code Sec. 25C residential energy property tax credit from 10 percent to 30 percent, raises the maximum cap to a \$1,500 aggregate amount for 2009 and 2010 installations, eliminates the \$500 lifetime cap, and makes several other modifications. The changes are effective for eligible property placed in service after December 31, 2008, and before January 1, 2011.

**Impact** *Higher energy costs should accelerate the “pay-back” period for qualifying home improvements. The credit was in effect in prior years through 2007, but Congress allowed it to lapse for 2008. Pre-2008 credits are not counted toward the new \$1,500 maximum.*

**Comment** *Improvements eligible for the Code Sec. 25C credit include insulation materials, 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, certain metal roofs and stoves, and advanced main air circulating fans.*

### Residential Energy Efficient Property Credit

The new law removes the individual dollar caps under the Code Sec. 25D

residential energy efficient property credit for solar hot water property, geothermal heat pumps and wind energy property. The new law, however, does place a \$500 credit cap on qualified fuel cell property expenditures.

### Alternative Fuel Pump Tax Credit

The new law increases the credit for alternative fuel vehicle refueling property for commercial and retail refueling stations for 2009 and 2010. The credit currently equals 30 percent of the cost of property placed in service at each location by the taxpayer during the tax year but is limited to \$30,000. The agreement increases the credit to 50 percent (capped at \$50,000) for property placed in service in 2009 and 2010. For individuals, the credit is also increased to 50 percent (capped at \$2,000).

**Comment** *Although the 30 percent credit continues to apply to hydrogen refueling property, the maximum credit for hydrogen refueling property jumps to \$200,000.*

### Renewable Electricity Production Credit

Code Sec. 45 provides a credit for electricity produced from renewable sources, such as wind. The new law extends (generally, through 2013; through 2012 for wind facilities) the placed-in-service dates for qualified wind and other facilities under Code Sec. 45.

### Energy Investment Credit

The Economic Stimulus Act expanded the Code Sec. 48 energy investment credit to include qualified small wind energy property. The new law removes the credit cap for qualified small wind energy property. A 30 percent credit presently is available for qualified small wind energy property expenses made by the taxpayer during the tax year.

**Comment** *The new law also removes the provision under Code Sec. 48(a)(4) that currently reduces the amount of the credit available for taxpayers financing their qualified facility with subsidized energy financing or proceeds from a private activity bond. This provision is effective for periods after December 31, 2008.*

### Investment Credit Election

In lieu of producers taking the Code Sec. 45 production tax credit, the new law allows taxpayers to treat certain qualified alternative energy facilities as energy property eligible for a 30 percent investment credit under Code Sec. 48. Code Sec. 45 provides a credit for the production of electricity from alternative sources of energy at qualified facilities. The agreement limits the election for wind property placed in service in 2009-2012 and for other property placed in service in 2009-2013. The new law also coordinates Code Sec. 48 with renewable energy grants.

### Plug-in Electric Vehicles

Although plug-in electric vehicles are not yet on the market, the new law modifies the existing credit for these environmentally-friendly vehicles. Separate treatment has also been carved out for low-speed vehicles. The base amount of the credit for qualified plug-in electric vehicles is \$2,500. The full amount of the credit will be reduced once the manufacturer records its 200,000<sup>th</sup> sale.

**Comment** *If a vehicle is eligible for the plug-in electric vehicle credit, it is not eligible for the Code Sec. 30B qualified hybrid vehicle credit. The new law allows the Code Sec. 30B credit as a personal credit against the alternative minimum tax (AMT) for tax years beginning after 2009.*

## HELP FOR STATE/LOCAL GOVERNMENTS

The new law provides fiscal relief for states facing large budget deficits. The relief is designed to prevent cuts in health care, education, law enforcement and other programs, to avoid tax increases, and to increase spending on infrastructure improvements.

### Bonds

The new law enhances existing bond programs and creates some new ones:

- **Recovery Zone bonds.** The new law creates a new category of tax credit bonds for 2009 and 2010 to be invested in economic recovery zones.
- **Industrial Development bonds.** The new law temporarily extends the scope of state and local government-issued industrial development bonds to facilities manufacturing intangible property.
- **Build America bonds.** The new law creates Build America bonds.
- **Qualified School Construction bonds.** The law provides for a new category of state and local government-issued tax-credit bond, known as a qualified school construction bond.
- **Qualified Zone Academy bonds (QZABs).** The law increases the annual limit on QZABs and extends their availability at the heightened limit through 2010.
- **Tribal Economic Development bonds.** The new law authorizes Indian tribal governments to issue tax-exempt “tribal economic development bonds.”
- **High-Speed Rail bonds.** The new law fine-tunes the maximum speed requirements for high-speed intercity rail facilities for purposes of high-speed rail bonds.
- **AMT limits on new private activity bonds.** Previously, Congress excluded interest on private activity bonds for housing from treatment as a tax-preference item subject to the individual alternative minimum tax (AMT). The new law expands the exclusion to all private activity bonds issued in 2009 and 2010.
- **Tax-exempt interest paid to financial institutions.** The new law creates a de minimis safe harbor for financial institutions deducting interest expense allocable to investments in tax-exempt municipal bonds issued in 2009 and 2010.

### Low-Income Housing Credit

The new law allows states to receive a grant for low-income housing in lieu of low-income housing credit allocations for 2009.

### Withholding On Government Contractors

The new law delays three-percent withholding on government contractors for one year, to December 31, 2011.

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