



# The American Recovery and Reinvestment Act of 2009 – Stimulus and Taxes

## **Porter Keadle Moore, LLP**

- A full-service accounting and consulting firm that provides audit, tax, and systems services to clients throughout the country.

---

## THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 – STIMULUS AND TAXES

On February 17, 2009, President Obama signed The American Recovery and Reinvestment Act of 2009 (“The Act”) into law. In all, the Act makes more than 300 changes to the current Internal Revenue Code {IRC}. This document outlines many of the key provisions. To view the Act in full, please see [www.Recovery.gov](http://www.Recovery.gov).

### BUSINESS TAXES:

- **Extension of Net Operating Loss (“NOL”) Carryback Period**
  - A NOL is the excess of business deductions over gross income in a particular year. For NOLs arising in **2008 ONLY**, the Act permits “small businesses” to increase the carryback period from 2 years to 5 years. (For businesses that do not meet the “small business” definition, the carryback period remains 2 years.) By extending the carryback period, the Act allows taxpayers to recover additional taxes previously paid.
  - For purposes of this NOL provision, a “small business” is defined as a corporation, partnership, or sole proprietorship whose average annual gross receipts for the 3-year period preceding the 2008 year are \$15 million or less.
  - Tax Planning Strategy: Carrying back NOLs results in an immediate tax benefit. Companies with 2008 NOLs who paid tax in the previous 5 years should file their 2008 income tax returns as soon as possible in 2009 and then immediately file carryback claims to bolster cash flow in 2009. Electronically filing 2008 tax returns with direct deposit account numbers and routing numbers will also speed up the process.
- **Tax Exempt Bonds**
  - The Act allows a financial institution, when determining its portion of interest expense allocable to tax-exempt municipal bonds, to exclude its holdings in tax-exempt municipal bonds issued during 2009 and 2010, to the extent that these investments do not exceed two percent of the average adjusted basis of total assets. The Alternative minimum Tax (AMT) limitation on tax-exempt bonds is also suspended for 2009 and 2010.
- **Executive Pay Restrictions for TARP Participants**
  - The Act contains significant restrictions on executive pay for those companies which participated in the Troubled Assets Relief Program (TARP). Tax deductions are available only for salaries of up to \$500,000 and additional provisions are set-up to discourage employers from structuring incentive pay arrangements that may encourage executives to take unnecessary and excessive risks that could harm the company.
  - Any incentive compensation to executives must be repaid if underlying financial criteria for those incentives is later found to contain material inaccuracies. Expanded limitations on compensation upon termination, or “golden parachutes” are also included.

- To ensure that new executive compensation requirements are followed, TARP participants will now be required, under the Act, to set-up a compensation committee made up solely of independent directors.
- **Cancellation of Debt Income**
  - For tax purposes, the cancellation of debt is taxable income in the year cancelled. The Act provides that for debt discharges in 2009 and 2010, a taxpayer can elect to have debt discharge income included in gross income ratably over 5 years, starting in the fifth tax year (fourth tax year if the discharge occurs in 2010) after the discharge. Applicable debt instruments include bonds, debentures, notes, certificates, or any other instrument constituting indebtedness by a C corporation or any other person in connection with the conduct of a trade or business.
    - **Example:** In 2009, ABC Corp. repurchases for \$6 million notes that it issued with an adjusted issue price of \$10 million. ABC realizes \$4 million of debt discharge income, but doesn't recognize that income in 2009. Instead, it recognizes \$800,000 of debt discharge income ( $\$4 \text{ million} \div 5$ ) in each of the five years from 2014 to 2018, inclusive.
- **Incentive to Hire Unemployed Veterans**
  - The act temporarily expands the Work Opportunity Tax Credit to employers that hire, during 2009 and 2010, unemployed, recently discharged veterans. Generally, the credit is 40 percent of qualifying first-year wages, for a maximum credit of \$2,400.
  - An **unemployed veteran** has to be certified by the designated local agency as someone who: (1) has served on active in the Armed Forces for more than 180 days or who has been discharged or released from active duty in the Armed Forces for a service-connected disability; (2) has been discharged or released from active duty in the Armed Forces at any time during the 5-year period ending on the hiring date; and (3) has received unemployment compensation under State or Federal law for not less than four weeks during the one-year period ending on the hiring date.
- **S Corporation Built-In Gains Holding Period**
  - S corporations that were previously C corporations often have built-in gains on assets that appreciated in value during the C corporation period. Current law dictates that S Corporations are required to hold on to these properties for ten years or be taxed on the built-in gain. The act provides for a temporary reduction of the built-in gains holding period to seven years for tax years which begin in 2009 and 2010.
- **Qualified Small Business Stock**
  - The Act increases the percentage of gain from the sale of small business stock that can be excluded from income from 50 percent to 75 percent. This is for stock that is acquired between February 17, 2009 and December 31, 2010. For purposes of this provision, a small business is one that does not have more than \$50 million in assets and must conduct an active trade or business.

