

Tax Legislative Update

News from Capitol Hill
from Grant Thornton's National Tax Office and Construction Practice

2009-08

President signs stimulus bill with \$326 billion in tax cuts

President Obama signed a new stimulus bill (H.R. 1) into law on Feb. 17 that includes over \$300 billion in tax incentives.

The bill's tax title, the American Recovery and Reinvestment Tax Act of 2009, includes sizable packages of changes for both individuals and businesses.

Individuals will receive relief from the alternative minimum tax, which has been patched for 2009. Incentives are also provided for education, new car purchases and first-time home buyers, but all the changes are temporary and all phase out at upper income levels.

President Obama's signature "Making Work Pay" credit was reduced in the final bill to provide a maximum credit of only \$400 for individuals and \$800 for married couples filing jointly.

The most significant provision for contractors who are struggling in this economy, a five-year carryback period for net operating losses (NOLs), was limited severely in the final bill. It will only apply to companies with less than \$15 million in annual receipts. For the purposes of this limitation, all businesses under common control are aggregated, making the enhanced carryback period available to only small contractors.

Contractors will be able to benefit from an extension of bonus depreciation, Section 179 expensing and enhancements to existing energy tax incentives.

Withholding on construction contracts with governmental entities, a major concern to the construction industry, was delayed by one year to 2012.

Grant Thornton LLP has prepared the following chart containing details of the principal tax provisions contained in the legislation that affect contractors.

Contact information

Todd Taggart
National Construction
Practice Leader
T 612.677.5193
E Todd.Taggart@gt.com

www.GrantThornton.com/tax

Provision	Current law	American Recovery and Reinvestment Tax Act of 2009 (H.R. 1)
“Making work pay” credit	§ No provision	§ Creates a new refundable tax credit in 2009 and 2010 of 6.2% of earned income up to a maximum of \$400 for individuals and \$800 for couples filing jointly § Phases out at \$75,000 to \$95,000 for singles, \$150,000 to \$190,000 for married couples § Social security, SSI, railroad retirement recipients, veterans receiving disability or pension benefits, and federal and state pensioners who are not eligible for Social Security would be eligible for a one-time minimum \$250 payment
First-time homebuyer credit	§ Provides a 10% credit up to \$7,500 for the purchase of a principal residence between April 9, 2008, and June 30, 2009, by taxpayers who have not owned a residence in three years § Must be paid back over 15 years § Phases out for incomes between \$75,000 and \$95,000 for singles and \$150,000 and \$170,000 for married couples	§ Extends the credit to apply to purchases made through Nov. 30, 2009 § Increases the credit to \$8,000 for purchase in 2009 § Waives the payback requirement for homes purchases in 2009, unless the residence is sold within 36 months
Unemployment income	§ Unemployment benefits are included in income	§ Excludes the first \$2,400 of unemployment compensation from income in 2009
Alternative minimum tax	§ The AMT exemption amount is not indexed for inflation and is set to fall to \$33,750 for individuals and \$45,000 for couples in 2009	§ Increases the AMT exemption to \$46,700 for individuals (up from \$46,200 in 2008) and \$70,950 for married couples (up from \$69,950)
Car-buyer incentives	§ No provision	§ Creates an above-the-line deduction for state and local sales tax on new car purchases up to \$49,500 from the date of enactment through the end of 2009 for taxpayers that do not elect to claim state and local sales taxes as an itemized deduction. § Phases out for adjusted gross income between \$125,000 and \$135,000 for individuals and between \$250,000 and \$260,000 for married couples filing a joint return
NOL carryback	§ Net operating losses can be carried back for two tax years to obtain refunds against taxes paid	§ Extends the NOL carryback period from two to five years for NOLs in 2008 only for businesses with average receipts under \$15 million over the three years before the year of the loss § Eligible businesses can elect tax years beginning or ending in 2008 § Provides a minimum 60-day period after the date of enactment to adjust previously made elections
Section 179 expensing	§ Section 179 allows small businesses to expense rather than depreciate business equipment § Section 179 expensing in 2008 is limited to \$250,000, further reduced by the amount of qualifying property over \$800,000 § These limits are scheduled to revert to \$125,000 and \$500,000 in 2009, adjusted for inflation	§ Extends the 2008 \$250,000 and \$800,000 limits for one year through 2009
Bonus depreciation	§ A special bonus depreciation provision allows one-half of the cost of eligible property placed in service in 2008 to be recovered immediately, while the remaining half is depreciated using the normal rules § Some long-lived property qualifies if placed in service in 2009 but only for costs incurred by the end of 2008	§ Extends bonus depreciation to property placed in service in 2009 § Property placed in service in 2008 or 2009, but subject to a binding agreement before 2008, would still be disqualified § Long-lived property already qualifying for bonus depreciation if placed in service in 2009 could be placed in service in 2008, 2009 or 2010; bonus depreciation would be

