

American Recovery And Reinvestment Act Of 2009

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On February 17, 2009, President Barack Obama signed into law the American Recovery and Reinvestment Act of 2009 (the Act). The Act includes a total of \$787.2 billion in spending and tax cuts, including a number of provisions that significantly impact small businesses. These include the following:

Extension of bonus depreciation. Last year, Congress temporarily allowed businesses to recover the costs of capital expenditures made in 2008 faster than the ordinary depreciation schedule would allow by permitting these businesses to immediately write-off 50% of the depreciable basis of qualifying property acquired in 2008 (after any Section 179 deduction and before figuring out the regular depreciation deduction). Qualifying property includes, among other categories, tangible property depreciated under the modified accelerated cost recovery system (MACRS) with a recovery period of 20 years or less. The Act extends this temporary benefit for capital expenditures in 2009 (and 2010 for certain longer-lived and transportation property). *See Conference Report § 1201.*

Five year carry back of net operating losses. The Act allows “small businesses” to elect to carry back net operating losses for taxable years ending in 2008 (or if the small business elects, for taxable years beginning in 2008) for a period of up to five years. An applicable eligible small business is a taxpayer meeting a \$15 million gross receipts test. *See Conference Report § 1211.*

Estimated tax payments. The Act provides that the required annual estimated tax payments of a qualified individual for taxable years beginning in 2009 is not greater than 90% of the tax liability shown on the tax return for the preceding year. A qualified

individual means any individual if the adjusted gross income shown on the tax return for the preceding taxable year is less than \$500,000 (\$250,000 if married filing separately) and the individual certifies that at least half of the gross income shown on the return for the preceding taxable year was income from a small trade or business. A small trade or business is any trade or business that employed no more than 500 persons, on average, during the calendar year ending in or with the preceding taxable year. *See Conference Report § 1212.*

Qualified small business stock. Under present law, individuals may exclude 50% (60% for certain empowerment zone businesses) of the gain from the sale of certain small business stock acquired at original issue and held for at least five years. The Act provides the percentage exclusion for qualified small business stock sold by an individual is increased from 50% (60% for certain empowerment zone businesses) to 75%. *See Conference Report § 1241.*

The American Recovery and Reinvestment Act presents closely-held business owners and entrepreneurs with tremendous opportunities in the area of tax savings and business expansion. However, the Act is complex and detailed. The attorneys at Einhorn Barbarito are well versed in the Act, its impact on business and the opportunities it affords. To learn more about the Act and how it applies to your business planning for 2009 and beyond, contact us today by email or phone.