



**2009**

**American Recovery and Reinvestment Tax Act**

**UPDATED March 23, 2009**

## **INTRODUCTION**

On February 17, 2009, President Obama signed the **American Recovery and Reinvestment Tax Act of 2009** (the "American Recovery Tax Act") providing approximately \$275 billion of temporary tax breaks and incentives impacting virtually every individual and business taxpayer. Also, late in 2008, Congress passed a law that temporarily waives required minimum distributions from employer retirement plans and IRAs. This letter summarizes selected provisions of the American Recovery Tax Act and the 2009 suspension of the required minimum distributions.

**Temporary Individual Tax Breaks** include: an increased refundable first-time home buyer's credit of up to \$8,000, estimated tax payment relief for certain individuals owning small businesses, a deduction for sales tax on the purchase of qualifying vehicles, an increased and partially refundable tuition tax credit (up to \$2,500), a refundable income tax credit to offset payroll taxes of low and middle income individuals, and a significant expansion of various credits for energy-efficient home improvements.

**Temporary Business Tax Breaks** include: a longer carryback period for 2008 Net Operating Losses, an extension of the higher \$250,000 section 179 deduction, an extension of the 50% bonus depreciation, and an expanded work opportunity tax credit for hiring certain disadvantaged employees.

**Since much of this tax relief expires either in 2009 or 2010, you will need to act timely to obtain maximum benefits from the legislation.**

As you read the following highlights, please keep in mind that many of these tax breaks require quick action. Consequently, pay careful attention to the **effective date** and **sunset date** (if applicable) of each new provision, which we **highlight prominently** in each segment.

To help you locate items of interest, we have divided our discussion of the new changes into the following two categories:

- **New Tax Breaks Available To Individual Taxpayers—Selected Provisions**
- **New Tax Breaks Available To Business Taxpayers—Selected Provisions**

**Planning Alert!** We highlight only *selected* provisions of this new tax legislation. If you have heard or read about any provision not discussed in this letter, feel free to call our office. We will help you determine how the provision impacts you or your business. This letter also contains planning ideas. However, you cannot properly evaluate a particular planning strategy without calculating your overall tax liability (including the alternative minimum tax) with and without the strategy. You should also consider any state income tax consequences of a particular planning strategy. We recommend you call our firm before implementing any tax planning technique discussed in this letter, or if you need more information.

## **NEW TAX BREAKS AVAILABLE TO INDIVIDUAL TAXPAYERS—SELECTED PROVISIONS**

**Home Buyer's Credit Expanded And Enhanced.** For 2008, first-time home buyers who satisfied certain income thresholds were eligible for a refundable credit of up to \$7,500 for purchases of a principal residence after April 8, 2008 and before 2009. However, this credit had to be paid back to the government in equal installments over 15 years, or earlier if the house was sold or if the purchaser failed to use the home as a principal residence.

**Caution!** These rules (including the 15-year payback requirement) still apply to qualifying home purchases **after April 8, 2008 and before 2009**. However, for **qualifying home purchases after 2008 and before December 1, 2009**, the *new law* expands and enhances the credit by:

1. increasing the maximum credit from \$7,500 to \$8,000 (not to exceed 10% of the home's purchase price),
2. eliminating the 15-year payback requirement,
3. requiring recapture of the credit upon the sale of the residence or failure to use the residence as a principal residence *only* where the sale or change of use occurs within 36 months of the date of purchase,
4. extending the deadline for qualifying purchases from **June 30, 2009** to **November 30, 2009**, and
5. allowing the credit for qualifying homes bought with proceeds from tax-exempt mortgage revenue bonds.

**Tax Tip.** The credit offsets both alternative minimum tax (AMT) and regular tax liabilities.

- **How Do The Credit Limits Apply?** Under the *2009 Rules*, the amount of the credit is the lesser of: **1)** \$8,000 (\$4,000 if you are married filing separately), or **2)** 10% of the home's purchase price. The credit is phased out as your adjusted gross income (AGI) increases from \$75,000 to \$95,000 if you are single, or from \$150,000 to \$170,000 if you are married filing jointly. **Tax Tip.** Since the credit is refundable, you will actually get a refund to the extent the credit exceeds your tax liability.
- **Who Is A Qualified First-Time Home Buyer?** You are a "first-time home buyer" if neither you nor your spouse has owned an interest in a principal residence in the U.S. during the 36-month period ending on the date of the purchase of the current residence.

**Tax Tip.** Even if you or your spouse previously owned a home, you can still qualify for the credit, if that ownership ended at least three years before the purchase of the current residence.

**Planning Alert!** You generally will **not qualify** for the credit if: **1)** you purchase your home from a related party (e.g., certain family members), or **2)** the home is not located in the U.S.

