




MOODY, FAMIGLIETTI & ANDRONICO

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Federal Tax Alert

A photograph of the U.S. Capitol building in Washington, D.C., viewed from across the reflecting pool. The building's white dome and neoclassical architecture are prominent against a cloudy sky. The reflecting pool in the foreground shows a clear reflection of the building and the sky.

Subject: Tax Stimulus Legislation

Details

The new Congress and the new Administration have quickly turned their focus to the weakened economy. As can be expected, tax provisions are a major component of the economic stimulus legislation.

On January 28, 2009, the House of Representatives approved, without amendments, the approximately \$275 billion tax bill that had been approved by the Ways and Means Committee. The Senate Finance Committee approved its version of the tax stimulus bill on January 27, 2009. After the Senate votes on its version of the economic stimulus bill, a Conference Committee will meet to produce a compromise. This paper summarizes the most significant tax provisions of the American Recovery and Reinvestment Tax Act of 2009. We will issue another bulletin when final legislation is enacted.

Business Tax Provisions

Bonus Depreciation: The House bill extends the 50 percent bonus depreciation through 2009, retroactively to January 1, 2009. The bill would also extend the bonus depreciation through 2010 for property with a recovery period of ten years or more, for transportation equipment, and for certain aircraft.

The Senate bill is similar, except that it would also allow bonus depreciation for motion picture film and videotapes.

First Year Expensing: Both bills would extend to property placed in service in 2009 the section 179 expensing limit of \$250,000 and the threshold for reducing the deduction of \$800,000 of total property additions. These increased limits currently apply to property placed in service in 2008.

Net Operating Loss Carryback: The House bill allows taxpayers to carry back net operating losses for three, four, or five taxable years, rather than the current two taxable years. However, the amount of the net operating loss would be reduced by ten percent if the addi-

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tional carryback period is used. The five year carryback is available only for losses generated in taxable years ending in 2008 or 2009.

The Senate bill is similar to the House bill, except that the net operating loss would not be reduced if the additional carryback period were claimed.

Refundable Credits: The Senate bill would extend through the end of 2009 a provision that permitted corporations to monetize some of their older unused alternative minimum tax and research and development tax credits. Under this provision, a corporation that is eligible for bonus depreciation may elect instead to claim additional refundable alternative minimum tax or research and development tax credits. The credits are increased by 20 percent of the difference between depreciation claimed on eligible property with and without bonus depreciation. The amount is limited to the lesser of six percent of the accumulated credits or \$30 million. The House bill has no corresponding provision.

General Business Credit: The Senate bill would allow a business to carry back the general business energy credits from 2008 and 2009 for five taxable years rather than the one taxable year in current law, and eliminates the limit on the amount of credit that can be carried back. The House bill contains no provision.

Work Opportunity Credit: Both bills would add unemployed veterans and disconnected youth to the list of targeted groups eligible for the credit.

Cancellation of Debt Income: Under the Senate bill, a company that repurchases its debt for cash would recognize any cancellation of debt income ratably over four years beginning the year after the year of the repurchase. The House bill has no corresponding provision.

Scope of Section 382: The Internal Revenue Service issued Notice 2008 83 relieving banks and other financial institutions from the application of certain aspects of Section 382 regarding the use of built in losses following an ownership change. Both the House bill and Senate bill would generally terminate the application of this Notice for transactions after January 16, 2009, using strongly worded language indicating that the Treasury Department and the Service had exceeded their authority in issuing the Notice.

S Corporation Built in Gains Tax Relief: Under the Senate bill, the recognition period for the section 1374 built in gains tax imposed on S corporations would be temporarily reduced from ten years to seven years for taxable years beginning in 2009 or 2010. The House bill has no corresponding provision.

Individual Tax Provisions

Making Work Pay Tax Credit: The House bill provides for an income tax credit equal to the lesser of 6.2 percent of an individual's earned income or \$500 (\$1,000 for married couples filing a joint return). The credit would be reduced, but not below zero, if an individual's modified adjusted gross income exceeds \$75,000 (\$150,000 in the case of married couples filing jointly). The credit applies to 2009 and 2010.

The Senate bill is similar, but adds a one time payment of \$300 to Social Security beneficiaries and SSI recipients, and to veterans receiving disability compensation and pension benefits from the Department of Veterans Affairs. Recipients of this payment will be subject to a dollar for dollar reduction in the amount of the otherwise available income tax credit.

