



AMERICAN RECOVERY AND REINVESTMENT TAX ACT OF 2009

Special Report

Highlights:

- ✓ *New Making Work Pay Credit*
- ✓ *Enhanced Child Tax Credit*
- ✓ *American Opportunity Tax Credit for Education*
- ✓ *Expand Homebuyer Tax Credit*
- ✓ *Extended Bonus Depreciation and Code Sec. 179 Expensing*
- ✓ *Five-Year Carryback of NOLs*
- ✓ *Extensions/Increases of Many Energy Tax Incentives*
- ✓ *Recovery Zone Bonds and Related Relief*

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Senate Passes Tax Stimulus Bill; White House Expects Final Bill By February 16

A divided Senate passed its version of the *American Recovery and Reinvestment Act (H.R. 1)* on February 10. The final vote of 61 to 37 reflected GOP disenchantment with the spending and tax provisions in the bill. However, Republicans in the Senate lacked enough votes to defeat passage of the bill or strip most of the spending provisions from it. Lawmakers are now racing to reconcile the Senate bill with the version passed by the House on January 28. While the overall price tags for the House and Senate bills hover between \$815 and \$840 billion, significant differences remain in the allocation of those amounts between the tax and spending provisions. Negotiations are predicted to be intense. President Obama is insisting that Congress send him a stimulus bill before February 16.

Caution *At press time, there is a possibility that lawmakers will bypass a conference. Instead, the bill would “ping-pong” between the House and Senate with leaders from both chambers making changes until lawmakers can agree on final bill language.*

The tax title in the Senate bill, like the version passed by the House on January 28, includes the Making Work Pay credit, enhancements to the child tax credit and first-time homebuyer credit, taxpayer-friendly changes to many energy incentives, extensions of 2008

bonus depreciation and increased Code Sec. 179 expensing along with a five-year carryback of net operating losses, state and local government relief, and more. However, the Senate bill overall is more generous than the House on these tax cuts. The Senate also added an alternative minimum tax (AMT) patch, as well as a temporary tax incentive for purchasers of new motor vehicles, parity for transit benefits, new curbs on executive compensation for firms receiving TARP funds, and additional incentives.

Impact *Most of the tax incentives in the final House and Senate agreement are expected to be retroactive to January 1, 2009. The hope has been that individuals and businesses would not delay any immediate spending.*

INDIVIDUAL INCENTIVES

Making Work Pay Credit

The final stimulus package is expected to include President Obama’s Making Work Pay credit. The Making Work Pay credit allows a credit against income tax in an amount equal to the lesser of 6.2 percent of the individual’s earned income or \$500 (\$1,000 for married couples filing jointly). The credit would be applied retroactively to the start of 2009 and extend through 2010.

The House bill would reduce the credit for individuals whose modified

adjusted gross income (MAGI) exceeds \$75,000 or \$150,000 in the case of married couples filing jointly. The Senate bill would lower the MAGI cut off to \$70,000 for individuals, \$140,000 for married couples, and accelerate the phase out. The employer's share of FICA, or its 6.2 percent equivalent to be more precise, would remain unchanged. Qualified taxpayers would take this credit through a reduction in wage withholding or in a lump sum when filing their return for the tax year.

The Senate bill also provides one-time payments of \$300 to individuals on fixed incomes (primarily Social Security recipients and disabled veterans). Whether this addition will be enough in House/Senate negotiations to counterbalance the Senate's major reduction in the MAGI limits remains to be seen.

Impact *The Making Work Pay credit would effectively offset an individual's share of FICA payroll taxes for the first \$8,100 in earnings (\$16,200 for couples).*

Comment *It is unclear just yet how the credit would be taken from payroll checks. MAGI limits and the possibility of some individuals working two jobs both appear to prevent an automatic reduction made by all employers. Likely, wage earners will be required to file a revised Form W-4 to claim the credit. Self-employed individuals would take the credit either through adjustment of estimated tax payments or on their income tax returns for the year.*

Impact *According to some Joint Committee on Taxation staff members, the Making Work Pay credit would not appear in taxpayers' pay checks until June because of the difficulty in implementing new withholding tables. This timetable would be unacceptable for many in Congress*

and President Obama who want employers to advance the credit quickly to taxpayers. The Joint Committee notes that the House and Senate versions of the Making Work Pay credit are slightly different in execution of the credit, with the Senate version favoring lower withholding that reflects make up payments since the beginning of the year.

