

# Client newsletter



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## **BUSINESS TAX CHANGES IN THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

This is an overview of key tax changes affecting business in the recently enacted “American Recovery and Reinvestment Act of 2009” (the 2009 economic stimulus act). Our tax attorneys, Don Goode and Wes Ellis, can explain in more detail how the new changes will affect your business.

### **Extension of bonus depreciation.**

Last year, Congress temporarily allowed businesses to recover the costs of capital expenditures made in 2008 faster than ordinary depreciation schedules would allow by permitting businesses to immediately write off 50% of the cost of depreciable property acquired in 2008 for use in the United States. The new law extends this temporary benefit for qualifying property purchased and placed into service in 2009.

### **Extension of enhanced small business expensing (Section 179).**

In order to help small businesses quickly recover the costs of

certain capital expenses, small business taxpayers may elect to write off the costs of these expenses in the year of acquisition in lieu of recovering these costs over time through depreciation. Last year, Congress temporarily increased the amount that small businesses could write off for capital expenditures incurred in 2008 to \$250,000 and increased the phase-out threshold for 2008 to \$800,000. The new law extends these temporary increases for capital expenditures incurred in 2009.

### **Expanded loss carryback of net operating losses for small businesses.**

Under pre-Act law, net operating losses (NOLs) may be carried back to the two years before the year that the loss arises and carried forward to each of the succeeding twenty years after the year that the loss arises. For 2008, the new law extends the maximum NOL carryback period from two years to five years for small businesses with gross receipts of \$15 million or less. The taxpayer must

affirmatively elect the increased carryback. Absent an election, the regular NOL carryback period rules apply.

### **Incentives to hire unemployed veterans and disconnected youth.**

Businesses are allowed to claim a work opportunity tax credit equal to 40% of the first \$6,000 of wages paid to employees of one of nine targeted groups. The new law expands the work opportunity tax credit to include two new targeted groups: (1) unemployed veterans; and (2) disconnected youth. Individuals qualify as unemployed veterans if they were discharged or released from active duty from the Armed Forces during 2008, 2009 or 2010 and received unemployment compensation for more than four weeks during the year before being hired. Individuals qualify as disconnected youths if they are between the ages of 16 and 25 and have not been regularly employed or attended school in the past 6 months.

### **Extension of monetization of accumulated Alternative Minimum Tax (AMT) and Research & Development (R&D) credits in lieu of bonus depreciation.**

The new law extends the provision contained in the Foreclosure Prevention Act of 2008 and allows AMT and loss taxpayers in 2009 to receive 20% of the value of their old AMT or research and development (R&D) credits to the extent such taxpayers invest in assets that qualify for bonus depreciation.

### **Delayed recognition of certain cancellation of debt income.**

To benefit certain businesses that buy their own debt at a discount, the new law lets the businesses recognize cancellation of debt income ("CODI") over 10 years (defer tax on CODI for the first four or five years and recognize this income ratably over the following five tax years) for specified types of business debt repurchased by the business in 2009 or 2010.

### **Qualified small business stock.**

The new law increases the exclusion of gain from the sale of certain small business stock held for more than five years from 50% to 75% for stock issued after the enactment date and before 2011.

### **S corp holding period.**

The new law temporarily shortens the holding period of assets

subject to the built-in gains tax from 10 years to seven years.

### **Repeal of IRS's built-in loss rules.**

The new law provides a prospective repeal of Notice 2008-83, the controversial IRS guidance which provided that if a bank recognizes a loss from the disposition of a loan or takes a bad debt deduction under the specific charge-off or reserve methods of accounting after a change in ownership, that loss or deduction will not be treated as a built in loss attributable to the pre-acquisition period.

### **COBRA Premium Subsidiary.**

Certain laid-off workers are entitled to a 65% COBRA health insurance premium subsidy for up to 9 months. As with ordinary COBRA premiums, the business does not pay the subsidy but the business is responsible for administering the COBRA coverage, which is a significant challenge particularly if your company has laid off employees or has plans to do so. Under the subsidy program, the federal government will help pay for the COBRA benefit of any individual who is involuntarily terminated between September 1, 2008, and December 31, 2009, and whose income in the year of the subsidy does not exceed certain limits. At \$125,000 for single returns and \$250,000 for joint returns, the subsidy begins to phase out until \$145,000 for single returns and

\$290,000 for joint returns is reached. In addition, COBRA qualified beneficiaries associated with the related covered individual are eligible for the subsidy (such as a dependent child covered immediately prior to the qualifying event). These individuals pay just 35% of the premium to the company as the plan sponsor. The company will be reimbursed by the federal government for the remainder of the premium by a credit against the company's payroll taxes. If an employee was laid off after September 1, 2008, and declined COBRA coverage, the business must give that employee another chance to elect coverage. The business must notify all COBRA-eligible individuals of the subsidy and ordinary COBRA benefits.

### **Mississippi COBRA-type Premium Subsidy for Businesses with Less Than 20 Employees.**

Mississippi has a group policy continuation coverage statute that applies to employers not covered by COBRA (§ 83-9-51). Even if a business does not have to comply with federal COBRA law because it has fewer than 20 employees, it must offer a premium subsidy similar to the COBRA premium subsidy if it is covered by a COBRA-type state law. Your insurance provider will need to provide premium subsidy notification information either in the certificate of coverage that describes the continuation privilege or by another method. Also, premium subsidy information needs to be provided to affected individuals who may

have previously declined coverage and individuals who elected coverage prior to the law change. If the COBRA premium subsidy notice deadline and the retroactive effective date also apply to the state law continuation premium subsidy, employees who were previously involuntarily ter-

minated on or after September 1, 2008, who either declined continuation coverage or who elected coverage prior to the law change, must be notified about their premium subsidy rights by April 18, 2009. Those who declined continuation coverage must also be provided additional

continuation coverage election rights.

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