**Tax Tip.** Your *principal residence* could include a condominium, houseboat, or mobile home.

**2009 Estimated Tax Relief For Certain Individuals Owning Small Businesses.** Generally, if your **2008 AGI** was \$150,000 or less, one way you can avoid 2009 underestimated tax penalties is to make your timely 2009 estimated tax payments based on 100% of your 2008 tax liability. If your **2008 AGI** was over \$150,000, you can avoid penalties by basing your 2009 estimated tax payments on 110% of your 2008 tax liability. Under the American Recovery Tax Act, if you meet certain conditions, you can avoid 2009 underestimated tax penalties by basing your 2009 estimated tax payments on 90% (rather than 100% or 110%) of your 2008 tax liability. To qualify: **1)** you must have had adjusted gross income below \$500,000 (\$250,000 if married and filing separate returns) **for 2008**, and **2)** you *must certify* that more than 50% of the gross income on your 2008 return came from a “qualifying small business.” For this purpose, a “qualifying small business” is generally defined as a business that employed on average less than 500 employees during calendar-year 2008.

**Tax Tip.** When we prepare your 2008 return, we will help you decide if you qualify for this provision for your 2009 estimated tax payments.

**Individuals May Deduct Sales Or Excise Taxes Paid On Qualified Vehicle Purchases.** For purchases from **February 17, 2009 through December 31, 2009**, you may claim a deduction for sales or excise taxes you pay on the purchase of a “qualified motor vehicle.” If you itemize deductions, you may deduct the qualified sales or excise taxes as “taxes.” If you do not itemize deductions, you may deduct the qualified sales or excise taxes as an additional standard deduction. A **qualified motor vehicle** is a *new* passenger automobile with a gross vehicle weight (GVW) of 8,500 lbs or less, a new motorcycle with a GVW of 8,500 lbs or less, or a motor home. This additional deduction for sales or excise taxes is limited to the sales tax on the first \$49,500 of the vehicle’s purchase price, and phases out ratably as your modified adjusted gross income (MAGI) increases from **\$250,000 to \$260,000** on a joint return (**\$125,000 to \$135,000** on a single return). The *new* car sales tax additional standard deduction (or itemized deduction) is deductible for AMT purposes.

**Expanded And Enhanced HOPE Tuition Tax Credit.** For 2008, individuals were allowed a HOPE tuition tax credit (HOPE Credit) for qualifying tuition costs generally for the first two years of college (e.g., freshman and sophomore years). For example, in 2008 you were entitled to a HOPE credit of up to \$1,800 per student for qualified tuition and fees paid for yourself, your spouse, or a dependent. However, this credit phased out as your modified adjusted gross income increased from **\$96,000 to \$116,000** on a joint return (**\$48,000 to \$58,000** on a single return). The new law changes the name of the HOPE credit to the **“American Opportunity Tax Credit,”** and **for 2009 and 2010** makes five significant changes to the credit:

1. **Amount of Credit** – the maximum credit is increased from \$1,800 to \$2,500 (100% of the 1<sup>st</sup> \$2,000 of qualifying education expenses plus 25% of the next \$2,000 of qualifying expenses);
2. **Number of Years Credit Allowed** – the number of years that the student may qualify for the HOPE credit is increased from *two* years to *four* years;
3. **AGI Phase-Out Limits** – the credit is phased out as modified adjusted gross income increases from \$160,000 to \$180,000 for those filing joint returns (\$80,000 to \$90,000 for single filers);
3. **Partially Refundable** – 40% of the credit is refundable unless the student is subject to the so-called *kiddie tax rules* (i.e., all students under age 18 and most full-time students under age 24); and
4. **Qualifying Education Expenses** – course materials are added to the expenses qualifying for the credit (therefore, for 2009 and 2010, expenses qualifying for the credit include tuition, fees, and *required course materials*).

**“Making Work Pay” Tax Credit.** For **2009 and 2010**, qualifying individuals are allowed a new refundable *Making Work Pay* tax credit equal to 6.2% of *earned income* (including tax-exempt combat pay received by military personnel) up to \$12,903 on a joint return (up to \$6,452 if filing single). This translates into a maximum credit of \$800 for joint filers and \$400 for single filers. However, the credit is phased out as your modified adjusted gross income (MAGI) increases from \$150,000 to \$190,000 (\$75,000 to \$95,000 on a single return). Also, the credit is not available if you qualify as someone’s dependent, or if you are a nonresident alien. You will not get a rebate check as you did with last year’s economic stimulus payment. Instead, Congress has instructed the IRS to revise the official withholding tables so that the credit will reduce your payroll tax withholdings and increase your take home pay.

**Planning Alert!** If you qualify for this credit for 2009 but you do not have sufficient withholding to utilize all of the credit, you will be entitled to any unpaid portion as a refundable credit when you file your 2009 tax return.

