

Small Business Tax Breaks in the Stimulus Bill

February 15, 2009

The American Recovery and Reinvestment Act of 2009, expected to become law as early as Monday, contains numerous tax provisions aimed at small businesses .

Bonus depreciation: IRC section 168(k) is amended to extend the 50% first-year bonus depreciation through 2009 (through 2010 for certain transportation property and aircraft).

The election to accelerate AMT and research credits in lieu of taking the bonus depreciation (which had been introduced last year by the Housing Assistance Tax Act, P.L. 110-289) is also extended to qualifying property placed in service through 2009. Special rules apply to taxpayers who had already made this election for property placed in service in 2008.

Section 179 expensing: The increase in the section 179 expensing amount to \$250,000 and the increase in the phaseout threshold to \$800,000 are both extended through 2009. The amounts had originally been temporarily increased (for 2008) by the Economic Stimulus Act of 2008, P.L. 110-185.

Carryback of small business NOLs: Eligible small businesses are allowed to carry their 2008 net operating losses (NOLs) back for five years (section 172(b)(1)(H)). An eligible small business is one that has average gross receipts of \$15 million or less (using the gross receipts test from section 448(c)). The act gives Treasury authority to publish anti-abuse rules relating to this provision.

Small business estimated taxes: Qualified individuals are allowed (for 2009 only) to make estimated tax payments that equal only 90% of their preceding tax year liability instead of 100% (under section 6654(d)(1)). To be a qualified individual, the taxpayer must have adjusted gross income (AGI) of less than \$500,000 and more than 50% of the individual's gross income must come from a small business (a business with an average of fewer than 500 employees).

Work opportunity tax credit: The act creates two new targeted groups for the work opportunity tax credit, "disconnected youth" and unemployed veterans (section 51(d)(14)). Employers who hire members of these groups during 2009 or 2010 may be eligible to take the credit.

Discharge of business indebtedness: The act allows certain businesses to recognize cancellation of indebtedness income over five years, starting in 2014, if the business repurchases specific types of debt in 2009 or 2010 (section 108(i)).

Qualified small business stock: The section 1202 exclusion of gain from the sale of qualified small business stock is increased from 50% to 75%, for stock acquired after the enactment date and before Jan. 1, 2011.

S corporations: The recognition period for assets subject to the built-in gains tax is reduced from 10 years to seven years for S corporation tax years beginning in 2009 and 2010 (Section 1374(d)(7)).

Limitations of loss carryforwards: For businesses that have ownership changes pursuant to a restructuring plan required by a Treasury loan agreement or line of credit under the bailout provisions of the Emergency Economic Stabilization Act, P.L. 110-343, the section 382 limitation on loss carryforwards will not apply.

New markets tax credit: The section 45D new markets tax credit investments limit is increased for 2008 and 2009 to \$5 million.

Notice 2008-83 restricted: The act expresses Congress's doubt about the legal authority of Notice 2008-83 (the "Wells Fargo Ruling") and states that it is inconsistent with Congressional intent in enacting section 382(m). Therefore, the act restricts the notice's effect to changes in ownership occurring (or subject to a binding written contract entered into) on or before Jan. 16, 2009. (For more on the questions surrounding Notice 2008-83, see White, "[Notice 2008-83: The Ripples Keep Spreading](#)," *Tax Insider* (Feb. 2, 2009).)

Energy credits: The act also includes a number of energy incentives aimed at both individuals and businesses, including increases in the section 25C residential energy property credit, the section 25D residential energy efficiency property credit, and the energy investment credit under section 48.