

Feeling Stimulated?

Tax Aspects of the Stimulus Legislation

By Christopher J. Loughran and William R. Hamerman

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Tax Act of 2009 (the Act). The Act contains approximately \$300 billion worth of tax cuts, the intent of which, combined with other government spending, are to help revive the economy by promoting consumption, investment and employment (see John Maynard Keynes, who is apparently slapping Adam Smith with his invisible hand). Regardless of your past attitude toward tax policy and its effect on you, there seems to be somewhat of a civic duty to take full advantage of these tax cuts as best you can, so that you too can support the economy by getting your piece of the tax cut pie and joining in the consumption.

Some of the key tax highlights of the Act that many of you will be interested in are as follows:

Business Provisions

Enhanced Fixed Asset Cost Recovery.

The existing 50 percent bonus depreciation rules and the \$250,000 section 179 expensing election for most new fixed assets are extended through the end of 2009. The section 179 benefit phase out continues based on purchases in excess of \$800,000 on a dollar for dollar basis. Bonus depreciation eligible property generally includes new MACRS property with a recovery period of less than 20 years, computer software and qualifying leasehold improvements. The 50 percent bonus depreciation is also extended to 2010 for property with a recovery period of 10 years or more, for transportation equipment and for certain aircraft.

Refundable Research & Minimum Tax Credits

The Act extends through 2009 the provision which allows taxpayers to elect to monetize a portion of research and minimum tax credit carryforwards in lieu of taking bonus depreciation. A detailed cost benefit analysis is likely required to select the most advantageous option.

Net Operating Loss (NOL) Enhanced Utilization for Small Businesses

An increase in the NOL carryback period for losses incurred in years ending in 2008 (or by election, for years beginning in 2008) is provided by the Act. Such NOLs can be carried back by C corporations and individuals with respect to small business flow-through entities (S corporations, partnerships/LLCs and sole proprietorships) if they have average annual gross receipts of less than \$15 million for the three years preceding the loss year, subject to special aggregation rules. The NOLs can be carried back three, four or five years rather than the two years provided by prior law.

Cancellation of Debt (COD) Income Relief

Taxpayers can elect to defer most COD income otherwise recognizable in 2009 or 2010 until 2014. The 2009 COD income would be spread five years beginning in 2014, and the 2010 COD income would be spread four years.

S Corporation Built-in Gains Relief

The S corporation built-in gain tax trigger period is reduced from ten years from the date of the S election, to seven years. This rule will benefit C corporations that converted to S status between 2000 and 2003, which sell assets at a gain in

2009 or 2010 that would otherwise be subject to two layers of federal taxation.

COBRA Benefit Revision (includes employer mandate)

For any employee involuntarily terminated between September 1, 2008 and January 1, 2010, the (former) employer must pay 65 percent of the COBRA cost (post termination health insurance premiums). The employer is allowed a credit against income tax/payroll tax withholdings for this amount. In theory, employees with adjusted gross income (AGI) in excess of \$125,000 are not eligible for the benefit, but the employer is not required to verify the employee qualified (and may not be able to, since AGI is not necessarily known at the time of the request). There are many non-tax issues related to these rules, and employers should have their human resources group address the revised rules or contact their employment legal counsel to prepare a compliance strategy as soon as possible.

Individual Provisions

Individual Estimated Tax Modification

A relaxed federal estimated tax rule for individuals for 2009, limiting the required payments to 90 percent of the 2008/prior year tax is provided by the Act. This payment option is only available to certain qualifying persons that meet two requirements: 1.) their 2008 AGI is less than \$500,000 for joint filers (\$250,000 single), and 2.) the taxpayer can establish that more than 50 percent of the gross income on the prior year return was derived from businesses that employed on average less than 500 people.

2009 AMT Patch

A one year "fix" (again) for 2009 increasing the alternative minimum tax (AMT) exemption to limit how many taxpayers are subject to AMT. The exemption for 2009 is increased to \$46,700 for individuals and \$70,950 for joint filers. In addition, most personal tax credits can be used to offset the AMT.

The "Making Work Pay" Credit

While not available to higher income taxpayers, you may have family members or friends who qualify if you do not, for the \$400 single/\$800 joint return individual credits for 2009

and 2010. The credit is limited to the lesser of the dollar amounts noted or 6.2 percent of earned income, and cannot be claimed by a qualifying dependent. Checks will not be mailed; the funds are to be made available via automatic payroll tax adjustments and/or via credits on 2009 returns.

First Time Homebuyer Credit

A refundable credit of \$8,000 (\$4,000 if married filing separately) is provided for first time homebuyers for residences purchased between January 1, 2009 and November 30, 2009. Unlike the credit enacted for 2008, there is no mandatory repayment requirement for this credit. However, there is a recapture provision if the home is sold within 36 months. To qualify as a "first time homebuyer" the taxpayer can have no ownership interest in a principal residence during the three years ending on the purchase date (assume 1,096 consecutive days of non-ownership is required, with 2008 being a leap year). The credit is phased out ratably for joint returns with AGI between \$150,000 and \$170,000, and for all other filers between \$75,000 and \$95,000.

Residential Energy Credit

The Act increases the credit from 10 percent to 30 percent of qualifying costs (such as new furnaces, windows/doors and insulation), and raises the maximum credit to \$1,500 in aggregate for 2009 and 2010.

Plug-in Hybrid Vehicle Revised Credit

The revised credit is available for the first 200,000 new vehicles sold by each manufacturer, and applies to vehicles purchased *after* December 31, 2009 (prior rules remain in effect for 2009 purchases). For passenger vehicles, the credits start at \$2,500 and increase to as much as \$7,500 based on kilowatt battery capacity in excess of 4 kWh. The dealer/manufacturer should certify the amount of the credit to the purchaser. There are also credits of up to \$2,500 per vehicle for low speed (25 mph or less) neighborhood electric vehicles acquired after February 17, 2009 and before January 1, 2012.

Expanded Higher Education Tax Credit

Though substantially limited based on taxpayer AGI, the Hope college tuition credit is increased to a maximum of \$2,500 per year for 2009 and 2010 and can be used for the first four years of college (versus two previously). It phases out ratably, and completely, between AGI of \$160,000 and \$180,000 for joint filers (\$80,000 and \$90,000 for others). Qualifying expenses are expanded to include textbook costs as well as tuition. To obtain the maximum credit, \$4,000 of qualifying costs must be incurred (100 percent of first \$2,000 allowed, and 25 percent of excess over \$2,000 allowed).

A Final Note

If you are still feeling stimulated four hours after reading this bulletin, please call your doctor immediately - or at least call one of the Perkins tax shareholders below for any questions about how the stimulus provisions may impact you or your business.

Chris Loughran	(503)221-7565	cloughran@perkinsaccounting.com
Tim Kalberg	(503)221-7511	tkalberg@perkinsaccounting.com
David Uslan	(503)221-7597	duslan@perkinsaccounting.com
Roy Abramowitz	(503)221-7500	roya@perkinsaccounting.com
Keith Meyers	(503)221-7579	kmeyers@perkinsaccounting.com

This bulletin is a summary and is not intended as tax or legal advice. You should consult with your tax advisor to obtain specific advice with respect to your fact pattern.

Based on the most recent "best practice" standards for tax advisors issued by the Treasury Department, commonly referred to as Circular 230, we wish to advise you that this bulletin has not been prepared to be used, and cannot be used, to provide assurance that penalties which may be assessed by the IRS or other taxing authority (including specifically section 6662 understatement penalties) will not be upheld.



+ 1211 SW Fifth Avenue, Suite 1000
+ Portland, Oregon 97204-3710