



Fred J. Toroni & Company

CERTIFIED PUBLIC ACCOUNTANTS

With the enactment of the American Recovery and Reinvestment Act of 2009 on Feb. 17, Congress delivered a smorgasbord of tax relief items to individual taxpayers and small businesses. While the specifics of those measures were the subject of whirlwind conference negotiations in Congress, the outcome reflects an attempt to give targeted tax benefits to the broad middle class and less-affluent Americans. At the same time, it seeks to stoke the engine of economic recovery by allowing small businesses to accelerate depreciation and carry back operating losses and by encouraging them to hire veterans and youths.

TAX BREAKS FOR INDIVIDUALS

College students and their families, homebuyers, and buyers of new cars are among the act's potential beneficiaries, but so too are low-income Americans, with the act's continuation and expansion of such tax breaks as a higher eligibility limit for the earned income tax credit.

Higher education. The American opportunity tax credit is a temporary (for tax years beginning in 2009 and 2010) increase and expansion of the Hope scholarship credit (IRC § 25A(i)). It increases the maximum credit per student from \$1,800 to \$2,500 and extends its availability from the first two years of postsecondary education to four years. Nonrefundable under prior law, the credit now becomes 40% refundable.

The phaseout range is increased from the current \$50,000 to \$60,000 for single filers to \$80,000 to \$90,000. The joint filer phaseout, currently \$100,000 to \$120,000, increases to \$160,000 to \$180,000. Expenses for course materials, such as textbooks, are added to the definition of qualified tuition and related expenses eligible for the credit.

Homebuyer's credit. The act increases the maximum amount of the IRC § 36 first-time homebuyer's credit from \$7,500 to \$8,000 and eliminates the repayment requirement for houses purchased in 2009. The credit, added by the Housing Assistance Tax Act of 2008, PL 110-289, is refundable, but for homes purchased between April 9, 2008, and Dec. 31, 2008, it must be recaptured ratably over 15 years, or earlier if the home is sold. The stimulus act waives the recapture requirement for homes purchased after Jan. 1, 2009, and extends the sunset of the credit from June 30, 2009, to Dec. 1, 2009.

The amount of the credit remains 10% of the purchase price of a principal residence of a taxpayer who has not owned a U.S. principal residence in the previous three years. Recapture still applies if the taxpayer disposes of the home or no longer uses it as a principal residence within three years after purchase.

Making work pay credit. Intended to partially offset an employee's portion of Social Security payroll taxes, this temporary credit is 6.2% of earned income up to a total credit of \$400 for individuals and \$800 for joint filers (IRC § 36A). It is retroactive to the beginning of 2009 and is set to expire at the end of 2010. It begins phasing out at a rate of 2% of modified adjusted gross income (MAGI) above \$75,000 for individuals and \$150,000 for joint filers.

New car sales tax deduction. Buyers of new cars and light trucks between Feb. 17, 2009, and the end of the year may deduct the portion of state and local sales and excise taxes attributable to the first \$49,500 of the vehicle's purchase price (IRC § 164(b)(6)). This is an above-the-line deduction and is allowed against alternative minimum tax (AMT). The deduction will be phased out for single taxpayers with MAGI in excess of \$125,000 for the tax year (\$250,000 for joint filers). Taxpayers who elect under section 164(b)(5) to take the state and local sales tax deduction in lieu of deducting state and local income tax cannot also take the new car sales tax deduction.

Section 529 plans may buy computers. For 2009 and 2010, the costs of computers and related technology qualify as higher education expenses for purposes of the rules governing distributions from a section 529 qualified tuition plan, as long as the beneficiary of the plan is enrolled at an eligible educational institution. Internet access charges are also covered, as well as software, so long as it's not for sports, games or hobbies (unless the software is predominantly educational in nature).

Qualified transportation fringe benefit increase. Another reason to vanpool or take public transit to work arrived with a near doubling of the exclusion amount for a transportation fringe benefit from \$120 to \$230 per month (the same as the qualified parking amount) (IRC § 132(f)). This higher limit is effective March 2009 and through 2010 with an annual inflation adjustment.

Child tax credit and other items. The act extends for 2009 and 2010 the lower, \$3,000 income threshold for refundability of the section 24 child credit, meaning more of it is refundable to low-income taxpayers. Other items directly benefiting less-affluent taxpayers or those in financial distress include a temporary increase in the earned income tax credit for 2009 and 2010, a one-time \$250 payment to persons on fixed incomes not eligible for the making work pay credit and a temporary exclusion of \$2,400 of unemployment benefits from taxable income for 2009.

SMALL BUSINESS TAX BREAKS

Bonus depreciation. IRC § 168(k) is amended to extend the 50% first-year bonus depreciation through 2009 (through 2010 for certain transportation property and aircraft).

Section 179 expensing. The increase in the section 179 expensing amount to \$250,000 and the increase in the phaseout threshold to \$800,000 are both extended through 2009. The amounts had originally been temporarily increased (for 2008) by the Economic Stimulus Act of 2008, PL 110-185.

Carryback of small business NOLs. Eligible small businesses are allowed to carry their 2008 net operating losses (NOLs) back for five years (section 172(b)(1)(H)). An eligible small business is one that has average gross receipts of \$15 million or less (using the gross receipts test from section 448(c)). The act gives the Treasury Department authority to publish anti-abuse rules relating to this provision.

Small business estimated taxes. Qualified individuals are allowed (for 2009 only) to make estimated tax payments that equal only 90% of their preceding tax year liability instead of 100% (under section 6654(d)(1)). To be a qualified individual, the taxpayer must have adjusted gross income (AGI) of less than \$500,000, and more than 50% of the individual's gross income must come from a small business (a business with an average of fewer than 500 employees).

Work opportunity tax credit. The act creates two new targeted groups for the work opportunity tax credit: "disconnected youth" and unemployed veterans (section 51(d)(14)). Employers who hire members of these groups during 2009 or 2010 may be eligible to take the credit.

Qualified small business stock. The section 1202 exclusion of gain from the sale of qualified small business stock is increased from 50% to 75% for stock acquired after the enactment date and before Jan. 1, 2011.

S corporations. The recognition period for assets subject to the built-in gains tax is reduced from 10 years to seven years for S corporation tax years beginning in 2009 and 2010 (section 1374(d)(7)).

Limitations of loss carryforwards. For businesses that have ownership changes pursuant to a restructuring plan required by a Treasury loan agreement or line of credit under the bailout provisions of the Emergency Economic Stabilization Act, PL 110-343, the section 382 limitation on loss carryforwards will not apply.

Energy credits. The act also includes a number of energy incentives aimed at both individuals and businesses, including increases in the section 25C residential energy property credit, the section 25D residential energy efficiency property credit, and the energy investment credit under section 48.