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Business Provisions of the American Recovery and Reinvestment Act of 2009 (ARRA)

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The American Recovery and Reinvestment Act of 2009 ([ARRA](#)) provides a number of tax incentives for businesses. Most of the tax incentives for businesses are found in Subtitle C of Division B, Title I of ARRA. In addition, some of the energy incentives, contained in Subtitle B, [and a subsidy for premiums for COBRA health continuation coverage in Title III of Division B,] provide tax relief for businesses.

Here is a summary of the key ARRA provisions, in numerical order, which may impact businesses, large and small:

TAX INCENTIVES FOR BUSINESS (SUBTITLE C)

50-Percent Special Depreciation Allowance/Bonus Depreciation (Section 1201) - The new law extends the 50-percent special depreciation allowance that was available for 2008 acquisitions to acquisitions of qualifying property in 2009. This provision enables businesses to deduct half the adjusted basis of qualifying property in the year it is placed in service. The extension applies to qualifying property placed in service in 2009 (2010 for long production period property and certain transportation property).

Acceleration of Certain Business Credits (Section 1201): Corporations that acquire eligible business property have an additional year to accelerate certain tax credits in lieu of a bonus depreciation deduction. The extension applies to eligible business property placed in service in 2009 (2010 for long production period property and certain transportation property).

Section 179 Expensing (Section 1202): During 2009, small businesses can elect to expense up to \$250,000 of the cost of qualifying property under section 179. Without the new law, the limit would have dropped to \$133,000. The existing \$25,000 limit still applies to sports utility vehicles. The \$250,000 amount provided under the new law is reduced if the cost of all section 179 property placed in service by the taxpayer during the tax year exceeds \$800,000.

Expanded Net Operating Loss Carryback (Section 1211): Many small businesses that had expenses exceeding their income for 2008 can choose to carry the loss back for up to five years, instead of the usual two years. For small businesses that were profitable in the past but lost money in 2008, this could mean a special tax refund. The option is available for a small business that has no more than an average of \$15 million in gross receipts over a three-year period. This option is available for most eligible taxpayers for a limited time. A corporation that operates on a calendar-year basis, for example, must file a claim by Sept. 15, 2009. For eligible individuals, the deadline is Oct. 15, 2009.

Estimated Tax Requirement Modified (Section 1212): Many individual small business taxpayers may be able to defer until the end of the year paying a larger part of their 2009 tax obligation. For 2009, eligible individuals can make quarterly estimated tax payments equal to 90 percent of their 2009 tax or 90 percent of their 2008 tax, whichever is less. Individuals qualify if they received more than half of their gross income from their small business in 2008 and meet other requirements. For details, see [Publication 505](#).

Discharge of Business Indebtedness (Section 1231): The act allows certain businesses that repurchase specific types of debt in 2009 and 2010 to pay taxes on cancellation of debt income over a five year period, starting with tax year 2014.

Exclusion of Gain on the Sale of Certain Small Business Stock (Section 1241): ARRA provides an extra incentive for investment in small businesses. The new law provides an increase in the Section 1202 exclusion from 50 percent (60 percent for enterprise zone qualified business entity stock) to 75 percent for any gain from the sale or exchange of qualified small business stock acquired after Feb. 17, 2009 and before Jan. 1, 2011, and held for more than five years. This provision is limited to individual investors and not available to corporations.

S-Corporation Built-in Gains Holding Period (Section 1251): For tax years beginning in either 2009 or 2010, the new law eliminates the corporate level tax on the built-in gains of an S-Corporation that converted from C-corporation status at least seven tax years before the current tax year.

COBRA PREMIUM ASSISTANCE (TITLE III)

COBRA: Health Insurance Continuation Subsidy (Section 3001): Under the new law, employees who were involuntarily terminated after Aug. 31, 2008 and before Jan. 1, 2010, and who elect COBRA health continuation coverage, are entitled to receive a 65 percent subsidy on their COBRA premiums. For periods of COBRA coverage beginning after Feb. 16, 2009, the involuntarily terminated employee must be treated as having paid the required COBRA premium if the individual pays 35 percent of the premium amount. The employer (or, in some cases, multiemployer health plan or insurer) may recover the other 65 percent by taking the subsidy amount as a credit on their quarterly employment tax return.

ENERGY INCENTIVES (SUBTITLE B)

Extension of Renewable Energy Production Tax Credit (Section 1101): The new law generally extends the "eligibility dates" of a tax credit for business facilities producing electricity from wind, closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower and marine and hydrokinetic renewable energy. The new law extends the "placed in service date" for wind facilities to Dec. 31, 2012. For the other facilities, the placed-in-service date was extended from Dec. 31, 2010 (Dec. 31, 2011 in the case of marine and hydrokinetic renewable energy facilities) to Dec. 31, 2013.

Election of Investment Credit in Lieu of Production Credit (Section 1102): Businesses that place in service facilities that produce electricity from wind and some other renewable resources after Dec. 31, 2008 can choose either the energy investment tax credit, which generally provides a 30 percent tax credit for investments in energy projects or the production

tax credit, which can provide a credit of up to 2.1 cents per kilowatt-hour for electricity produced from renewable sources. A business may not claim both credits for the same facility.

Repeal of Certain Limits on Business Credits for Renewable Energy Property (Section 1103): The new law repeals the \$4,000 limit on the 30 percent tax credit for small wind energy property and the limitation on property financed by subsidized energy financing. The repeal applies to property placed in service after Dec. 31, 2008.

Coordination with Renewable Energy Grants (Section 1104): Business taxpayers also can apply for a grant instead of claiming either the energy investment tax credit or the renewable energy production tax credit for property placed in service in 2009 or 2010. In some cases, if construction begins in 2009 or 2010, the grant can be claimed for energy investment credit property placed in service through 2016, and for qualified renewable energy facilities, the grant is 30 percent of the investment in the facility and the property must be placed in service before 2014 (2013 for wind facilities).

New Clean Renewable Energy Bonds (Section 1111): Certain State utilities, governmental entities and cooperatives that initiate projects to generate electricity from renewable sources (for example wind and solar) can finance those projects through qualified tax credit bonds. The new law increases the amount of funds available to issue new clean renewable energy bonds from the one-time national limit of \$800 million to \$2.4 billion.

Temporary Increase in Credit for Alternative Fuel Vehicle Refueling Property (Section 1123): The new law modifies the credit rate and limit amounts for property placed in service in 2009 and 2010. Qualified property (other than property relating to hydrogen) is now eligible for a 50 percent credit, and the per-location limit increases to \$50,000 for business property (increases to \$2,000 for other/residential locations). Property relating to hydrogen keeps the 30 percent rate as before, but the per-business location limit rises to \$200,000.

Increased Exclusion Amount for Commuter Transit Benefits and Transit Passes (Section 1151): The new law increased to \$230 the monthly tax exclusion for employer-provided commuter transportation and transit pass benefits, effective from March through the end of 2009. Employers can generally deduct these qualified transportation fringe benefits as a business expense. These benefits are also excluded from an employee's wages for income tax and payroll tax purposes. Because of this exclusion from employee wages, the employer can reduce the amount paid in employment taxes.