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Summary of The American Recovery and Reinvestment Act

Below is a summary of certain income tax provisions in The American Recovery and Reinvestment Act of 2009 (the "Recovery Act") signed by President Obama on February 17, 2009.

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I. Individual Incentives

- *First-Time Home Buyer Credit.* A first-time home buyer who, after April 8, 2008 and before January 1, 2009, purchased a home that he or she uses as a principal residence, may claim a tax credit on his or her individual tax return of up to \$7,500. The amount of the credit is gradually reduced for those taxpayers who are married and have modified adjusted gross income ("AGI") of \$150,000 or more. Any taxpayer who claims the credit must pay it back over a 15 year period of time. A first time buyer who purchases his or her principal residence after December 31, 2008 and before December 1, 2009, may claim a credit of \$8,000. No repayment provision applies to the credit for purchases made in 2009. The 2009 purchasers who may realize a better tax result by using the credit against their 2008 income tax liability, may elect to treat the purchase as occurring in calendar year 2008. This provision allows those whose income tax liability may be greater in 2008 than in 2009 to obtain more benefit from the credit.
- *Making-Work-Pay Credit.* Eligible individuals are given a refundable income tax credit for tax years 2009 and 2010. The credit is the lesser of (i) 6.2% of earned income or (ii)

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\$400 (\$800 joint return). The credit is phased out if a person's modified AGI exceeds \$75,000 (\$150,000 for a joint return).

- *American Opportunity Tax Credit.* For tax years 2009 and 2010, the Hope credit is modified and is renamed as the American Opportunity Tax Credit. The maximum amount of the credit is \$2,500 per eligible student per year for qualified tuition and related educational expenses paid for each of the first four years of college and/or other educational institutions. The amount of the credit is phased out ratably for those taxpayers with modified AGI between \$80,000 and \$90,000 (\$160,000 and \$180,000 for joint filers). This credit may also be claimed for AMT purposes for the first time in 2009 and 2010.
- *Computers as Educational Expense.* Computer technology expenses can be paid for using funds from qualified 529 plans in 2009 and 2010 for the first time.
- *Automobile Sales and Excise Taxes.* For purchases on or after 2/19/2009 and before 1/1/2010, the Recovery Act allows a deduction for state, local and excise taxes imposed on the purchase of new cars, light trucks, motor homes and motorcycles. Only taxes on that portion of the purchase price not in excess of \$49,500 may be deducted. The deduction is available to both itemizers and non itemizers. It phases out ratably for those taxpayers with modified AGI between \$125,000 and \$135,000. It phases out for taxpayers filing joint returns with modified AGI between \$250,000 and \$260,000.
- *AMT Relief.* The AMT exemption amounts are increased in 2009 as follows:
 - o \$46,700 (for 2008, \$46,200) for unmarried persons;
 - o \$70,950 (for 2008, \$69,950) for married couples; and
 - o \$35,475 (for 2008 \$34,975) for married couples filing separate.

Certain personal credits are also allowed in 2009 and 2010 for AMT purposes. [back to top](#) 

II. Business Incentives

- *50% Bonus Depreciation Extended.* Additional 50% bonus depreciation was first introduced in the Job Creation and Worker Assistance Act of 2002. The concept has been extended multiple times since 2002, including The Economic Stimulus Act of 2008 that allowed the deduction for property placed in service before January 1, 2009. Continuing this trend, The Recovery Act extended the additional bonus depreciation to property generally acquired after December 31, 2007 and placed in service before January 1, 2010.

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Code Section 168(k) allows an additional 50% bonus depreciation deduction for the taxable year in which Qualified Property is placed-in-service. Qualified Property consists of four asset classes: (1) property to which MACRS applies with a recovery period of 20 years or less; (2) computer software to which a deduction is allowed under Code Section 167(a); (3) water utility property; or (4) qualified leasehold improvement property.


- First Year Depreciation on Certain Autos. Code Section 280F places a limit on depreciation deductions allowed for certain vehicles. In 2008, the first year limit for vehicles that did not qualify for bonus depreciation was \$2,960, and if the vehicle qualified for bonus depreciation, an additional \$8,000 could be deducted. The Recovery Act provides that the limitation under Section 280F will continue to be increased by \$8,000 for vehicles meeting the bonus depreciation requirements.
- Extension of Election to Trade Bonus Depreciation for Deferred Credits. Code Section 168(k)(4) allows a corporation to forego the bonus depreciation it would otherwise be entitled to for qualified property in exchange for the current allowance of certain research and AMT deferred tax credits. The Recovery Act extended the election for qualified property acquired and placed in service before December 31, 2009.
- Increase in Section 179 Expensing. Code Section 179 allows taxpayers to deduct in the current tax year capital expenditures to acquire tangible personal property used in a trade or business rather than depreciating such property as normally required by the Code. Code Section 179 places a limit on the amount that can be expensed each year, and that amount is phased out dollar for dollar by the excess of the Section 179 Property placed in service during the taxable year over the investment ceiling set forth in Code Section 179. For tax years beginning in 2009, The Recovery Act increases the expensing limit to \$250,000 and the investment ceiling to \$800,000.
- Longer NOL period for Small Businesses. Net Operating Losses can typically be carried back 2 years and carried forward for 20 years. The Recovery Act permits small business to carry back net operating losses that occurred after December 31, 2007 for a period of either 2, 3, 4, or 5 years. A small business for this purpose is a trade or business whose average annual gross receipts are \$15 million or less for the three-tax-year period ending with the tax year before the year in which the loss arose.
- Reduced estimated tax burden for individuals with small businesses. To the extent that tax isn't collected through withholding, taxpayers generally are required to make quarterly estimated payments of tax in an amount