The tax title to either the House or Senate bill frontloads at least \$225 billion in tax breaks within the first two years: 2009 and 2010. In all, more than 50 major provisions have been rolled up into this massive tax recovery package.

Impact *Only individuals with earned income would qualify for the Making Work Pay credit. Since the credit is refundable, a worker with no tax liability would be entitled to the full credit after earning \$8,100.*

Caution *Excluded from the Making Work Pay credit are nonresident aliens, any individual who may be claimed as a dependent by another taxpayer under Code Sec. 151, and any estate or trust.*

AMT Patch

At press time, it is unclear if the final stimulus package will include an alternative minimum tax (AMT) patch for 2009. The patch permits taxpayers to take most personal credits to reduce

AMT liability and also gives taxpayers higher exemption amounts. The Senate added an AMT patch to its version of the stimulus bill. The House bill does not include an AMT patch.

Impact *The patch is designed to insulate approximately 24 million middle-income taxpayers from the reach of the AMT. The AMT patch will cost roughly \$70 billion when measured against what would have been collected without it. Many House Democrats would prefer to pass a 2009 AMT patch later in the year, leaving \$70 billion more on the table for spending provisions.*

Comment *The AMT patch for 2009 would raise exemption amounts slightly above 2008 patch levels. The 2009 AMT exemption amounts would be: \$70,950 for joint filers and surviving spouses (up from \$69,950 in 2008); \$46,700 for singles and heads of households (up from \$46,200).*

Homebuyer Tax Credit

The Senate bill expands the current first-time homebuyers tax credit to include all homebuyers (not just first-time homebuyers), doubles the credit (10 percent of the purchase price, up to \$15,000), and eliminates any payback requirement if the property is held for at least 24 months. The House bill keeps the current credit cap of \$7,500, continues to have it apply only to first-time homebuyers, but also removes the repayment requirement.

Caution *The effective dates should be watched carefully by those who are about to close title on a home. The Senate version calls for its changes to take effect only after President Obama signs the bill. The House bill proposes a January 1, 2009, effective date. The Senate extends*

its enhanced credit for one year; the House extends the credit only until September 1, 2009.

Comment *Congress enacted a similar homebuyer incentive in the mid-1970s. At that time, the incentive was \$2,000.*

Impact *The first-time homebuyer credit would continue to remain unavailable to taxpayers at the time of purchase to swing close deals with extra money down. Lower wage withholding or estimated tax payments would be one way to accelerate the benefit of the credit that would otherwise be taken on the tax return filed for the year of purchase.*

Planning Tip *Under the Senate bill, taxpayers would be able to elect to equally divide the credit between the two tax years beginning with the tax year in which the principal residence purchase is made. The credit is nonrefundable.*

New Car Deduction

Lawmakers will need to decide whether to include a tax break for purchasers of new vehicles in the stimulus package. The Senate bill – but not the House bill – allows an above-the-line deduction for state and local sales taxes paid on purchases of a new motor vehicle, including light trucks and SUVs, plus up to one year of interest on any financing. Lawmakers are expected to fine-tune the effective date and duration of this temporary incentive.

Under the Senate bill, taxes and interest would apply only to the extent the aggregate debt on the vehicle does not exceed \$49,500 (\$24,750 for married persons filing separately). Income limits would apply, with a phase-out of the deduction starting at an MAGI level of \$125,000 for singles and \$250,000 for married couples filing jointly.

Impact *A taxpayer who claims this above-the-line deduction would also be allowed to claim the existing itemized deduction for state and local taxes.*

Education Credit

The final stimulus package is expected to enhance the HOPE education credit in amount (from a maximum \$1,800 to \$2,500 per year), in scope (extending it to all four years of college and adding text books to qualifying expenses), and in phase-out level (from \$50,000/\$100,000 joint filers to \$80,000/\$160,000 joint filers). The House bill renames the credit the “American Opportunity Tax Credit” and makes 40 percent of the credit refundable. The Senate bill makes only 30 percent of the enhanced credit refundable.

Comment *Although this credit would be made retroactive to January 1, 2009, it would not automatically apply to a college semester that begins in 2009. Tuition paid late in 2008 for an upcoming 2009 semester counts only for a credit taken in 2008 under existing rules.*

Child Tax Credit

The final stimulus package is expected to increase the refundable portion of the child tax credit for 2009 and 2010. The House bill would do so by completely eliminating the current earned income floor for claiming the credit. The Senate bill sets the income threshold at \$8,100.

