

Business Planning: Can Your Business Benefit from the Incentives Available Under the 2009 Act?

With proper planning and evaluation of current business conditions, businesses may be able to enjoy the benefits of the tax incentives.

BY ROBERT L. THORNE, CPA

Under the current economic conditions, it may be time to start planning business strategies that allow you to take advantage of the business tax incentives available under the *American Recovery and Reinvestment Act of 2009* signed into law by President Obama on February 17, 2009. The \$787 billion stimulus act offers nearly \$300 billion in tax relief and over \$75 billion in business incentives for 2009 and 2010.

Below are highlights of the incentives available to businesses and items that may affect businesses as they relate to current and former employees. The business incentives include bonus depreciation, section 179 expensing, and changes to net operating loss carryback rules. A change to COBRA benefits rules and the Make Work Pay Credit may require immediate attention by businesses.

Bonus Depreciation

The Economic Stimulus Act of 2008 restored the 50 percent depreciation for assets placed in service in 2008. The new law extends the 50 percent first-year bonus depreciation through December 31, 2009, retroactive to January 1.

The 50 percent bonus depreciation is taken on top of regular depreciation reported for the first year the property is placed in service. The depreciation deduction equals 50 percent of the asset's depreciable basis (cost or other basis less Section 179 expensing and any applicable credits). The 50 percent deduction is for new assets and generally applies to assets that are depreciated ratably over a period of time under the rules of the Modified Accelerated Cost Recovery System (MACRS). The 50 percent bonus depreciation generally includes tangible property with an applicable recovery period of 20 years or less, purchased computer software (not covered under Section 197), and qualified leasehold improvements. Property that was acquired for personal use in 2008 and later converted to business property in 2009 meets the original use test.

Leasehold improvements qualify if they meet all four of the following: 1) the building is nonresidential real property, 2) the improvement is to an interior portion of a building, 3) improvements are made pursuant to a lease by a tenant, sub-tenant, or the landlord to property to be occupied exclusively by the tenant or sub-tenant, and 4) the improvement is placed in service more than three years

after the date the building was placed in service. Items that do not qualify include enlargement of the building, an elevator or escalator, any structural component benefiting a common area, and internal structural framework of the building.

The new law also extends to the 2009 bonus depreciation deduction for passenger automobiles. The regular, first-year depreciation dollar cap for passenger automobiles is increased from \$2,960 to \$10,960. The \$10,960 increased deduction is

expected to revert back to \$2,960 beginning January 1, 2010.

Planning Notes

- *The original use of the property must begin with you.*
- *The amount of depreciation taken is not affected by short taxable years.*
- *If you acquire or construct a new building during the time period qualifying for bonus depreciation, you may need to consider obtaining a cost classification report. Buildings in general do not qualify for bonus depreciation; however, there may be costs of personal property that can be separated from the building costs that do qualify for bonus depreciation, such as cabinetry and carpeting.*
- *Improvements made under a lease between related parties do not qualify for bonus depreciation.*

Internal Revenue Code Section 179

Last year, the 2008 Economic Stimulus Act increased the Code Section 179 expense amount to \$250,000 and increased the threshold for reducing the deduction to \$800,000. The American Recovery and Reinvestment Act

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of 2009 extends the \$250,000 deduction for new and used assets placed in service in 2009.

Code Section 179 allows a taxpayer to expense the cost of the assets in the year of purchase in lieu of depreciating the property ratably over several years. This includes qualified tangible personal property, such as equipment and furniture and certain off-the-shelf computer software.

Planning Notes

- *The section 179 expensing can be applied to all or part of an asset that is acquired during the year.*
- *When considering what assets to apply section 179 to, it is more advantageous to apply to the assets with the longest depreciable lives.*
- *In order to maximize the 179 expensing, the total asset acquisition costs cannot exceed the \$800,000 threshold.*
- *The section 179 deduction is scheduled to revert back to \$125,000 (indexed for inflation) and the threshold for reducing the deduction to \$500,000 (indexed for inflation).*

Net Operating Loss (NOL)

The new law allows a five-year carryback of 2008 NOLs for qualified small businesses. A qualified small business is deemed to have average gross receipts of \$15 million or less. You can choose to carry back the NOL three, four, or five years. This new treatment of NOLs will apply for a business with a tax year beginning or ending in 2008. The loss carryback will revert back to two years for NOLs incurred in 2009.

Planning Notes

- *Once you file your 2008 return with an NOL, you can begin the process of claiming a refund.*
- *Computing a refund is done on Form 1045 for individuals and Form 1139 for a corporation.*

COBRA Benefits

The new law allows an individual who is involuntarily separated from employment between September 1, 2008 and January 1, 2010, to elect to pay 35 percent of his/her COBRA coverage and have it be treated as paying the full amount. The former employer will be required to pay the remaining 65 percent and, in effect, will be reimbursed by crediting those amounts against income tax withholding and payroll taxes a business is otherwise required to submit to the federal government. The in-

come and other limitations related to COBRA coverage still apply.

Make Work Pay Credit

The Make Work Pay credit is an incentive aimed to give individuals tax relief on their first \$6,452 of earnings. The credit is allowed against income tax in an amount equal to the lesser of 6.2 percent of the individual's earned income or \$400 (\$6,452 multiplied by 6.2%). The credit is retroactive to the January 1, 2009 and extends through 2010.

The credit is available to individuals whose modified adjusted gross income (MAGI) does not exceed \$75,000 or \$150,000 in the case of married couples filing jointly. The credit is phased out at a two percent rate above that limit.

The employer's share of Federal Insurance Contribution Act (FICA) or its 6.2 percent equivalent would remain unchanged. Qualified taxpayers can take the credit through a reduction in wage withholding or as a lump sum distribution when filing their individual tax return. If employees choose to have a reduction in wage withholding, employers will need to make the appropriate reduction to employee wage withholding.

Planning Notes

- *Earnings from self-employment also qualify to the extent they are taken into account in computing taxable income.*
- *Nonresident aliens are not eligible for the credit.*
- *The credit is not available if a person can be claimed as a dependent by another taxpayer.*

Proper Planning and Evaluation

Businesses have time to take advantage of the current tax incentives available under the 2009 Act. It is important that you review and understand the effects that your business may incur if you decide to take advantage of the tax incentives. With proper planning and evaluation of current business conditions, businesses may be able to enjoy the benefits of the tax incentives.

The information contained in this article is intended to provide a general understanding of some tax law changes as a result of the American Recovery and Reinvestment Act of 2009. However, the effect and application of tax laws can and do vary, depending on the situation of each taxpayer. It is recommended that, prior to making any tax decision, you consult your tax or legal advisors.

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