

Business Incentives in 2009 Stimulus Act

Your business could benefit from tax incentives included in the *American Recovery and Reinvestment Act of 2009* (also known as the stimulus act or bill). This comprehensive stimulus package has a price tag approaching \$800 billion, and was signed into law by President Barack Obama on February 17, 2009.

Highlights

- The 2009 stimulus act includes incentives for businesses, including two important depreciation enhancements that previously existed for 2008 only.
- Small businesses have an extended Section 179 deduction of up to \$250,000.
- All businesses can claim an immediate 50 percent depreciation deduction for many asset acquisitions.
- Small businesses have been given an increased and flexible period for tax loss carrybacks to assist in recovering prior tax payments.

Section 179 expense amount extension

The new law extends the 2008 Section 179 deduction limits to tax years beginning in 2009. The expense limit remains at \$250,000 and the asset addition phase out threshold remains at \$800,000.

As a result, businesses with qualifying asset additions over \$800,000 have a dollar-for-dollar reduction in the expensing limit (until totally ineligible for any Section 179 deduction at \$1,050,000 of asset purchases).

Caution: As extended, this provision is only applicable for tax years beginning in 2009. Accordingly, a fiscal year business will have the enhanced Section 179 deduction available for its tax year beginning in 2009 and ending in 2010. Also, many states do not allow these enhanced amounts for state income tax purposes.

Extension of 50 percent bonus depreciation

Bonus depreciation was first introduced in 2001 following the September 11 terrorist attacks, and it generally expired at the end of 2004. The *Economic Stimulus Act of 2008* restored 50 percent bonus depreciation as a first-year deduction for property placed in service after December 31, 2007, and prior to January 1, 2009. The 2009 stimulus act extends that provision for another year for property placed in service prior to January 1, 2010.

The increased Section 179 deduction and the 50 percent bonus depreciation can both apply to your business: claim the Section 179 deduction first, and apply the 50 percent bonus to the remaining (reduced) cost.

The 50 percent bonus deduction generally applies to:

- Tangible property that has a recovery period not exceeding 20 years
- Purchased computer software
- Qualified leasehold improvement property

Bonus depreciation applies for both regular tax and alternative minimum tax (AMT) purposes, so it will not create an AMT adjustment. As extended, it applies for property purchased and placed in service from January 1, 2009, through December 31, 2009. This is in contrast with the Section 179 effective date, which is available for tax years beginning in 2009.

Rules for 50 percent bonus depreciation

- The bonus depreciation applies to original use property only—used property is ineligible.
- If a new asset is acquired by trade, both the boot and any remaining depreciable basis of the relinquished asset qualify for the 50 percent bonus.
- Leasehold improvements qualify if made to an interior portion of a building that is a) non-residential rental property and b) more than three years old.
- Eligible leasehold improvements do not include building enlargements, elevators, escalators, internal structural framework, or property leased between related parties.
- The 50 percent bonus depreciation can electively be declined by a taxpayer.
- New passenger automobiles used in business, which normally are subject to a first-year depreciation limit of approximately \$3,000, are allowed an additional amount of \$8,000 during 2009.

Tax loss carryback period increased for small businesses

Normally, when a business incurs a tax loss, that loss can be applied to the prior two tax years to recover previously paid taxes. But a new stimulus provision allows small businesses with a 2008 tax loss to be electively carried back to either the fifth, fourth, or third prior tax year. Any excess is then carried forward to subsequent tax years.

There is also special loss carryback flexibility for fiscal-year entities. A fiscal-year business can select either the tax year ending in 2008 or the tax year beginning in 2008 as its loss year for the special carryback election. And a small business qualifies for this carryback only if it has average annual gross receipts of \$15 million or less for 2006, 2007, and 2008. Complex rules exist in measuring gross receipts and aggregation rules for related businesses apply, so professional advice is recommended.

“This is great for small businesses, but the limitations are surprising and disappointing in that businesses of all sizes were initially eligible for the provision until the 11th hour Congressional conference negotiations,” explains Ranweiler. He also notes, “Many businesses of all sizes currently incurring losses could use the refund resulting from a loss carryback to continue operations and maintain jobs. The conferees were apparently concerned about the cost of providing this opportunity to businesses of all sizes.”

Other business provisions

Several other provisions impacting businesses were enacted, including a jobs tax credit to apply to qualifying unemployed veterans and what are known as disconnected youths. In addition, liberalized rules on debt discharge income and limits on executive compensation were also enacted as part of the bill.

How LarsonAllen can help

Contact us to discuss the new law and evaluate your business situation, so we can help you take advantage of the stimulus provisions. For additional information on the 2009 stimulus act, reference the IRS Website www.irs.gov.

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