



Tax Law Group E-Bulletin

Highlights of the Tax Provisions of the American Recovery and Reinvestment Act of 2009 for Businesses

The American Recovery and Reinvestment Act of 2009 contains a number of tax changes and governmental spending provisions that will have an impact on businesses. Warner Norcross & Judd's tax attorneys have examined this \$787 billion federal stimulus package from every angle. What follows is a summary of ARRA's significant tax provisions as they pertain to businesses. Take special note of the links that provide more in-depth information for some sections of this summary.

Delayed Recognition of Certain Cancellation of Indebtedness Income

ARRA provides that if a corporation or other taxpayer realizes income from the forgiveness of business indebtedness or acquisition of its business indebtedness at a discount (COD income) in 2009 or 2010, the taxpayer may elect to defer the recognition of the COD income and include it in income over a five-year period beginning in 2014. The income is accelerated and included in the tax year that the taxpayer dies, terminates business, liquidates, or sells substantially all assets.

NOL Carry-back Period May be Increased for 2008

The Act allows an "eligible small business" to elect to carry back net operating losses (NOLs) arising in 2008 for three, four, or five years, instead of the normal two years. An eligible small business that has a fiscal year other than the calendar year may elect to use either the fiscal year ending in 2008 or 2009 in making the extended carry-back election. An eligible small business is defined as a business whose average annual gross receipts are less than \$15 million for the three-year period ending with the year the NOL arose.

Section 179 Expensing

ARRA extends the increased 2008 Code Sec. 179 expensing (i.e., small business expensing) amounts to 2009. The 2008 Economic Stimulus Act increased the amount of Code Sec. 179 expensing for 2008 to \$250,000, and increased the threshold for reducing the deduction to \$800,000. Without the 2009 extension, businesses placing property in service in 2009 would have been limited to a \$125,000 inflation-adjusted maximum deduction with a \$500,000 cap. Unlike bonus depreciation, Code Sec. 179 expensing is available for new and used property. However, the \$800,000 qualifying property ceiling effectively limits Code Sec. 179 expensing to small businesses.

Bonus Depreciation

ARRA extends the 50 percent bonus depreciation allowed for qualified property placed in service during the year through 2009. The ARRA extension is through 2010 for transportation property with a 10-year or longer recovery period.

AMT and R&D Credits in Lieu of Bonus Depreciation

ARRA extends a business's ability to accelerate the recognition of AMT or R&D credits in lieu of claiming bonus depreciation for eligible qualified property through 2009. The allowed acceleration amount is capped at 6 percent of the sum of AMT and R&D credits or \$30 million, whichever is less.

Work Opportunity Tax Credit

The law expands the existing Work Opportunity Tax Credit to include unemployed

veterans and disconnected youth that begin work in 2009 and 2010.

S Corporation Built-In Gain Period

ARRA reduces the 10-year asset holding period required for a former C corporation that makes the S corporation election to avoid the “built-in gains” tax to seven years for the 2009 and 2010 tax years.

Industrial Development Bonds

The definition of manufacturing facilities eligible for tax-exempt bond financing for bonds issued in 2009 and 2010 is expanded to include facilities that produce both tangible and intangible property, and expands the scope of “manufacturing facilities” to include functionally related and subordinate property.

Advanced Energy Investment Credit

A new 30 percent investment credit for facilities that manufacture advanced energy property is part of the package. The Secretary of Treasury may allocate up to \$2.3 billion for this type of credit. To qualify for the credit the project must meet certain certification requirements established by the Secretary of the Treasury in consultation with the Secretary of Energy. A qualifying advanced manufacturing energy project is one that produces property to produce energy from renewable resources; energy storage systems associated with hybrid-electric vehicles; electric grids that support intermittent energy generation; equipment for use for carbon capture and storage; renewable fuels or energy conservation technologies; and property designed to reduce greenhouse gas emissions.

Renewable Energy Production Tax Credit

The availability of the production tax credit also is extended. The production tax credit provides a credit to refined coal producers based on the volume of refined coal that they produce during the year and to renewable electricity generators based on the amount of electricity that they produce from qualified renewable resources during the year. The amount of the credit ranges from approximately 1 cent per kilowatt-hour (hydroelectric) to 2.1 cents per kilowatt-hour (wind) depending on the resource used to generate electricity. ARRA makes the production tax credit available until January 1, 2013, for electricity generated from wind systems and for refined coal produced at refined coal production facilities. The credit is available until January 1, 2014, for electricity produced from closed-loop biomass, open-loop biomass, geothermal, solar, small irrigation, landfill gas, trash combustion, hydroelectric, and marine and hydrokinetic systems.

Business Energy Tax Credit

The measure extends the existing 30 percent business energy credit to facilities that are eligible for the production tax credit. Facilities that generate electricity from large-scale wind, closed-loop biomass, open-loop biomass, geothermal, small irrigation, hydropower, landfill gas, waste-to-energy, and marine and hydrokinetic are eligible for a tax credit equal to 30 percent of the cost of the facility. Those facilities can now choose between the production tax credit and the investment tax credit. The 30 percent credit is still available for fuel cell power plants, solar light, and small wind installations, and a 10 percent credit remains available for qualified micro-turbine property, combined heat and power systems, and geothermal heat pump systems. There is no longer a \$4,000 cap on the 30 percent credit available to small wind installations. A taxpayer may claim the full investment tax credit even if the qualifying property is financed with industrial development bonds or through federal, state, or local subsidized finance programs.

