



TAX ALERT

American Recovery and Reinvestment Act of 2009

Wilkin & Guttenplan, P.C.

Certified Public Accountants
& Consultants

1200 Tices Lane
East Brunswick, NJ 08816
732-846-3000
fax: 732-846-0618
www.wgcpas.com

The recently enacted “American Recovery and Reinvestment Act of 2009” contains a wide-ranging tax package that includes tax relief for both individuals and businesses. While the full details of the Act are beyond the scope of this Alert, your Wilkin & Guttenplan advisor can help you determine how these provisions may benefit you. Following are highlights of some of these changes.

Incentives for Businesses

Extension of bonus depreciation. Last year, Congress temporarily allowed business to recover the costs on new equipment 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.

Planning thought: Capital intensive businesses will benefit from this provision as there is no limitation on the amount of assets which qualify for this enhanced write off.

Extension of enhanced small business expensing (Section 179). 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.

Planning thought: Unlike bonus depreciation, this benefit is allowed for used equipment and will result in a dollar for dollar expense, if qualified.

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 losses generated in 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.

Planning thought: This benefit may allow some businesses currently suffering losses to get a cash refund now of taxes paid in prior years.

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 six months.

Planning thought: Labor intensive businesses should consider the above as well as all of the other categories associated with the work opportunity credit. State grants may also be available.

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.

Planning thought: For businesses in financial distress, this benefit may be key part of a debt restructuring.

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.

Planning thought: Start up businesses seeking investment may find themselves more attractive to potential investors if the business qualifies for this treatment.

Lower estimated tax payments for small business owners. Estimated tax payments for 2009 can be based

on 90% of the tax shown on the preceding year’s tax return. This opportunity applies if the adjusted gross income on the preceding year’s return is less than \$500,000 and over 50% of the gross income shown on the preceding year’s return is from a small business. This benefit is only available for individual taxpayers who are business owners.

Planning thought: While this benefit will not ultimately reduce your tax bill, it may defer estimated tax payments, allowing more working capital to be available.

S corporation built in gains tax. The new law temporarily shortens the holding period of assets subject to the built-in gains tax from 10 years to seven years.

Planning thought: This benefit may help corporations which converted to S corporation status more than 7 years ago.

Incentives for Individuals

“Making Work Pay” credit. The new law provides an individual tax credit in the amount of 6.2 percent of earned income not to exceed \$400 for single returns and \$800 for joint returns in 2009 and 2010. The credit is phased out at adjusted gross income (AGI) in excess of \$75,000 (\$150,000 for married couples filing jointly). The credit can be claimed as a reduction in the amount of income tax that is withheld from a paycheck, or through a credit on a tax return.

Economic recovery payment. The new law provides for a one-time payment of \$250 to retirees, disabled individuals and Social Security beneficiaries and SSI recipients receiving benefits from the Social Security Administration and Railroad Retirement beneficiaries, and to veterans receiving disability compensation and pension benefits from the U.S. Department of Veterans' Affairs.

Unemployment compensation exclusion. A provision temporarily suspends federal income tax on the first



\$2,400 of unemployment benefits received by a recipient in 2009.

Expanded and revised higher education tax credit.

The new law creates a \$2,500 higher education tax credit that is available for the first four years of college. The credit is based on 100% of the first \$2,000 of tuition and related expenses (including books) paid during the tax year and 25% of the next \$2,000 of tuition and related expenses paid during the tax year, subject to a phase-out for AGI in excess of \$80,000 (\$160,000 for married couples filing jointly). Forty percent of the credit is refundable. The new credit temporarily replaces the Hope credit.

Computers as an education expense. A provision permits computers and computer technology to qualify as qualified education expenses in 529 education plans for tax years beginning in 2009 and 2010.

Expanded first-time credit for first-time home buyers. Last year, Congress provided taxpayers with a refundable tax credit that was equivalent to an interest-free loan equal to 10% of the purchase of a home (up to \$75,000) by first-time home buyers. The provision applied to homes purchased on or after April 9, 2008 and before July 1, 2009. Taxpayers receiving this tax credit were required to repay any amount received under this provision back to the government over 15 years in equal installments (or earlier if the home was sold). The credit phases out for taxpayers with adjusted gross income in excess of \$75,000 (\$150,000 in the case of a joint return). The new law enhances the credit by eliminating the repayment obligation for taxpayers that purchase homes on or after January 1, 2009 as long as the home is owned and used as a primary residence for at least 36 months. It also extends the credit through the end of November 2009, and bumps up the maximum value of the credit from \$7,500 to \$8,000.

Tax break for new car purchasers. The new law allows taxpayers to deduct State and local sales taxes paid on the purchase of a new automobile, including

light trucks, SUVs, motorcycles, and motor homes, but it only applies on \$49,500 of the vehicle's price. The tax break phases out starting with taxpayers earning \$125,000 per year (\$250,000 for joint returns). The deduction is allowed to both those who itemize their deductions as well as to nonitemizers. However, the deduction cannot be taken by a taxpayer who elects to deduct State and local sales taxes in lieu of State and local income taxes. This benefit expires at the end of 2009.

Alternative minimum tax patch. To hold the number of taxpayers subject to the AMT at bay, the new law increases the AMT exemption amounts for 2009 to \$46,700 for individuals and \$70,950 for joint returns, and allows the personal credits against the AMT.

Private activity bond relief. Private activity bonds are certain state and local tax exempt bonds which pay interest subject to AMT. The new law exempts the income from private activity bonds issued in 2009 and 2010 from AMT.

Incentives for Energy Investments

Energy-efficient existing homes. The new law extends the tax credits for improvements to energy-efficient existing homes through 2010. For 2009 and 2010, the amount of the tax credit is increased from 10% to 30% of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements during the tax year. The property-by-property dollar caps on the tax credit are also eliminated, and an aggregate \$1,500 cap applies to all property qualifying for the credit.

Residential energy property. The new law removes the dollar limitations on certain energy credits, e.g, for qualified small wind energy property (\$4,000 cap); for qualified solar water heating property (\$2,000 cap); and qualified geothermal heat pumps (\$2,000).

Credit for investment in advanced energy facilities. The new law establishes a new manufacturing



investment tax credit for investment in advanced energy facilities, such as facilities that manufacture components for the production of renewable energy, advanced battery technology, and other innovative next-generation green technologies.

Vehicles. The new law provides a tax credit for purchases of plug-in electric drive vehicles ranging from \$2,500 to \$7,500 depending on battery capacity. The new law also restores and updates the electric vehicle credit for plug-in electric vehicles that would not otherwise qualify for the larger plug-in electric drive vehicle credit and provides a tax credit for plug-in

electric drive conversion kits. This credit will apply to qualifying vehicles purchased after December 31, 2009.

The above represents a summary of the new rules and does not address all of the details contained in the new legislation. For clarification or more information on these and other tax matters, contact your W&G tax advisor at 732-846-3000.

Any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.