

Summary of Key Provisions for Businesses in American Recovery and Reinvestment Act of 2009

The recently enacted American Recovery and Reinvestment Act of 2009 (the "Act") provides several favorable tax provisions for businesses. The Act was signed into law by President Obama on February 17, 2009. This is welcome relief for many businesses that are impacted by the recent global economic downturn. The following summary highlights the most important new provisions for businesses.

Net Operating Loss Carryback Period. Generally, a taxpayer may carryback a net operating loss for a period of 2 years and carryforward a net operating loss for a period of 20 years. The Act provides an election whereby a qualifying small business may elect to carryback losses for a period of 3 to 5 years. The Act's special extension applies to losses that arise in a tax year beginning or ending in 2008. In order to qualify as a small business eligible for the election, the business must have average annual gross receipts of \$15 million or less over the prior 3-year period.

The Act's special rule applies to all taxpayers, including corporations and sole proprietorships. IRS Revenue Procedure 2009-19 clarifies that the rule applies to S Corporation shareholders and partners of a tax partnership and provides election mechanics for these taxpayers.

Cancellation of Indebtedness Income Deferral. Taxpayers may recognize cancellation of debt income (CODI) in circumstances where a creditor forgives the debt or releases the debt for less than its face value. Some businesses can qualify for an exception to the CODI rules, including insolvent businesses and businesses that have filed for Chapter 11 Bankruptcy protection. The Act provides that businesses may elect to defer the recognized income for a period of 5 years with respect to CODI related to a 2009 transaction and for a period of 4 years with respect to CODI related to a 2010 transaction. However, any CODI that the business elects to defer would not be eligible for the general exceptions. In the case of a partnership for tax purposes, the election must be made at the partnership level, rather than at the individual partner level.

The election would allow the business to recognize the deferred CODI income ratably over the 5 years succeeding the deferral period. In addition, the CODI would accelerate in certain circumstances, including in the event the taxpayer were to die; or in the case of an entity, dissolve or sell substantially all of its

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assets.

Reduction of S Corporation Built-in-Gain Period. When an S corporation disposes of assets that it held during a prior C corporation period, the disposition may trigger a built-in-gains tax under section 1374. However, the special tax only applies to dispositions that occur during the 10-year period following the year of the corporation's S election. The Act reduces the 10-year period to 7 years, but only for dispositions that occur in 2009 and 2010.

Sales of Small Business Stock. Current law provides a 50% gain exclusion under section 1202 for gain related to the sale of qualified small business stock that the taxpayer has held for more than 5 years. Gain that is not eligible for the exclusion is taxed at the lower of the ordinary income rate or 28%. The Act increases the excluded amount to 75% for taxpayers other than corporations, but this applies only to sales of stock after February 17, 2009 and prior to January 1, 2011. As a result, gain from a qualifying sale is essentially taxed at a 7% maximum federal rate.

Extension of Bonus Depreciation and Small Business Expensing. The Act provides that qualified property placed in service in 2009 is eligible for 50% bonus depreciation for the year in which such property is placed in service. This represents an extension of the bonus depreciation rule for capital expenditures that was scheduled to sunset at the end of 2008.

In addition, the Act extends special section 179 expensing provisions for 2009 that allow taxpayers to deduct certain capital expenditures by increasing the allowable amount to \$250,000 and increasing the phase-out threshold to \$800,000.

Investment Credit for Advanced Energy Property. The Act provides a tax credit equal to 30% of a taxpayer's basis in eligible property that is used to re-equip, expand or establish a facility that manufactures components for the production of renewable energy. Energy tax credits generally have benefited producers and consumers, but this credit provides an incentive for manufacturers to develop and invest in facilities. The Act places a cap on the total number of credits available and requires taxpayers to submit an application to be eligible for the credit. This creates a competitive bidding process and the Secretary allocates credits based on a number of identified selection criteria.

For further information regarding tax planning opportunities, please contact Dan Cooper or any other member of Reinhart Boerner Van Deuren s.c.'s Tax Department.



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