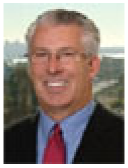

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Stimulus Maximus?

The American Recovery and Reinvestment Act of 2009 reels in tax provisions worth $75 billion for businesses.

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The American Recovery and Reinvestment Act of 2009 (2009 Stimulus Plan) advanced through both the House and Senate in record time and the Conference Committee reconciled the House and Senate versions in less than 48 hours.

The final version of the bill (H.R. 1) settled in at approximately $789 billion with approximately 38 percent of the total cost represented by tax incentives. This represents a reduction of approximately $100 billion in total costs from the prior Senate version.

While there are many aspects of the 2009 Stimulus Plan that apply to individual taxpayers, there are numerous tax incentives applicable to corporations and other businesses.

Following are the more significant tax provisions applicable to businesses which total approximately $75 billion (approximately 10% of the total Stimulus package):

1. **Bonus Depreciation.** The Stimulus Plan extends the 50 percent first year bonus depreciation provisions applicable to acquisitions of new tangible personal assets is extended for assets placed in service between January 2009 and December 2009. The bonus depreciation provisions are also extended through 2010 for the acquisition of certain "transportation property" used in transporting passengers or cargo. Purchasing these assets versus leasing them will generally result in significantly faster tax recovery.

   Congress also increased the first year auto depreciation limit by $8,000 for a revised 2009 limit of $10,160 and $11,160 for light trucks and vans. These revised limits are the same as the temporary 2008 increase and will only apply to new and used vehicles placed in service during the 2009 calendar. Of course this presumes 100 percent business use and lesser use will proportionately scale back these new limits. A related benefit for individuals is an above-the-line deduction for the sales tax or excise tax paid on domestic or foreign vehicles (limited to the taxes paid on the first $49,500 of vehicle value with phase-out for taxpayers with adjusted gross income (AGI) above $125,000(S)/$250,000(J)) placed in service after the Stimulus Plan is signed by the President.

2. **Section 179 Expensing.** The Stimulus Plan also extends the IRC Section 179 asset "expensing" rules to allow a first year write-off of the first $250,000 of new or used property purchases in 2009. The Section 179 expensing rules have two limits: 1) the amount expensed is limited to the taxpayer's reported taxable income (before the Section 179 deduction) and 2) If the taxpayer purchases more than $800,000 of 2009 personal property the $250,000 179 limit is reduced dollar-

for-dollar until it is fully phased out after $1.05 million of asset purchases. Taxpayers at risk of hitting these limits should consider a mix of purchased and (operating) leased assets during the year.

3. **Net Operating Loss Carryback Enhancement.** The Plan extends the net operating loss (NOL) carryback period from the current two-year period to a five-year period, but only for companies with average gross receipts of $15 million or less. These new rules generally apply to losses incurred for tax years beginning in 2008 (but not 2009 as previously proposed). With the extended carryback period, both corporate and individual taxpayers should take a very thorough look at all methods to maximize their 2008 tax losses in order to maximize cash flow via refund claims.

4. **Cancellation of Debt (COD) Deferral.** Since so many taxpayers are being forced to restructure their debt, but may not be insolvent for purposes of IRC Section 108/1017, the Stimulus Plan generally allows taxpayers to spread any taxable income associated with debt repurchases/ restructuring occurring after December 2008 and before January 2011 to spread the related taxable income over five years beginning January 2014. This deferral is elective but such election is irrevocable and the deferral may be accelerated if the company is sold or liquidated.

5. **S Corp Built-In-Gain Relief.** In order to encourage taxpayers to convert their C Corps to S Corp status, the Stimulus Plan reduces the 10-year "Built-in-Gain" (BIG — the difference between the fair market value and tax basis in assets held on the date of conversion) period to seven years. Therefore, C Corps that are experiencing tax losses and have maximized their NOL carrybacks (see #3 above), should evaluate a conversion to S Corp status to allow losses to flow through to the shareholders for personal tax advantage. Of course prior to making an S Election, a full analysis of the BIG exposure, shareholder tax basis in stock and debt in order to claim future losses and projected income and losses is necessary.

6. **Liberalized WOTC Credit.** The federal Work Opportunity Tax Credit (WOTC), which allows hiring tax credits of $2,400 to $4,800 for each employee meeting specified demographic criteria, has been expanded to allow more veterans and "disconnected youth" to generate these credits for employers hiring them after December 31, 2008.

   A "Qualifying Veteran" is any person who: a) received unemployment compensation for at least four weeks within a year of being hired and b) was discharged from active duty in the U.S. Armed Forces between September 2001 and December 2010. Veterans with physical or mental disabilities, who have also receive food stamps, can generate a credit for their employer of up to $4,800 under existing law.

   "Disconnected Youth" include individuals between the ages of 16 and 25 who have not attended school or been regularly employed in the prior six months.

   Since these expanded definitions are retroactive to January 2009, the normal 28-day WOTC certification period will likely be extended for the early part of the year.

   Qualifying WOTC individuals can be easily accessed through existing city and county Workforce Development Departments, veteran's organizations, Goodwill and similar not-for-profit entities throughout the country.

7. **Small Business Stock Exclusion.** Small Business Stock (defined under IRC Section 1244) acquired after enactment of the Stimulus Plan and before January 2011 and held for more than five years can obtain a 75 percent federal exclusion on future gain.

8. **Energy Related Provisions.** There are numerous eco-friendly tax incentives for alternative fuel and energy conservation activities.

a. Alternative Fuel Pumping Station Credit — Increases the credit percentage for specialized alternative fuels pumping station from 30 percent to 50 percent with a maximum credit of $50,000 per facility. Hydrogen fuel pumping stations only receive a 30-percent credit but can receive a credit up to $200,000. These rules apply for 2009 and 2010.

b. Renewable Energy Production Credit — Extends the "placed in service date for purposes of IRC Section 45 credit until 2013 (2012 for wind energy equipment).

c. Energy Investment Credit — Eliminates the prior dollar cap on small wind energy credits. Applies a 30 percent credit for qualified equipment placed in service post-December 2008. The new rules also liberalize the use of government subsidies and private activity bonds without reducing the credit amount.

d. Elective Credit Application — Taxpayers can elect to apply the 30 percent IRC Section 48 Energy Investment Credit in lieu of the Section 45 Renewable Energy Credit. This election is generally not applicable to wind energy equipment.

e. Plug-In Electric Vehicle — Base credit of $2,500 per vehicle for purchaser with phase-down after 200,000 units produced. The vehicles will not be eligible for the Section 30B hybrid credit.

Conclusion

Regardless of your view of the 2009 Stimulus Plan, CPAs and business taxpayers can generally applaud the various tax incentives contained in the legislation. There are some bright spots for businesses in virtually every industry — even those companies suffering losses.

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