

Kick-starting the economy

How to get the most out of the American Recovery and Reinvestment Act **Interviewed by Matt McClellan**

Business owners should be sitting down with their accountants to discuss The American Recovery and Reinvestment Act of 2009 in order to get the most out of the new law.

"It's a matter of getting to know what benefits are out there and then taking advantage of them," says Corey Higa, a senior manager at Haskell & White LLP. "Sometimes cash can be left on the table. To avoid that, work closely with your CPAs. Be sure they are on top of the news and that they are up to speed on all the new rules and regulations."

Smart Business spoke with Higa about the changes and how business owners can derive tax advantages in light of the new law.

How have bonus depreciation and Section 179 changed?

The act has extended the 2008 increase in Section 179 deduction limits for depreciable property through 2009. The limit will remain at \$250,000 (\$285,000 if the business is in a qualified enterprise zone or renewable community). The eligible Section 179 deduction is decreased dollar for dollar for the amount by which the cost of property acquired during the taxable year exceeds \$800,000.

In addition, the act extends the 2008 bonus depreciation allowance for certain qualified property placed in service during 2008 and 2009 (2010 for certain property having longer production periods and aircraft). The taxpayer may deduct an additional 50 percent of the adjusted basis of qualified property, after reduction for any Section 179 deduction but before regular depreciation.

Qualified property is tangible property with a recovery period of 20 years or less, water utility property, off-the-shelf computer software and qualified leasehold improvement property. The depreciation limits on autos, trucks and vans have also been increased for the year.

The extension of the Section 179 deduction amounts and the bonus depreciation provisions are two of the significant business provisions in the act. Businesses should plan their asset purchases to maximize these deductions. It may be necessary to accelerate or defer asset purchases depending on the business circumstances.

Note that an election exists for corpo-



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rations, which allows them to treat unused pre-2006 Alternative Minimum Tax (AMT) or Research credits as refundable credits. The cost of this benefit is the corporation must agree to forego bonus depreciation and must use straight-line depreciation method on those assets. The availability of this election has been extended through 2009 along with the bonus depreciation provision. This may be beneficial to loss corporations or those frequently in AMT.

What do business owners need to know about the net operating loss carryback provision in the act?

This provision allows a net operating loss to be carried back up to five years rather than two years for qualifying businesses. This can help business owners by infusing cash into their operations this year. If a business had profits in prior years and paid taxes on those profits, it has the ability to take a deduction for this year's losses and claim a refund up to five years.

For example, if a company had profits in 2006 and paid taxes on them, it could carry that loss back to 2000 and get a refund of the taxes it paid previously.

For 2008, the new law extends the maximum NOL carryback period from

two years up to five years for small businesses with gross receipts of \$15 million or less.

How does the new law affect businesses in debt?

Under prior law, taxpayers generally recognize income where the taxpayer is released from a debt obligation or if the taxpayer repurchases its debt at a discount. There are exceptions for bankruptcy, insolvency and certain qualified real property business indebtedness. Certain businesses will now be allowed to elect to defer cancellation of debt (COD) income generated from the repurchase of its debt by itself or a related party for five years (for acquisitions in 2009, four years for acquisitions in 2010), and then recognize the COD into income ratably over the following five years. These same rules will apply also to a complete forgiveness of debt by the creditor, as well. The important consideration here is that any taxpayer making the election under this provision will not be allowed to utilize any of the other exclusion provisions for the year of the election or any subsequent years. This is significant because the exclusion provisions in some instances provide for either a permanent exclusion from income or a long-term deferral into basis of property, which the taxpayer may decide to continue to own and thus not trigger the income.

Have there been any changes to the work opportunity credit?

The new act adds two new groups for which employers may receive work opportunity tax credits of up to \$2,400 per individual hired from a qualifying group. The new groups are unemployed veterans and disconnected youths. Qualified veterans are those discharged or released from active duty during the five years prior to hire. A 'disconnected youth' is an individual between 16 and 25 who hasn't been regularly employed or attended school in the past six months. It is intended to motivate and provide financial assistance to businesses for hiring from these targeted groups. <<

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