The Wealth Counselor

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Individual and Small-Business Tax Benefits in the Stimulus Package

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From [Edward Marin](#)

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The $787 billion, 1,100+ page American Recovery and Reinvestment Act of 2009 (ARRA) signed February 17, 2009 contains 575 pages of tax provisions. This issue of The Wealth Counselor highlights many of the more important of those tax provisions that affect individuals and small businesses, including some that, although not applicable to most of your clients, may affect their parents', children's, or grandchildren's taxes. Citations to the applicable sections of the ARRA are included.

Provisions for Small Businesses

Net Operating Loss Carryback Provisions (ARRA Sec. 1211)

This benefit is for small businesses (including sole proprietorships and individual members of pass-through entities) with average annual gross income of less than $15M for 2006 through 2008 that have a 2008 net operating loss (NOL) for tax purposes. The ARRA increases their options by lengthening the carryback period against which to apply the 2008 NOL from 2 to 5 prior years. The five-year carryback is also allowed for computing Alternative Minimum Tax.

Planning Tip: Under the ARRA, a taxpayer can carry back losses up to 5 years, but only if its 2006-2008 average gross income is less than $15M. This expands the opportunities to offset income taxed in the higher brackets.

Planning Tip: Revenue Procedure 2009-19, available online athttp://www.irs.gov/pub/irs-drop/rp-09-19.pdf, provides the technical requirements for making an extended net operating loss election via Form 1139 or Form 1045.

Section 179 Deduction (ARRA Sec. 1202)

Generally, qualifying taxpayers can elect to treat the acquisition cost of certain business personal property (called Section 179 property) as an expense and deduct it in the year the property is placed in service, rather than depreciating it. The Section 179 property amount, which was increased to $250,000 for 2008, would have dropped to $133,000 for 2009 and subsequent years (inflation adjusted). The ARRA extends the $250,000 amount through 2009.

Planning Tip: The $250,000 amount is reduced if the cost of all Section 179 property placed in service by the taxpayer during the tax year exceeds $800,000.

Planning Tip: The ARRA does not change the $25,000 Section 179 limitation on expensing sport utility vehicle acquisition costs.

Lower Estimated Tax Payments Avoid Underpayment Penalty (ARRA Sec. 1212)
Under the prior law, individuals with business income could avoid the estimated tax underpayment penalty by paying at least 90% of the current year's tax liability or 100% of the prior year tax liability (110% for taxpayers with prior year adjusted gross income (AGI) in excess of $150,000) by the return due date. The ARRA reduced the 100% and 110% to 90%.

Extension of Bonus Depreciation Deductions through 2009 (ARRA Sec. 1201)
The first-year bonus depreciation provision had been extended through 2008. The ARRA extends it through 2009 (2010 for certain long-lived and transportation property). For eligible taxpayers, the first year's depreciation is 50% of the cost with the other 50% depreciated over the remaining life of the property. This will allow businesses to take a larger tax deduction on qualifying property placed in service in 2009. As in 2008, under the ARRA the bonus depreciation allowance begins phasing out at $800,000 of new qualifying property.

Capital Gains Tax Break for Investment in Small Business (ARRA Sec. 1241)
Individuals who buy stock in a small business, hold it for at least five years and then sell it, get to exclude 50% of their gains (within certain limits) under current tax law. The ARRA increases that exclusion to 75% - but only for stock acquired after February 17, 2009 and before January 1, 2011.

Non-Business Provisions
Alternative Minimum Tax (AMT) Patch (ARRA Sec. 1011 and Sec. 1012)
The ARRA increases the AMT exemption amounts from $46,200 to $46,700 for individuals and from $69,950 to $70,950 for married couples filing jointly. This is yet another one-year patch to the AMT.

Planning Tip: Although the ARRA provides a relatively small "patch" (or extension) of the AMT exemption, it will keep millions of clients out of AMT. This includes those individuals earning approximately $85,000-100,000 and married couples filing jointly that earn $150,000-200,000.

Expanded Qualified Higher Education Expenses (ARRA Sec. 1004 and Sec. 1005)
For 2009 and 2010, the ARRA:

A. Expands permissible 529 plan disbursements to include tax-free distributions for the purchase of computer technology or equipment. Computer technology or equipment includes educational software, internet access and related services.

B. The American Opportunity Credit, new under the ARRA, provides a tax credit for up to four years of post-secondary education expenses. A replacement for the Hope Credit for 2009 and 2010, the American Opportunity Credit also expands the definition of expenses to include required course materials and increases the maximum annual credit from $1,800 to $2,500 per student.

Planning Tip: The full American Opportunity Credit is available to individuals whose modified AGI is $80,000 or less ($160,000 or less for married couples filing jointly) and phases out for taxpayers with incomes above those levels. These income limits are higher than under the Hope and Lifetime Learning Credits.