**One-Time “Economic Recovery Payment” To Certain Veterans, Social Security Recipients, Etc.** If you are currently receiving social security retirement or social security disability benefits; veteran’s compensation or veteran’s pension benefits; Railroad Retirement benefits; or Supplemental Security Income (SSI) benefits (excluding individuals who receive SSI while in a Medicaid institution); you may qualify for a **one-time payment** of \$250. The IRS is to begin making these payments no later than June 17, 2009. If you are also eligible for the “Making Work Pay” credit, discussed above, that credit is reduced by any “economic recovery payment.”

**2009 Refundable Credit For Government Retirees.** If **during 2009** you receive a pension or annuity for service performed in the employ of the U.S. or any state, or any instrumentality thereof, and you do not receive an “economic recovery payment” (discussed above) you may be entitled to a refundable credit on your 2009 return. The credit is \$250 (\$500 if you file a joint return and both you and your spouse are eligible individuals).

**Expanded Tax Credits For Residential Energy-Efficient Expenditures.** There are several non-refundable credits available for *qualified energy-efficient* improvements to our homes, including:

1. a lifetime credit up to \$500 for various qualified *energy-efficient home improvements*;
2. an annual 30% credit up to \$2,000 for qualified solar water heaters and geothermal heat pumps,
3. an annual credit of up to \$4,000 for small wind energy property; and
4. a 30% credit for qualified residential solar electric generating property (e.g. solar PV panels).

The American Recovery Tax Act expands and enhances these credits. For example, if you **place in service in 2009 and 2010** qualified energy-efficient improvements to your *principal residence located in the U.S.*, the Act provides a 30% credit with a \$1,500 maximum total cumulative credit for the 2009 and 2010 tax years (previously, there was a lifetime credit limit of \$500). Also, the credit is allowed even if the improvements are purchased with government subsidized energy financing, and may offset the AMT. If instead you install a qualifying solar water heater, solar electric generating property, geothermal heat pump, or small wind energy property in your residence located in the U.S., you may qualify for a credit equal to 30% of the equipment’s cost (including onsite labor costs), **with no dollar cap**.

**Tax Tip.** Before making energy-efficient improvements to your home, you should first check to see if the manufacturer has certified the products as qualifying for any of these energy tax credits. You can also go to [www.energystar.gov](http://www.energystar.gov) and type in “energy credits” for detailed information on whether your planned energy-efficient expenditures qualify for a credit. If you provide that information to us, it will help us prepare your return more efficiently.

**Waiver Of Required Minimum Distributions (For 2009 Only!).** During the last weeks of 2008, Congress passed a law waiving required payments (called “required minimum distributions” or RMDs) from employer-sponsored retirement plans and IRAs for **calendar year 2009 only**. Thus, if you have reached age 70½, or you are a beneficiary of an IRA or employer-sponsored plan whose owner has passed away, you will generally not be required to take a distribution otherwise due in 2009.

**Planning Alert!** Unfortunately, this waiver does not apply to any RMDs that you were required to take in 2008. Also, if you reached **age 70½ during 2008**, and did not take your first RMD in 2008, you generally must take your first RMD **no later than April 1, 2009** to avoid the 50% penalty for failing to make a required distribution. If you reach age **70½ during 2009**, you must make your first required distribution **no later than December 31, 2010** (rather than April 1, 2010) to avoid the 50% penalty.

**Tax Tip.** If you have already received a payment in 2009 that is not required under the rules discussed above, you may keep it without penalty and simply include it in your taxable income. If you do not want to keep it and include the distribution in income, you may be able to roll the amount distributed into an IRA within 60 days of receipt, and avoid taxation of the distribution.

**Caution!** Only one rollover from one IRA to another may be made within a 12-month period. Please call us if you wish to roll these amounts to an IRA so we can assist you with the transaction.

## **NEW TAX BREAKS AVAILABLE TO BUSINESS TAXPAYERS—SELECTED PROVISIONS**

**Temporary 5-Year Carry Back Of Net Operating Losses.** If you have an “eligible small business” that is currently generating a tax loss (NOL) but was profitable in prior years, the American Recovery Tax Act may allow you to get a refund of taxes paid in previous years. Under current law, you may generally carry back an NOL and offset taxable income reported in the 2 tax years before the year that the loss arose (the “Carry back period”), and carry it forward to each of the following 20 years. **For NOLs generated by an “eligible small business” in the tax year ending in 2008** (or, instead *at the taxpayer’s election*, in the tax year beginning in 2008), the new legislation allows you to “elect” to extend the current NOL Carry back period from 2 years to up to 5 years. In other words, a qualifying business may “elect” a 3, 4, or 5-year Carry back period. Generally, a business is an “**eligible small business**” qualifying for this special 5-year Carry back rule if it is a corporation, partnership, or sole proprietorship that has generated average gross receipts of no more than \$15 million for the 3 tax years (or, shorter period of existence) ending with the tax year of the NOL.