allowed with respect to costs incurred in 2008 and 2009		
Acceleration of AMT and R&D credits	§ Taxpayers in 2008 can elect to “cash out” some of their older AMT and research and development (R&D) credit carryovers in lieu of claiming bonus depreciation	§ Extends this provision through 2009 § Limitations will be separately applied to 2008 and 2009 elections
CODI recognition	§ Forgiveness of debt or the repurchase of debt at a discount must be included in income as cancellation of debt income (CODI)	§ Defers the recognition of CODI from debt re-acquisitions in 2009 and 2010 until 2014, and includes CODI in income ratably over five years beginning in 2014
Work opportunity tax credit	§ Provides a tax credit for employers hiring employees from one of nine targeted groups	§ Expands the credit in 2009 and 2010 to apply to the hiring of unemployed veterans discharged within five years of their hire and unemployed youths between 16 and 24 years of age not in school and lacking “a sufficient number of basic skills”
S corporation built-in gains	§ Built-in gains are taxed at the time of conversion from a C corporation to an S corporation if the gains are recognized during the first 10 S corporation years	§ For 2009 and 2010, built-in gain tax will not apply if conversion to an S corporation occurred more than seven years earlier
Small business stock	§ Taxpayers may exclude 50% of the gain from the sale of qualifying small business stock	§ Increases the exclusion of the gain from the sale of qualifying small business stock to 75% for stock issued between the date of enactment and Jan. 1, 2011
Estimated tax payment relief	§ Individuals can avoid underestimated tax penalties by paying at least 100% (110% if AGI exceeds \$150,000) of the prior year’s tax through withholding and estimated tax	§ Individuals with AGI under \$500,000, and who derived more than half of gross income from a business with 500 employees or less, will not be subject to underestimated tax penalties if they pay at least 90% last year’s tax through withholding and estimated tax
Low-income housing credit	§ The low-income housing credit is claimed over 10 years for renting housing to low-income tenants	§ Treasury will provide a grant to states in lieu of low-income housing allocations
Government contractor withholding	§ Federal, state and local government will be required to withhold 3% from payments made to contractors beginning in 2011	§ Delays the implementation of 3% percent withholding for one year until 2012
Section 45 renewable electricity production credit	§ Section 45 provides a per-kilowatt-hour tax credit for electricity produced by qualifying renewable facilities	§ Extends through 2012 the deadline for placing qualified wind facilities in service and extends the placed-in-service date through 2013 for all other facilities § Makes a technical amendment to the definition of small irrigation power facility
Section 48 energy investment credit	§ Section 48 provides credits between 10% and 30% for energy property such as solar, fuel cell and geothermal placed in service through 2016	§ Eliminates the credit cap on small wind energy property § Removes the rule that reduces the basis of the property for purposes of claiming the credit if the property is financed by subsidized energy financing or private activity bonds
Section 48 election in lieu of Section 45 credit	§ No provision	§ Allows taxpayers who place a facility in service that qualifies for the Section 45 production credit to elect instead to take the 30% investment credit under Section 48
Grants in lieu of Section 48 and Section 45 credits	§ No provision	§ Provides grants equal to up to 30% of basis for energy property in service in 2009 or 2010 that would qualify for the Section 45 or 48 tax credits (only 10% of basis for microturbines, combined heat and power systems, and geothermal heat pumps) § Credit can be claimed for certain property placed in service after 2009 and 2010 if construction started in those years and is completed before 2013, 2014 and 2017, depending on the property § Basis of the property is reduced by 50% of the grant, and the Section 45 and 48 credits are forfeited
Advanced energy investment credit	§ No provision	§ Creates a new 30% credit for investment in qualified property used in qualified advanced energy manufacturing projects for products such as renewable power

		<p>equipment, smart grid technology, carbon capture and storage, energy conservation, efficient transmission and distribution of electricity</p> <p>§ Treasury must establish a certification program within 180 days of enactment and may allocate up to \$2.3 billion in credits</p>
Section 25C energy-efficient home improvement tax credit	<p>§ Section 25C provides either a 10% credit for installing eligible energy-efficient property (insulation, windows, roofs to existing homes) or credit amounts between \$50 and \$150 for specific property purchases (fans, furnaces, water heaters)</p>	<p>§ Increases 10% credit to 30% for 2009 and makes property currently eligible for the \$50, \$100 or \$150 credit eligible for 30% credit</p> <p>§ Increases the credit's \$500 per dwelling cap to \$1,500 for property purchased in 2009 and 2010</p> <p>§ Extends credit for one year through 2010</p>
Section 25D residential energy-efficient credit	<p>§ Section 25D provides a 30% personal tax credit for property such as solar water heaters, geothermal heat pumps and fuel cells — subject to caps between \$500 and \$4,000</p>	<p>§ Eliminates credit caps for solar, geothermal and wind property</p> <p>§ Eliminates the reduction in credits for property using subsidized energy financing</p>
Alternative refueling property credit	<p>§ A 30% credit is available for alternative refueling property, capped at \$30,000 for businesses and \$1,000 for individuals</p>	<p>§ Increases the credit to 50% in 2009 and 2010 for property other than hydrogen</p> <p>§ Increases the credit cap to \$50,000 (\$200,000 for hydrogen) for businesses and \$2,000 for individuals</p>
Bond rules	<p>§ Various tax-favored bond rules and programs exist</p>	<p>§ The bill includes a large package of changes involving tax-favored bonds</p>

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