

MP&S ALERT: HIGHLIGHTS OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Acting quickly to jump start the economy, Congress has passed a massive economic stimulus package: the **American Recovery and Reinvestment Act of 2009 (Recovery Act)**. As you may know, the cost of the bill totals \$787 billion. What you may not necessarily realize is that nearly \$300 billion of the bill includes tax relief for individuals and businesses. Congress made many of the tax incentives retroactive to **January 1, 2009**.

The tax incentives in the stimulus package can be broken down into two broad categories: **individuals** and **business**. The partners and principals at Marks Paneth & Shron LLP stand ready to help navigate the new provisions under the **Recovery Act** and can help determine what incentives best suit you and your business. Note: Many of the individual tax provisions in the Recovery Act do not apply to high net worth taxpayers.

INDIVIDUAL INCENTIVES

Under the Recovery Act, incentives pertaining to issues ranging from wage earning credit and social security benefits to first time home buyers and new car deductions to child tax and education exist. Below are highlights of the tax incentives that might be of particular interest.

New car deduction. Automobile sales, like new home sales, have plummeted in recent months. In response, Congress has created an above-the-line deduction for state and local sales taxes or excise taxes paid on qualified purchases of new motor vehicles. This deduction is temporary and is also prospective from the date of enactment of the new law. **It will expire at the end of 2009.** Income thresholds and other limitations apply.

AMT patch. Every year, bills are introduced in Congress to abolish the alternative minimum tax (AMT). This year is no different but because the federal budget deficit, Congress cannot eliminate the AMT without finding an equivalent source of revenue. However, there is some good news. The **new law increases the AMT exemption amounts and allows taxpayers to take most personal credits** to reduce AMT liability for 2009.

Making Work Pay credit. Starting later this year, eligible wage earners will see an increase in their take-home pay. The new law provides 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). However, **income limitations apply** so the credit is unavailable to higher income wage earners. The Making Work Pay credit will be applied **retroactively to January 1, 2009 and prospectively to December 31, 2010.** One delay in getting the credit to wage earners is the need for the IRS to revise the payroll tax withholding tables. Some observers predict that the IRS will not be able to revise the tables until June. We will keep you posted of developments.

Seniors and others. Individuals receiving Social Security benefits, disabled veterans and others on fixed incomes will receive one-time payments of \$250. If the individual also qualifies for the Making Work pay credit, his or her credit will be reduced by the \$250 payment.

First-time homebuyer tax credit. In 2008, Congress enacted the first-time homebuyer tax credit. Unlike other credits, this one had to be repaid, making it unattractive to many taxpayers. The new law removes the repayment requirement for homes purchased by **first-time buyers between January 1, 2009 and December 1, 2009.** The enhanced credit equals 10 percent of the purchase price of a home up to \$8,000 (\$4,000 for married individuals filing separately). There are income limitations, which preclude higher-income individuals and couples from taking advantage of the credit.

Child tax credit. The current \$1,000 child tax credit is one of the most popular incentives in the Tax Code. The new law increases the refundable portion of the child tax credit **for 2009 and 2010.** Taxpayers

are eligible for a refundable credit equal to 15 percent of their earned income in excess of \$3,000 subject to certain restrictions and phase-outs.

Unemployment compensation. Many individuals are surprised to learn that unemployment benefits are taxable. The new law **excludes up to \$2,400** in unemployment compensation from a recipient's gross income in 2009.

Education. The Tax Code includes a number of incentives to help bring down the cost of education. The new law expands the current Hope education credit (and renames it the American Opportunity Tax Credit). **More individuals will be able to take advantage of this credit because of expanded income phase-outs.** The new law also raises the maximum credit, extends it over four years of post-secondary school education, and makes 40 percent of the credit refundable. In a related development, the new law also permits beneficiaries of qualified tuition plans (known as "529" plan) to use tax-free distributions to pay for computers and computer technology.

Transit benefits. Individuals who take public transportation to work or van pool may benefit from enhanced transit incentives in the new law. Congress increased the income exclusion amount for transit passes and van pooling **from \$120 per month to \$230 per month for 2009** (starting in March 2009) **and through 2010** with an inflation adjustment. However, these benefits must be offered by your employer to take advantage of them.