Expanded and Increased "First-Time Homebuyer" Credit (ARRA Sec. 1006)
ARRA provides for a refundable credit of up to $8,000 (up from $7,500) ($4,000 vs. $3,750 for married individuals filing separately) for "first-time homebuyers." The eligible purchase period is extended from July 1 to December 1, 2009. If the homebuyer uses the home as his or her (or their) principal residence for 36 months, the homebuyer will not be subject to repayment of any of the credit (compared to the maximum $7,500 credit for first-time homebuyers in 2008, which they must repay over 15 years).

Planning Tip: On February 25, 2009 the IRS announced that first-time homebuyers who purchase in 2009 can claim the credit on their 2008 federal tax return. If the home purchase closes after the 2008 return is filed, the taxpayer can file an amended 2008 return. Alternatively, first-time homebuyers may claim this credit on their 2009 return.

COBRA Assistance (ARRA Sec. 139C, Sec. 3001, Sec. 6432 and Sec. 6720C)
Under the ARRA, eligible former employees (those involuntarily separated from service between September 1, 2008, and December 31, 2009) who participated in their employer's health plan at the time they lost their jobs must pay only 35% of the cost of COBRA coverage. The employer-borne portion of the COBRA cost is not included in the former employee's gross income. The COBRA subsidy phases out for individuals with modified adjusted gross income (AGI) between $125,000 and $145,000. The phase-out range for those filing jointly is $250,000 to $290,000.

Planning Tip: Employees who lost their jobs between September 1, 2008, and February 17, 2009, but who did not initially elect COBRA coverage, now get an additional 60 days to elect COBRA coverage and receive the subsidy.

Employers must treat the 35% payment by these former employees as full payment and pay the other 65% themselves. On its payroll tax return, the employer can claim a credit for that 65%.

Planning Tip: Employers can claim this credit on updated Form 941, Employer's Quarterly Federal Tax Return, available online at http://www.irs.gov/pub/irs-pdf/f941.pdf.

Additional Sales Tax Deduction for Certain Vehicle Purchases (ARRA Sec. 1008)
The ARRA allows certain taxpayers to deduct some or all state and local sales and excise taxes on the purchase of new cars, light trucks, motor homes and motorcycles in 2009. This deduction is available regardless of whether the individual itemizes deductions on Schedule A.

The ARRA limits this deduction to the tax on up to $49,500 of the purchase price of an eligible motor vehicle. The deduction phases out for joint filers with modified AGI between $250,000 and $260,000 and other taxpayers with modified AGI between $125,000 and $135,000.

Planning Tip: Purchases before February 17, 2009 are not eligible for this deduction.

Energy Efficiency and Conservation Incentives (ARRA Sec. 1103(a) and Sec. 1121)
For 2009 and 2010, the ARRA provides a 30% credit (up from 10%) for the cost of replacing windows and doors with energy efficient ones, installing insulation and installing energy efficient heating and cooling equipment. It also increases the aggregate credit available from $500 to $1,500. There is no maximum credit on:

- Electric and solar water property
- Fuel cells (but the eligible expenditure is limited to $500 ($1,667 for property occupied by more than one person) for each half kilowatt of capacity installed)
- Small wind and geothermal heat pump property

Planning Tip: It appears that clients who had used up their $500 lifetime credit can now take an additional $1,000 credit for qualifying expenditures made during 2009 and 2010.

Plug-in Vehicle Credit (ARRA Sec. 1141 - Sec. 1143)
The ARRA also provides a credit equal to $7,500 (no weight limit) for plug-in electric vehicles and a 10% credit (up to $4,000) for converted plug-in vehicles. Low-speed vehicles receive a 10% credit (up to $2,500).

The energy efficiency and conservation and plug-in vehicle credits are not subject to AGI phase-outs.

Enhanced Child Tax Credits for Tax Years 2009 and 2010 (ARRA Sec. 1003)

The ARRA increases eligibility for the child tax credit for many taxpayers. Instead of a $12,550 minimum for 2009, the earned income formula for this refundable credit is modified to apply to 15% of earned income in excess of $3,000. This change to the child tax credit applies only to 2009 and 2010.

Conclusion

The ARRA provides numerous credits and incentives for small businesses and individual taxpayers. These provisions primarily impact tax years 2009 and 2010, but some provisions affect 2008 and earlier tax years. By helping clients and prospects understand these new provisions and the opportunities they create, the planning team may be able to help clients save significant tax dollars. Discussing the ARRA can also help the planning team bridge the gap in relations with parents, children and grandchildren because of the limitation of many ARRA provisions to lower-income taxpayers.

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