Alternative Minimum Tax: The Senate bill contains a patch for 2009 to the AMT. The patch would increase the exemption amounts and allow taxpayers to claim most personal tax credits to reduce AMT liability. The House bill has no similar provision.

Education Credit: The House bill increases the HOPE credit from the current maximum of \$1,800 to \$2,500 per year, includes textbooks as a qualifying expense, extends the credit from two years to four years, and increases the income phase out levels from \$50,000 (\$100,000 for married couples filing a joint return) to \$80,000 (\$160,000 for married couples filing a joint return). The credit would be renamed the American Opportunity Tax Credit. In addition, 40 percent of the credit would be refundable.

The Senate bill is similar, but only 30 percent of the credit would be refundable.

Unemployment Compensation: The Senate bill would exclude the first \$2,400 of unemployment compensation from taxable income in 2009. The House bill has no similar provision.

First Time Homebuyer Credit: In 2008, Congress enacted a tax credit for first time homebuyers for homes purchased on or after April 9, 2008, and before July 1, 2009. However, the credit must be repaid ratably over 15 years. The House bill would eliminate the repayment requirement for residences purchased after December 31, 2008. The Senate bill is similar, but extends the credit to homes purchased on or before August 31, 2009.

Child Tax Credit: Under current law, the child tax credit of \$1,000 per child is refundable to the extent of 15 percent of earned income in excess of \$8,500. The House bill increases the refundable portion of the child tax credit by eliminating the \$8,500 floor for 2009 and 2010. The Senate bill is similar, but reduces the floor to \$6,000.

Earned Income Tax Credit: Both bills increase the credit from 40 percent to 45 percent of the first \$12,570 of earned income.

Transit Benefits: The Senate bill increases the exclusion for transit passes and van pooling from \$115 per month to \$230 per month for 2009 and 2010. The House bill has no provision.

Small Business Capital Gains: The Senate bill increases the gain exclusion on small business stock from 50 percent to 75 percent for stock issued after the date of enactment of the bill and before January 1, 2011. The House bill has no similar provision.

Energy Provisions

New Energy Research Credit: Both bills create a new credit equal to 20 percent of the qualified energy research expenses, which are expenses incurred in the development of fuel cells, battery technology, renewable energy, energy conservation technology, efficient transmission and distribution of electricity, and carbon capture and sequestration.

Energy Investment Credit: Under current law, the energy investment credit is limited to \$4,000 per year. The House bill repeals the cap for qualified small wind energy property. The Senate bill also removes the cap, and allows certain qualified facilities to be treated as energy property.

Renewable Electricity Production Credit: Current law allows a production credit for electricity produced from renewable sources. The House bill extends the placed in service date for qualified wind facilities from January 1, 2010, to January 1, 2013. The placed in

service date for most other property is extended from January 1, 2011, to January 1, 2014. The Senate bill is similar.

Investment Credit Election: In lieu of claiming the production credit, both bills allow taxpayers to treat certain qualified property as eligible for the 30 percent investment credit.

Residential Energy Credit: The House bill increases the credit from ten percent to 30 percent, raises the maximum credit to \$1,500 for 2009 and 2010, and eliminates the \$500 lifetime cap. The Senate bill is similar.

Alternative Refueling Stations: Both bills would increase the business credit for alternative fuel vehicle refueling property from 30 percent to 50 percent, and increase the maximum from \$30,000 to \$50,000. The credit for individuals would be increased to \$2,000.

Other Provisions

Withholding on Government Contractors: The House bill would repeal the requirement, effective after December 31, 2010, that government agencies withhold three percent of payments to contractors. The Senate bill would defer the effective date of the withholding requirement for one year.

Private Activity Bonds: Both bills would exclude interest on private activity bonds from the alternative minimum tax.

Tax Credit Bonds: In lieu of interest, holders of tax credit bonds receive a federal tax credit. Both bills would allow state and local governments to temporarily elect to issue tax credit bonds rather than tax exempt governmental obligation bonds.

Recovery Zone Bonds: The House bill would create two categories of tax credit bonds for 2009 and 2010. There would be \$10 billion in recovery zone economic development bonds and \$15 billion in recovery zone facility bonds. These limits would be allocated among the states. The Senate bill is similar.

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