

SMALL BUSINESS TAX BENEFITS FOR 2009

With our country mired in a recession and a climbing unemployment rate, many laid-off employees have started their own small businesses in 2008 and 2009. The American Recovery and Reinvestment Act (the “Act”), signed into law in February 2009, established and extended a variety of small business tax deductions and credits for these entities through the end of 2009. A brief outline of the deductions and credits is explained below.

Capital Expenditure Write-Offs:

The Act extends through the end of 2009 the (i) special fifty percent (50%) depreciation allowance; and (ii) increased IRC Section 179 deduction limits. This will create an incentive for investment in new property and equipment by allowing a small business to recover these capital investments quicker than through annual depreciation deductions spread over several years.

The depreciation provision enables businesses to deduct half the adjusted basis of qualifying property in the year it is placed in service. The section 179 deduction enables small businesses to deduct up to \$250,000 (instead of \$133,000) of the cost of capital assets (machinery, equipment, vehicles, furniture and other qualifying property) placed in service during 2009. The \$250,000 amount will be reduced if the cost of all section 179 property placed in service in 2009 exceeds \$800,000. Both the depreciation provision and deduction should be claimed on IRS Form 4562.

Expanded Net Operating Loss Carry-back:

The Act enables a small business with expenses exceeding their 2008 income the option to carry back those losses for up to five (5) years (instead of two (2) years). The option is available for any small business that had less than an average of \$15 million in gross receipts over a three-year period and could result in a special tax refund.

The option is available for a calendar-year corporation until Sept. 15, 2009 and an eligible individual until Oct. 15, 2009. Corporation should file their claim using IRS Form 1139 and individuals through IRS Form 1045.

Exclusion of Gain on the Sale of Certain Small Business Stock:

Section 1202 of the Internal Revenue Code is amended to create a new incentive for investment in a small business. Investors acquiring “qualified small business stock” between Feb. 18, 2009 and December 31, 2010, which is held for five (5) or more years, will be eligible to exclude seventy-five (75%) percent of the gain upon sale of the stock. The provision is limited to individual investors and not corporations.

Estimated Tax Requirement Modified

The Act allows many small businesses to defer, until the end of the year, a portion of their 2009 tax obligations. The small business will have the option to make quarterly estimated tax

payments equal to the lesser of: (i) ninety (90%) percent of their 2009 tax; or (ii) ninety (90%) percent of their 2008 tax. Eligibility requires the small business to have received more than half of their gross income from their small businesses in 2008 and meet other requirements.

COBRA Credit:

Employees who were involuntarily terminated between September 1, 2008 and December 31, 2009 and elect COBRA health continuation insurance (COBRA) are provided a subsidy requiring them to only incur thirty-five (35%) percent of the cost of coverage. Employees who lost their jobs between September 1, 2008, and enactment of the law, but failed to initially elect COBRA because it was unaffordable, are entitled to an additional sixty (60) days to elect COBRA and receive the subsidy.

The subsidy phases out for individuals whose modified adjusted gross income exceeds \$125,000 (\$250,000 for those filing joint returns). Individuals with modified adjusted gross income exceeding \$145,000 (\$290,000 for those filing joint returns) will not qualify for the subsidy.

Employers required to provide the sixty-five (65%) percent COBRA premium subsidy will be able to claim it as a credit on their quarterly or annual employment tax returns. Impacted employers will be able to reduce their employment tax deposits by the credit amount of the credit.

Small Business Act:

The Act Amends provisions of the Small Business Act, until September 30, 2010, by (i) suspending the 7(a) program with regard to guaranteed loans to small businesses; and (ii) the 504 program with regard to financing backed by guaranteed debentures. The Act additionally authorizes the Small Business Administration to guarantee up to ninety (90%) percent of any loan made by a private lender to (i) a small business eligible for a loan guarantee under the Small Business Act; or (ii) the Small Business Investment Act of 1958. However, the Act prohibits a guarantee for any small business in which an alien has an ownership interest.

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