Impact *The child tax credit currently gives individuals with dependent children under age 17 at the close of a calendar year a \$1,000 per child credit through 2010. The Emergency Economic Stabilization Act of 2008 (EESA) enhanced the credit for 2008. Taxpayers are eligible for a refundable credit equal to 15 percent of their*

Some of the key differences to be resolved in House-Senate negotiations include:

- Homebuyer tax credit
- AMT patch
- Unemployment compensation exclusion
- Transit benefits parity
- NOL carrybacks
- Cancellation of indebtedness
- Qualified small business stock
- S corp built-in gain
- Executive compensation

earned income in excess of \$8,500 up to the child credit amount if the total amount of their allowable credit exceeds their total tax liability (regular and AMT). The adjusted gross income phase-out levels would not be changed, starting at \$110,000 for joint filers and \$75,000 for singles.

Earned Income Tax Credit

The final stimulus package is expected to enhance the Earned Income Tax Credit (EITC) for 2009 and 2010. The current credit percentage for the EITC for a taxpayer with two or more qualifying children is 40 percent of the first \$12,570 of earned income. Under both the House and Senate bills, this percentage increases to 45 percent of the taxpayer’s first \$12,570 of earned income for taxpayers with three or more qualifying children. The EITC phase-out range would also increase by \$1,880 for married couples.

Planning Tip *Eligible individuals may elect to receive advance payment of the EITC from their employer. This is handled through the withholding system.*

Unemployment Compensation

Currently, unemployment benefits are included in a recipient’s gross income

for federal income tax purposes. The Senate bill would temporarily exclude up to \$2,400 of unemployment compensation from a recipient's gross income for 2009. The House bill does not include this temporary exclusion. Lawmakers will need to decide whether to include a tax break for individuals receiving unemployment compensation in the final bill.

Transit Benefits Parity

Qualified transportation fringe benefits, such as transit passes, van pooling and qualified parking, are not included in an employee's income up to specified dollar amounts. The Senate bill increases the current \$120 per month income exclusion amount for transit passes and van pooling to \$230 per month for 2009 and 2010. The House bill does not contain a similar provision.

Impact *The Senate bill in effect would equalize the \$230/month amount now permitted for parking, with similar inflation adjustments for 2010. These benefits are a tax-free fringe if provided by an employer, or a pre-tax deduction from wages if paid for by the employee.*

Qualified Tuition Programs

Qualified tuition program (aka "529 plan") distributions used to pay a beneficiary's qualified education expenses are tax-free. Other distributions are included in the beneficiary's income and are subject to a penalty. The Senate bill allows beneficiaries of qualified tuition programs to use tax-free distributions to pay for computers and computer technology. The House bill does not include a similar provision.

Impact *Laptops and computers are required for most first-year students at colleges, universities and other post-secondary education institutions so the change is very practical.*

BUSINESS INCENTIVES

Over \$100 billion of tax benefits for businesses for 2009 and 2010 are expected to be part of the final stimulus package. Both the House and Senate bills would extend bonus depreciation, increase Code Sec. 179 expensing, provide for a five-year, rather than two-year, carryback of net operating losses (NOLs), as well as provide other business-related incentives.

Bonus Depreciation

The final stimulus package is expected to extend the 50-percent first-year bonus depreciation allowed under the 2008 *Economic Stimulus Act* (EESA) through 2009. The extension would be retroactive to January 1, 2009. It would also extend, through 2010, the additional year of bonus depreciation allowed under the EESA for property with a recovery period of 10 years or longer, for transportation property (tangible personal property used to transport people or property), and for certain aircraft.

2009 bonus depreciation property would include (1) eligible for the modified accelerated cost recovery system (MACRS) with a depreciation period of 20 years or less; (2) water utility property; (3) computer software (off-the-shelf); or (4) qualified leasehold property. The property generally would be required to be purchased and placed in service during 2009, except that certain property with a long life or used in transportation could be purchased and placed in service in 2009 or 2010.

Planning Tip *Fifty-percent bonus depreciation is taken on top of the regular depreciation reported for the year the property is placed in service. As with any accelerated depreciation, however, a large current depreciation deduction results in smaller future deductions.*

Impact *Critics of both bonus depreciation and extended Code Sec. 179 expensing (dis-*

cussed, below) predict that this tax break for the most part will be used in 2009 by those businesses that already planned to buy equipment. They also point out that the current credit crunch will significantly limit a business's ability to finance a purchase in the first place, irrespective of the tax benefits being offered.