determined by the required annual payment. The required annual payment is the lesser of 90% of the tax shown on the return or 100% of the tax shown on the return for the prior tax year. Under Code Section 6654, the prior-year percentage is 110% if adjusted gross income for the preceding year exceeded \$150,000. An underpayment results if the required payment exceeds the amount of the installment paid on or before the due date of the installment. Taxpayers are subject to a penalty if there is an underpayment.


The Recovery Act provides that for any tax year beginning in 2009, the required annual payment for qualified individuals means the lesser of (1) 90% of the tax shown on the return for the tax year, or (2) 90% of the tax shown on the return of the individual for the preceding tax year. A qualified individual means any individual if the AGI on the tax return for the preceding tax year is less than \$500,000 (\$250,000 if married filing separately) and the individual certifies that at least 50% of the gross income shown on the return for the preceding tax year was income from a small trade or business.

- Targeted Group Added to Work Opportunity Tax Credit. The work opportunity tax credit is available on an elected basis for employers hiring individuals from one or more of nine targeted groups before September 2011. The employer's credit is determined by the amount of wages attributable to services rendered by a member of a targeted group during the one year period beginning with the day the individual commences employment with the employer. For individuals hired after December 31, 2008, the Recovery Act creates a new targeted group for the work opportunity tax credit, which consists of unemployed veterans and disconnected youth who commence employment in 2009 or 2010.
- Deferral of Debt Forgiveness Income on Repurchase of Debt. Taxable income generally includes income resulting from the discharge of debt unless certain exceptions apply. Where income from discharge of debt is excluded under one of the exceptions, taxpayers must generally reduce certain tax attributes such as business credits, net operating losses, capital loss carryovers and basis in assets by the amount of the income from the discharged debt that is not taxable. Under the Recovery Act, a taxpayer can elect to have debt discharge income that results from the reacquisition of certain debt instruments during 2009 and 2010 included in gross income ratably over five tax years.
- Exclusion for Qualified Small Business Stock Increased to 75% of Gain. Before the Recovery Act, individuals could exclude 50% of their gain on the sale of qualified business stock that was held for at least five years. For purposes of this exclusion, the corporation must have gross assets not in

excess of \$50 million and operate an active business. Under the Recovery Act, the percentage exclusion for gain on the sale of small business stock has been increased from 50% to 75%.

- *Gain Holding Period for S Corp Built-in Gain Shortened to Seven Years.* If a C corporation elects to become an S corporation, it is subject to tax at the highest corporate tax rate on any assets owned at the time of the election having "built-in" gain if such assets are sold during a 10 year period following the election. The Recovery Act shortens the holding period during which "built-in" gain must be recognized from 10 to 7 years. [back to top](#) 

III. Energy Incentives

- *Non-Business Energy Property Credit.* The current credit is increased to 30% (from 10%) for the cost of certain energy-efficient improvements and residential energy expenses. The credit applies for central air conditioners, wood stoves, furnaces, electric heat pumps, water heaters, windows, doors and skylights. The expenditures must meet certain standards and must be placed in service in either 2009 or 2010. There's a lifetime maximum cap of \$1,500 (previously \$500). Prior individual limits as to certain items purchased and placed in service, such as windows (\$200), no longer apply.
- *Residential Energy Credit.* For property placed in service prior to 2017, an individual is allowed a 30% credit for the purchase of residential energy efficient property, such as solar energy property and qualified fuel cell property, up to the maximum credit of \$500 for each 0.5 kilowatt of capacity.
- *Alternate Motor Vehicle Credit.* The Recovery Act expands this credit to include 10% of the cost of converting a person's motor vehicle to a plug in, electric drive motor vehicle. The property must be placed in service after 2/17/2009 and before 2012. The maximum amount of the credit is \$4,000, and there is no recapture requirement for this credit.
- *Plug-In Electric Vehicles.* The Recovery Act adds a new credit equal to 10% of the cost of an electric vehicle if the vehicle is acquired after 2/17/2009 and before 2012. The credit applies for two and three wheel electric vehicles. The maximum amount of the credit is \$2,500. [back to top](#) 



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