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February 14, 2009

American Recovery and Reinvestment Act of 2009

After much debate to provide an economic stimulus the American Recovery and Reinvestment Act of 2009 (the "Act") was passed by the House and Senate this past week and is expected to be signed by the President this coming Tuesday, February 17, 2009. The Act provides approximately \$800 billion in economic stimulus including \$300 billion in tax benefits. Many tax provisions originally discussed were eliminated or scaled back in the final bill.

Below is a brief summary of some of the more significant tax provisions:

Increase in the Net Operating Loss Carry Back Period

The initial proposals would have extended the carry back period for Net Operating Losses ("NOLs") from 2 years to 5 years for NOLs **arising in** taxable years ending in **2008 and 2009**.

The Act provides for a 5 year carry back period but **only** for net operating losses occurring in 2008 **and only** from losses generated from small businesses (\$15 million or less of average annual gross receipts) including losses from pass-through entities qualifying as small businesses.

Extension of Elective Expensing (Section 179)

The February 2008 stimulus bill increased the expensing limit to \$250,000 of personal property purchases and the phase-out to \$800,000 (of total purchases) for 2008. The Act extends the provisions to 2009.

Extension of Bonus Depreciation

The February 2008 stimulus bill allowed a trade or business to depreciate an additional 50 percent of the cost of a new asset acquired and placed into service in 2008. The Act **extends** bonus depreciation **for** calendar year **2009** at 50 percent (through 2010 for certain longer-lived property and aircraft). \$8,000 bonus depreciation on automobiles also extended to 2009.

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American Recovery and Reinvestment Act of 2009**Extension of Bonus Depreciation (continued)**

The Act provides in 2009, in certain situations, the option, in lieu of taking bonus depreciation, to take accumulated Alternative Minimum Tax and Research & Development tax credits.

Relief from Income from Cancellation of Debt

The Act provides certain taxpayers an election to defer income from cancellation of indebtedness resulting from reacquisition of the debt in 2009 and 2010. For 2009 income from debt cancellation is deferred 5 years and then recognized ratably over the next five years. For 2010 debt cancellation, the income is deferred 4 years and then recognized ratably over the next five years. Special rules allow deferral to partners in a partnership resulting from decreases in a partner's share of liabilities resulting from the debt discharge.

The Act further provides for acceleration of the debt cancellation income deferred upon sale of the underlying assets or other assets of the taxpayer.

2009 Estimated Tax Payments

The Act reduces for 2009 the safe harbor for estimated taxes for qualified individuals. Individuals with less than \$500,000 in 2008 adjusted gross income of which 50% or more of the gross income is from a business employing less than 500 employees, may base 2009 estimated payments on 90 percent of their 2008 tax liability.

Shortened S Corp Built-In Gains Tax Period

Built-in gains tax pertains to S corporations that were previously C corporations. The built-in gains tax was assessed for a period of 10 years after a C corporation converted to S corporation status on the sale of assets and certain other income recognized during the 10 year period beginning upon conversion to from C to S status.

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American Recovery and Reinvestment Act of 2009**Shortened S Corp Built-In Gains Tax Period (continued)**

The Act provides, for tax years beginning in 2009 and 2010, no built-in gains tax imposed on an S corporation after the seventh year that the S corporation election is in effect.

Making Work Pay Credit

The Act provides in 2009 and 2010 a new credit against income tax equal to the lesser of 6.2% of earned income or \$400, per person. The credit phases out for single filers between \$75,000 and \$95,000 of adjusted gross income; and for joint filers between \$150,000 and \$190,000 of adjusted gross income. Individuals claimed as dependents are not eligible.

Increased 2009 AMT Exemption

The Alternative Minimum Tax exemption amount is increased for 2009 to \$70,950 for joint filers and \$46,700 for singles.

Motor Vehicle Sales Tax Deduction

The Act provides a deduction from gross income for state sales and excise taxes on the first \$49,500 paid for new cars and light trucks purchased between November 12, 2008 and January 1, 2010. Deduction is phased out for singles with income over \$125,000 and for joint filers with income over \$250,000.

Increased First-Time Homebuyer Credit

The Act increases the first-time homebuyer credit to \$8,000 (from \$7,500) and expanded to homes purchased before December 1, 2009. New law eliminates credit repayment for homes purchased after December 31, 2008 unless the home is sold within 3 years.

Credit is phased out for singles with income over \$75,000 and for joint filers with income over \$150,000.

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American Recovery and Reinvestment Act of 2009**COBRA Benefits**

The Act provides an election for individuals involuntarily separated from employment between September 1, 2008 and January 1, 2010 to pay 35% of the cost of his or her COBRA insurance coverage and be treated as paying the premium in full.

The former employer is required to pay the balance of 65% and it will be reimbursed by credit against payroll taxes it owes.

Interest Income from Private Activity Bonds

Previously, interest received on private activity bonds, while tax-free for regular tax purposes, were taxable for purposes of Alternative Minimum Tax ("AMT").

Under the Act, interest received on certain private activity bonds will not be subject to AMT for bonds issued during 2009 and 2010.

The Act also has several other provisions benefiting state and local governments to assist in issuing tax-favored bonds used to finance infrastructure projects.

Residential Energy Property Tax Credit

The Act provides an income tax credit equal to 30% of the cost of certain residential energy-saving improvements up to a maximum tax credit of \$1,500 (in the aggregate for 2009 and 2010). The credit applies to qualifying property placed in service in 2009 and 2010.

The Act also has numerous other provisions benefiting energy efficiency.

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This information is not intended to provide a full description of all of the provisions of the Act. Please contact us if you have any questions or if you wish to discuss the Act in further detail.

The information presented herein is subject to change without notice and is provided for general informational purposes only and should not be construed as specific tax advice. The reader should consult his or her tax adviser to determine how the information presented herein pertains to them.

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