- **Section 179 Expensing on Capital Expenditures**
  - Under Code Section 179, a taxpayer can elect to deduct as an expense, rather than depreciate, the cost of new or used tangible personal property placed in service in the taxpayer's trade or business. The Act provides for an extension for capital investments and new equipment purchases through 2009. Companies spending \$800,000 or less on total qualifying fixed asset purchases can immediately write-off \$250,000 of capital expenditures in 2009.
  
- **50 Percent "Bonus" Depreciation**
  - To bolster the slowing economy and to encourage acceleration of capital spending, the Act showcases a one-year extension of the 50 percent first-year bonus depreciation provision allowed under the 2008 Economic Stimulus Act.
  - The "bonus" depreciation extension allows companies to deduct 50 percent of the cost of qualifying property placed into service in 2009, in addition to regular depreciation.
  - Generally speaking, qualified property will include the following:
    - Property placed into service with a recovery period of 20 years or less
    - Computer Software
    - Leasehold Improvements
  - The Act extended the \$8,000 bonus depreciation provision on first-year luxury passenger autos through 2009. For 2009, the regular first-year depreciation cap on autos is \$2,960 **PLUS** \$8,000 of "bonus" depreciation for a total deduction of \$10,960.
  
- **Refundable Credits in Lieu of Bonus Depreciation**
  - The Act allows businesses which are eligible for 50 percent bonus depreciation to monetize accumulated Alternative Minimum Tax (AMT) and Research and Development (R&D) credits in lieu of taking bonus depreciation in 2009. The election to accelerate these historic AMT and R&D credits applies to all property which qualifies for bonus depreciation. The company may change its election from 2008 to 2009, or make the election in 2009 even if no election was made in 2008.
  
- **Cost Segregations and Bonus Depreciation**
  - During 2009, taxpayers will be allowed to combine bonus depreciation with cost segregation studies on any building where a contract was signed on or after January 1, 2008 and the building was completed by December 31, 2009. Even if the building has not been placed into service as of December 31, 2009, bonus depreciation will still be allowed on the percentage of work completed by December 31, 2009.
    - **Tax Planning Strategy:** Combining cost segregations and bonus depreciation provide the opportunity to maximize tax deductions in the following manner:

- Not only would certain components of the construction be broken out into categories that are depreciated over shorter lives (3 year – 15 year recovery periods), these components could also be eligible for an immediate \$250,000 Section 179 deduction and ALL remaining qualified components would be eligible for the 50 percent “Bonus” depreciation.
- Due to the time value of money, the advantage of front-loading depreciation deductions is quantifiably greater than if the deductions had been spread over longer periods of time using slower depreciation methods.

- **NOL Limitations on Banks Reinstated**

- The Act repeals Notice 2008-83, and amends IRC § 382. Notice 2008-83 had provided relief to banks by removing certain built-in loss limitations found in IRC Section 382. The repeal is for ownership changes made after January 16, 2009. In amending IRC § 382, the limitations would not be applicable in cases of ownership changes under a restructuring plan required by a loan agreement or line of credit entered into with the Treasury Department under the Economic Stimulus Act of 2008.

- **COBRA Premiums**

- The Act provides a 65 percent federal subsidy for COBRA premiums for up to nine months for workers who are laid off between September 1, 2008 and December 31, 2009. Workers who have been laid off since September 1, 2008 who initially declined COBRA would have 60 days to elect it. Workers must pay for 35 percent of the premiums. The former employer is obligated to remit the remaining 65 percent; however, it may offset this expense by reducing wage withholding and payroll tax remittances by an equal amount.

## INDIVIDUAL TAXES:

- **2009 Alternative Minimum Tax (AMT) Patch**

- The Act provides a one year “patch” to protect approximately 26 million middle-class taxpayers from having to pay AMT. The Act increases the 2009 exemption amount to \$46,700 for individuals (up from \$46,200 in 2008) and \$70,950 for joint filers (up from \$69,950 in 2008). It also extends to opportunity to use certain nonrefundable credits, such as the dependent care credit and the tuition tax credit, against the AMT for 2009.

