DeCotiis, FitzPatrick, Cole & Wisler, LLP

Eight Key Considerations Regarding the Stimulus Act for Your Business

The American Recovery and Reinvestment Act of 2009 (known as the "Recovery Act"), which was signed into law on February 17, 2009, provides welcome relief for ailing businesses. The following highlights the more widely applicable provisions that may have an impact on your business.

1. Five-Year NOL Carryback Period. In general, net operating losses ("NOLs") may be carried back 2 taxable years before the loss year and forward to each of the 20 taxable years following the loss year. For NOLs arising in a tax year beginning or ending in 2008, the Recovery Act permits "small businesses" to elect to increase the NOL carryback period from 2 years to 5 years. A "small business" for this purpose is a trade or business whose average annual gross receipts are $15 million or less.

2. Temporary Reduction of S Corporation Built-in Gain Holding Period. If a Subchapter C corporation elects to become a Subchapter S corporation and disposes of certain assets within 10 years of the date of the election to S status, gains that were "built in" at the time of the election are taxed at the highest corporate rate (currently 35%). Fortunately, the Recovery Act, for tax years beginning in 2009 and 2010, temporarily shortens the special holding period to 7 years.

3. One-Year Extension for Bonus Depreciation. In 2008, Congress temporarily provided "bonus depreciation" so businesses could recover the costs of capital expenditures faster than through ordinary depreciation. Bonus depreciation was scheduled to end for most assets placed in service after 2008. The Recovery Act, however, extends for another year the ability for businesses to take an extra "bonus depreciation" deduction for the first year new assets are placed in service. The bonus first-year depreciation deduction generally equals 50% of the cost of qualified property (machinery, equipment, solar panels, computers, etc.) acquired and placed in service before January 1, 2010.

4. Enhanced Business Expensing Limits. Generally, businesses have the option of electing to deduct some of the cost of business machinery and equipment in the year of acquisition in lieu of recovering such costs over time through depreciation. For tax years beginning in 2008 or 2009, the maximum amount that a business may expense is $250,000 of the cost, and the expensing election begins to phase out when such costs exceed $800,000. If the Recovery Act had not passed and signed into law, the dollar limits would have dropped this year to $133,000 and $530,000, respectively.

5. Delayed Recognition of Tax on Debt Forgiveness Income. A business generally will wind up with debt discharge income if it repurchases its own debt for less than the outstanding amount of the debt. For debt that is repurchased in 2009 or 2010, the Recovery Act permits the tax that is owed on such debt forgiveness income to be paid over five years, beginning with 2014.

6. Additional Workers Eligible for Work Opportunity Tax Credit ("WOTC"). Employers that hire workers from one or more targeted groups can claim a tax credit that varies with the type of person hired. For individuals beginning work for the employer after December 31, 2008, the Recovery Act creates a new targeted group for the WOTC, consisting of unemployed veterans and disconnected youth who begin work for the employer in 2009 or 2010.

7. Grants in Lieu of Tax Credits for Low-Income Housing. Under present law, owners of certain low-income rental property may claim a low-income housing tax credit with respect to a portion of their investment. Under the Recovery Act, the Department of the Treasury will make grants to state housing credit agencies in lieu of the tax credits. States may elect to receive these federal grants in exchange for a portion of their unused low-income housing credit allocations for 2008 and 2009. The states must use the grants to make subawards to finance low-income housing. Grant recipients must satisfy the low-income housing credit rules.

8. Withholding on Government Contracts. The date after which federal, state and local government entities are required to begin withholding 3% on certain payments for property or services and reporting the withheld amounts to the IRS is changed from December 31, 2010 to December 31, 2011.

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