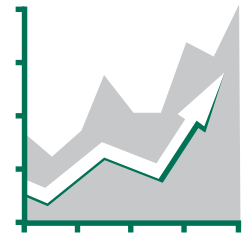


# Financial Adviser

## Stimulus Package Creates Tax Tumult



No matter what side of the aisle you lean toward, the new American Recovery and Reinvestment Act of 2009, which was signed into law in February, has more than 300 changes to the Internal Revenue Code that we all need to examine.

The new tax laws cover individuals and businesses and most are retroactive to January 1, 2009. There are \$280 billion in tax breaks effective within the first two years of the legislation.

The new bill has more than \$75 billion in tax incentives for businesses in 2009 and 2010. The legislation extends bonus depreciation, increases Code Section 179 expensing, provides a five-year carryback of net operating losses (NOLs), allows refundable credits in lieu of bonus depreciation, allows cancellation of indebtedness, addresses the S Corp built-in tax gain period, changes COBRA provisions and provides several other business-related incentives.

### Bonus Depreciation

The 50 percent first-year bonus depreciation allowed under the 2008 Economic Stimulus Act has been extended through December 31, 2009. The extension will be retroactive to January 1, 2009. There also is a higher cap on vehicle depreciation effective January 1, 2009. The regular dollar cap for new vehicles put in service in 2009 is now \$10,960 (\$11,160 for light trucks and vans) if bonus depreciation is elected.

### Code Section 179 Expensing

The increased Code Section 179 small-business expensing amounts have been extended through 2009. The amount of the allowable Code Section 179 expenses will remain at \$250,000 for 2009 and the threshold for reducing the deduction will remain at \$800,000.

### NOL Carryback

The Act provides a five-year carryback of 2008 NOLs but only for qualified small businesses with average gross receipts of \$15 million or less. Businesses now have the choice to carryback NOLs three, four or five years. This will apply only to any tax year beginning or ending in 2008.

### Refundable Credits in Lieu of Bonus Depreciation

With the passage of this new law, businesses are now allowed to continue to monetize accumulated AMT and Research & Development (R&D) credits in lieu of taking bonus depreciation. This legislation extends the opportunity for all property qualifying for bonus depreciation placed in service for 2009.

### Cancellation of Indebtedness

Now, with the new bill, certain businesses are able to recognize cancellation of indebtedness income over five years for specified types of 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 a person.

### S Corp Built-In Gain Period

The holding period for assets subject to the built-in gains tax imposed after a C corp elects to become an S corp has been changed from 10 to seven years under the new law. This change applies to C corps that convert to S corps in tax years 2009 and 2010.

### COBRA Benefits

There also is a significant change that affects businesses that are subject to the COBRA provisions. Most employees who are involuntarily separated from

employment between September 1, 2008 and December 31, 2009 can elect to have to pay only 35 percent of the COBRA premium for up to nine months. The former employer will be required to pay the remaining 65 percent, but is reimbursed by claiming the payment as a credit against its federal payroll tax obligations.

### Other Tax Incentives

Other tax incentives for business under the American Recovery and Reinvestment Act include the Work Opportunity Tax Credit (WOTC); increase in exclusion percentage for gain from sale of certain small business stock; NOL limitation on banks reinstated; decrease in estimated tax payments for individuals whose income is primarily from a small business; and an increase in the New Markets Tax Credit (NMTC).

*As with all tax laws and regulations, you must examine how best to utilize these tax incentives for your business. To get more information on how your business may benefit from any of these new tax laws, please contact Dean Fair at McGill, Power, Bell & Associates, LLP at [dfair@mpbcpa.com](mailto:dfair@mpbcpa.com) or 814/724-5890.*

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