**Tax Tip.** There are certain NOL Carry back filing procedures available that will allow your business to obtain a much quicker refund of taxes paid in the profitable Carry back years. If your *eligible small business* anticipates a tax loss for 2008, please call our firm and we will help you file for the Carry back refunds as soon as possible.

**Increased \$250,000 Section 179 Deduction Extended Through 2009.** For tax years beginning in 2007, your business could have elected to deduct (under section 179) up to \$125,000 of the cost of qualifying depreciable business property (e.g., machinery and equipment). Also, for 2007, this deduction was reduced by the amount of your section 179 property acquisitions in excess of \$500,000. Effective for tax years beginning in 2008, Congress increased the maximum section 179 deduction to \$250,000, and increased the phase-out threshold to \$800,000. The American Recovery Tax Act extends this \$250,000 section 179 deduction for one more year. Therefore, the increased section 179 limitation amounts apply **for tax years beginning in 2008 and 2009.**

**Tax Tip.** If you are considering a significant equipment or business vehicle purchase, please call our office. We will help you develop a purchase strategy that gives you maximum depreciation deductions.

**The 50% Bonus Depreciation Also Extended Through 2009.** The original bonus depreciation was first allowed following the terrorist attacks of 2001 and generally sunset after 2004. Last year *Congress* reinstated the 50% bonus depreciation deduction for calendar-year 2008 property acquisitions. The American Recovery Tax Act extends the 50% bonus depreciation for one more year. Therefore, the 50% bonus depreciation deduction is available for qualifying property **acquired and placed-in-service during calendar years 2008 and 2009.** Generally, the 50% bonus depreciation deduction applies only to **new** property that has a depreciable life for tax purposes of *20 years or less* (e.g., machinery and equipment; furniture and fixtures; cars and light general purpose trucks; sidewalks, roads, landscaping, depreciable computer software, farm buildings, qualified leasehold improvements, qualified motor fuels facilities).

**Planning Alert!** These are only *examples* of qualifying property. If you have a question about property that we have not mentioned, call us and we’ll help you determine if it qualifies.

**Tax Tip.** The 50% bonus depreciation can create or add to a net operating loss (NOL). Under the American Recovery Tax Act, we can elect to carry back 2008 NOLs for up to 5 years. Thus, if your business incurred a loss for 2008 but has generated healthy profits within the past 5 years, it still may be prudent to take the 50% bonus depreciation for 2008. This would increase the 2008 NOL, which might allow us to recoup more prior year taxes due to the temporary 5-year Carry back period. Please call our firm and we will gladly help you determine whether taking full advantage of the 50% bonus depreciation for 2008 will save you and your business taxes.

**New Incentives To Hire Unemployed Veterans And Disconnected Youth.** Businesses that employ individuals who are members of certain targeted groups (e.g., designated low income employees, welfare recipients, ex-felons, summer youth employees) are generally entitled to the *Work Opportunity Tax Credit* (WOTC) of 40% of the first \$6,000 of wages (up to \$2,400 per employee). **For employees who begin work in 2009 or 2010**, the American Recovery Tax Act creates two new categories of individuals qualifying an employer for the 40% WOTC: **1)** unemployed veterans, and **2)** disconnected youth. **Unemployed veterans** are generally individuals who have been discharged or released from active duty (after having served for more than 180 days) in the U.S. Armed Forces at any time during the 5-year period ending on the hiring date and received unemployment compensation for at least 4 weeks during the 1-year period ending on the hiring date. **Disconnected youth** are generally unskilled individuals from age 16 through age 24 who have not been regularly employed or attended school in the 6 months preceding the hiring date.

**Planning Alert!** If your business currently employs, or plans to employ, a *qualifying* targeted individual, it must properly certify the employee in order to qualify for the WOTC. You can satisfy this certification requirement if you have the employee complete a *pre-screening notice* (IRS Form 8850) before the employee begins working. Also, no later than 28 days after the employee begins working, you must submit the properly executed notice to the appropriate state employment security agency for certification.

**Tax Tip.** You can generally find detailed information on each qualifying targeted group in the instructions to **the most recent version of IRS Form 8850** located at **[www.irs.gov](http://www.irs.gov)**.



### **FINAL COMMENTS**

Please contact us if you are interested in a tax topic that we did not discuss. Tax law is constantly changing due to new legislation, cases, regulations, and IRS rulings. Our firm closely monitors these changes and we will gladly discuss any current tax developments and planning ideas with you. Please call us before implementing any planning ideas discussed in this letter, or if you need additional information. **Note:** The information contained in this material represents a general overview of tax developments and should not be relied upon without an independent, professional analysis of how any of these provisions may apply to a specific situation.

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