EITC. The earned income tax credit (EITC) is a refundable tax credit targeted to lower and middle income wage earners and families. When the EITC exceeds the amount of taxes owed, it generates a refund. **The new law enhances the EITC for taxpayers with three or more qualifying children and helps eliminate an existing "marriage penalty" across the board.**

Energy Incentives. The new law enhances several energy tax incentives that reward taxpayers for installing energy-efficient property and alternative sources of energy in their homes. Among the types of energy-efficient property that may qualify for a tax break are **certain heat pumps, furnaces, windows and doors.** There's also a tax break for purchasers of plug-in electric vehicles.

BUSINESS INCENTIVES

Although the business incentives in the new law are not as expansive as in some recent tax acts, they are still valuable and worth exploring.

Bonus depreciation. Bonus depreciation is one of Congress' favorite mechanisms (along with Code Sec. 179 expensing) to encourage business spending. The new law **extends 50 percent bonus depreciation that expired at the end of 2008.** Businesses can take advantage of bonus depreciation throughout 2009 (and longer for certain types of property). Bonus depreciation is taken on top of regular depreciation. While it can be valuable in the short term, keep in mind that a large current depreciation deduction results in smaller future deductions. Also good news in applying bonus depreciation to vehicles, **the new law raises the first-year depreciation cap limits by \$8,000.** The new law also allows eligible businesses to monetize accumulated AMT and research tax credits in lieu of taking bonus depreciation for 2009.

Code Sec. 179 expensing. Like bonus depreciation, increased Code Sec. 179 expensing expired at the end of 2008. The new law revives it for 2009. Under the new law, **Code Sec. 179 expensing for 2009 is \$250,000 and the threshold for reducing the deduction is \$800,000.**

Net operating losses. Because of the economic downturn, many businesses are in a loss position. The Tax Code generally allows eligible taxpayers to carry back net operating losses (NOLs) two years with some exceptions. The **new law increases the carryback period to five years for small businesses** (which the new law defines as businesses with average gross receipts of \$15 million or less). The treatment is also temporary, applying only to 2008 NOLs. Businesses that qualify can apply for an immediate refund of taxes paid during the extended carryback period.

Work Opportunity Tax Credit. The Work Opportunity Tax Credit rewards employers that hire individuals from targeted groups, such as veterans and young people. The new law **modifies the definitions of**

eligible veterans and disconnected youth for purposes of the credit.

Cancellation of indebtedness. Eligible businesses will be able to recognize cancellation of certain indebtedness over five years, beginning in 2014, under the new law. This treatment applies to specified types of **business debt repurchased or forgiven by the business after December 31, 2008 and before January 1, 2011.**

Energy incentives. The new law extends and enhances many energy tax incentives for developers and producers of alternative and renewable energy. Examples are **wind, biomass** and **solar power**. The incentives are temporary and are intended to boost production of energy from renewable sources.

More business incentives. In addition to the above incentives, the new law provides a host of additional changes that may work in favor of your business. The changes include:

- The new law allows qualified individuals to exclude 75 percent of the gain from the **sale of certain small business stock.**
- Congress **shortened the holding period for the S corp built-in gain period**, prospectively revoked a controversial IRS notice affecting NOL limitations on banks and enhanced COBRA coverage and the health coverage tax credit.
- The new law increases the **New Markets Tax Credit** program, decreases estimated tax payments for certain individuals whose incomes come from small businesses and delays withholding on government contractors.
- Congress enhanced many tax-exempt and tax-credit bond **rules to help states and local governments** generate revenue.

CONTACT UPDATE

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FOR MORE INFORMATION

The scope of the American Recovery and Reinvestment Act is broad. To discuss how the tax incentives in the new law may benefit you or your business or if you have any questions, please contact **Steven Eliach, JD, LLM**, the Principal-in-Charge of the Tax Practice at Marks Paneth & Shron at 212.503.6388 or via email at seliach@markspaneth.com.