Renewable Energy Grants in Lieu of Tax Credits

ARRA allows taxpayers to receive a renewable energy grant in lieu of tax credits. If a taxpayer accepts such a grant then the taxpayer may not claim either the investment tax credit or the production tax credit.

Tax Credits for Alternative Refueling Property

ARRA increases the credit for alternative fuel vehicle refueling property. For non-

hydrogen alternative refueling property placed in service in 2009 and 2010, the credit increases from 30 percent of the cost of the property (capped at \$30,000) to 50 percent (capped at \$50,000). For hydrogen refueling property, the credit percentage remains 30 percent, but the maximum credit increases from \$30,000 to \$200,000 for 2009 and 2010. In addition, the credit for non-hydrogen alternative refueling property on non-business property increases from 30 percent (capped at \$1,000) to 50 percent (capped at \$2,000).

Clean Renewable Energy Bonds

The Act authorizes qualified issuers to issue an additional \$1.6 billion of clean renewable energy bonds. These bonds are available to governmental bodies, state utilities that have an electricity-service obligation, and cooperative electric companies. The bonds can be used to finance construction of facilities that produce electricity from wind, closed-loop biomass, open-loop biomass, geothermal, solar, small irrigation, hydropower, landfill gas, trash combustion, and marine and hydrokinetic.

Qualified Energy Conservation Bonds

ARRA authorizes state and local governments to issue an additional \$2.4 billion, for a total of \$3.2 billion, of qualified energy conservation bonds. These bonds can be used for research, mass transit, demonstration technologies, and public education campaigns. They can also be used to reduce the energy consumption of publicly owned buildings, implement green community programs, and construct renewable electricity generation facilities. These bonds are allocated to the states in proportion to their populations, and they are allocated to large local governments within each state in proportion to that locality's population relative to the population of the state.

New Markets Tax Credit

The available new markets tax credit is increased to \$5 billion for 2008 and 2009. The 2008 increase will be allocated to qualified community development entities that submitted an allocation application for 2008 and did not receive an allocation, or received an allocation amount that was less than the amount requested.

Recovery Zone Bonds

ARRA authorizes \$10 billion in recovery zone economic development bonds and \$15 billion in recovery zone facility bonds to be issued by counties or large municipalities in 2009 and 2010. Recovery zone facility bonds are a form of exempt facility bond. Recovery zone economic development bonds are Build America Bonds that are qualified bonds with a tax credit rate of 45 percent of the interest payment.

Modified Speed Requirement for High-Speed Rail Facilities

The measure allows states to issue exempt facility bonds for high-speed-rail facilities used by vehicles capable of attaining speeds in excess of 150 miles per hour.

Delay of 3 Percent Withholding on Certain Governmental Payments

ARRA delays for another year, to December 31, 2011, the application of the 3 percent withholding requirement on government payments for property and services.

Qualified School Construction Bonds

The law creates a new category of state and local government-issued tax credit bond called qualified school construction bonds. A national limit of \$11 billion worth of such bonds may be issued by state and local governments in 2009 and another \$11 billion in 2010.

Extension and Increase in Authorization for Qualified Zone Academy Bonds

ARRA allows state and local governments to issue an additional \$1.4 billion of qualified zone academy bonds in 2009 and 2010. The bond proceeds are to be used for financing renovations, equipment purchases, developing course material, and training teachers and personnel at a qualified zone academy.

Build America Bonds

State and local governments will be allowed to issue Build America Bonds instead of tax-exempt bonds in 2009 and 2010. Build America Bonds pay interest and provide a

federal tax credit. The amount of the tax credit is 35 percent of the interest payment. ARRA also allows state or local governments to elect to issue certain Build America Bonds as qualified bonds. If this is done, state or local governments receive a direct payment from the federal government in lieu of the tax credit to bondholders. The amount of the direct payment to state or local governments for qualified bonds in lieu of the tax credit to the bondholder is also 35 percent of the interest payment.

Bonds Held by Financial Institutions

ARRA extends to certain financial institutions previously inapplicable safe harbor rules relating to interest expense deductions on tax-exempt bonds held by those institutions. Such interest, however, will be a financial institution preference item. These amendments only apply to obligations issued in 2009 and 2010, with refunding bonds treated as issued on the issue date of the original non-refunding bonds being refinanced. In addition, the requirements for bonds to be “bank qualified” are modified. The \$10 million annual issuance limitation on issuers of bank-qualified bonds is increased to \$30 million. Charitable organizations qualified under Code Sec. 501(c)(3) and governmental conduit borrowers are treated as direct issuers for purposes of the qualification requirements; and individual borrowers in a pool or composite issue are treated as if they were separate issuers for purposes of the qualification requirements. These amendments only apply to obligations issued in 2009 and 2010.

Temporary Repeal of AMT for Private Activity Bonds

ARRA provides that interest on private activity bonds is not treated as a preference item for purposes of the AMT, and is not included in the current earnings adjustment under the corporate AMT. These amendments only apply to obligations issued in 2009 and 2010. Refunding bonds are treated as issued on the issue date of the original non-refunding bonds being refinanced, except that refunding bonds issued to refund bonds issued from 2004 to 2008 will be treated as issued on their actual issue date.

Low-Income Housing Grant Option

State housing credit agencies are allowed to receive a grant from the Treasury Department in lieu of low-income housing tax credits.

This information is provided by:

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