- **American Opportunity Tax Credit**

- For 2009 and 2010, the Act provides a tax credit of up to \$2,500 per student per year related to qualified education expenses for the first four years of post-secondary study in a degree or certification program. The Credit applies against up to 100 percent of the first \$2,000 of qualified expenses, and 25 percent of the subsequent \$2,000. The expense must be *paid* in 2009 or 2010, not paid in 2008 for classes to take place in 2009. This is up from the \$1,800 available under the existing Hope Scholarship Credit, and up

from \$2,000 under the existing Lifetime Learning Credit; which are mutually exclusive credits. This new Credit also has higher phase out limits than the prior two credits; phased out for individual taxpayers who have Adjusted Gross Income (AGI) between \$80,000 and \$90,000; and for married couples who have AGI between \$160,000 and \$180,000.

- **Deduction for New Car Sales and Excise Taxes**

- The Act includes a new deduction for state and local sales and excise taxes paid or accrued on the purchase of a qualifying vehicle purchased between February 17, 2009 and December 31, 2009, not to exceed the taxes attributable to the first \$49,500 of the vehicle price. Qualifying vehicles include any newly purchased (not leased) foreign or domestic vehicle, including cars, SUVs, light trucks or motorcycles, which weigh no more than 8,000 pounds.
- This is an “above-the-line” deduction available to all taxpayers, whether or not deductions are itemized on your 2009 income tax return. The deduction is phased out for individual taxpayers who have AGI between \$125,000 and \$135,000; and for married couples who have AGI between \$250,000 and \$260,000.

- **Amended First-Time Home Buyer Credit**

- The Act modifies the tax credit enacted last year as a part of the Economic Recovery Act of 2008, which provided for a credit of up to \$7,500 for purchases of principal residences by first-time home buyers between April 9, 2008 and December 31, 2008, and was subject to repayment after three years (over 15 years).
- The Act increased the first-time homebuyer credit to the lesser of \$8,000 or 10 percent of the purchase price and removed the repayment requirement for homes purchased after December 31, 2008 and before December 1, 2009. If the home is sold within 36 months of purchase, recapture provisions will apply.
- Both credits begin to phase out for individual taxpayers with AGI in excess of \$75,000; \$150,000 for those taxpayers married filing jointly.

- **Decreased Estimated Tax Burden**

- The Act provides that the required annual estimated tax payments of a qualified individual for tax years beginning in 2009 is not greater than 90 percent of the tax liability shown on the tax return for the preceding tax year.
- A qualified individual means any individual if the AGI on the tax return for the preceding tax year is less than \$500,000 (\$250,000 if married filing separately) and the individual certifies that at least 50 percent of the gross income shown on the return for the preceding tax year was income from a small trade or business (*i.e.*, business that employed no more than 500 persons, on average, during the preceding calendar year).

- **Miscellaneous Provisions**

- **Enhancements to the Child Tax Credit** – The Act increases the eligibility for the refundable child tax credit by modifying the earned income formula. For 2009 and 2010, an individual is eligible for a credit equal to the lesser of \$1,000 or 15 percent of their earned income in excess of a base of \$3,000. In 2008, the formula was the lesser of \$1,000 or 15 percent of your earned income above \$8,500.
- **Unemployment Compensation** – The Act exempts from income tax up to \$2,400 of unemployment benefits for 2009. Any benefits above this amount are fully taxable.
- **Transit Benefits Parity** – In 2008, qualified transportation fringe benefits paid to an employee such as transit passes, van pooling and qualified parking were not included in an employee’s income up to \$120 a month (taken as a pre-tax deduction from wages provided a plan was in place). Under the Act, the exclusion amount is increased to \$230 per month for 2009 (starting in March), and continues it through 2010 with an inflation adjustment.

For additional information on The Act, contact either Dawn Patrick or Pat Tuley with Porter Keadle Moore, LLP.

<b>Dawn G. Patrick</b>	<a href="mailto:dpatrick@pkm.com">dpatrick@pkm.com</a>	<b>404-420-5770</b>
<b>Patrick A. Tuley</b>	<a href="mailto:ptuley@pkm.com">ptuley@pkm.com</a>	<b>404-420-5670</b>

*Porter Keadle Moore LLP is not, by means of this article, rendering accounting or other professional advice or services. This article is not a substitute for professional advice or services, nor should it be used as the basis for any decision or action that may affect you or your business. Porter Keadle Moore LLP shall not be responsible for any loss sustained by any person that relies on this article.*



Porter Keadle Moore, LLP

235 Peachtree Street, NE  
Suite 1800  
Atlanta, Georgia 30303  
[www.pkm.com](http://www.pkm.com)