Code Sec. 179 Expensing

The final stimulus package is expected to extend the increased 2008 Code Sec. 179 expensing (aka, small business expensing) amounts to 2009. The 2008 *Economic Stimulus Act* increased the amount of Code Sec. 179 expensing for 2008 to \$250,000 and increased the threshold for reducing the deduction to \$800,000. Currently, the enhanced amounts apply to property placed in service in tax years beginning in 2008.

Impact *Unlike bonus depreciation, Code Sec. 179 expensing is available on new or used property.*

NOL Carryback

Any final stimulus bill will likely see a five-year carryback of NOLs, a significant increase of the current two-year maximum carryback period. Significant differences exist between the House and Senate bills, however, over the treatment of the five-year carryback and these will need to be resolved by lawmakers. The House bill requires any NOL carryback to be reduced by 10 percent if the additional carryback period is used resulting in a 90 percent carryback for the additional three years. The both bills give businesses the choice to carry back NOLs three, four or five years. The Senate bill does not reduce the carryback amount by 10 percent for businesses using the additional carryback period.

Impact *The new treatment would apply to NOLs for any tax year beginning or ending in 2008 or 2009.*

Planning Tip *As soon as a taxpayer has filed a 2008 return containing an NOL, it can begin the process of claiming a refund to get cash back into its pockets. The amount of the refund for a carryback year is computed on page 1 of Form 1045 in the case of an individual and on page 1 of Form 1139 in the case of a corporation. The NOL is computed by making specified modifications to taxable income.*

Comment *Under both the House and Senate bills, taxpayers participating in the federal government's Troubled Asset Relief Program (TARP) would be ineligible for this special NOL treatment.*

Work Opportunity Tax Credit

The final stimulus package is expected to create two new categories of targeted groups under the existing Work Opportunity Tax Credit (WOTC): unemployed veterans and disconnected youth. These new categories apply to individuals who begin work for an employer after December 31, 2008.

- A qualifying unemployed veteran is an individual who has been discharged or released from active duty in the U.S. Armed Forces between September 1, 2001, and December 31, 2010, and who received unemployment compensation for four weeks.
- Disconnected youth are individuals between the ages of 16 and 25 who have not been regularly employed or attended school in the past 6 months.

Comment *The WOTC is combined with the Welfare-to-Work credit for qualified individuals who begin working for an employer after December 31, 2006, and before September 1, 2011.*

Refundable Credits in Lieu of Bonus Depreciation

The Senate bill extends through 2009

the provision contained in the Emergency Economic Stimulus Act of 2008 (EESA) that allows businesses to monetize accumulated AMT and R&D credits in lieu of taking bonus depreciation. The election applies to all property qualifying for bonus depreciation placed in service in 2009. The House bill does not include a similar provision and the difference will need to be resolved by lawmakers.

Comment *Under the EESA and by extension in the Senate bill, corporations eligible for 50-percent bonus depreciation may instead elect to claim additional research or minimum tax credits that are refundable. The research credit or minimum tax credit is increased by the bonus depreciation amount, which is 20 percent of the difference between depreciation claimed on eligible property with and without bonus depreciation. The bonus depreciation amount is limited to the lesser of (1) \$30 million or (2) research and AMT credits accumulated for years before January 1, 2006. The EESA provision applies to property placed in service after March 31, 2008, and before January 1, 2009. The Senate bill would extend this option to December 31, 2009.*

Impact *The Senate bill would also allow a business to change its election from 2008 to 2009, or to make an election in 2009 where no election was made in 2008. This is a sharp difference from recent regulatory guidance issued by the IRS that would make a 2008 election binding on the business for 2009.*

Cancellation of Indebtedness

The stimulus package may allow certain businesses to recognize cancellation of indebtedness income over eight years, beginning in 2011, for specified types of business debt repurchased by the business for cash after December 31, 2008,

and before January 1, 2011. The House bill does not provide for any deferral of debt cancellation income.

Qualified Small Business Stock

Under current law, individuals may exclude 50 percent of the gain from the sale of certain small business stock acquired and held for five years. The Senate bill increases the exclusion to 75 percent for stock acquired after the date of enactment and before January 1, 2011. A small business cannot have assets over \$50 million and must conduct an active trade or business. The House bill does not address any additional tax break for qualified small business stock.

S Corp Built-In Gain Period

The Senate bill temporarily shortens, from 10 to seven years, the holding period for assets subject to the built-in gains tax imposed after a C corp elects to become an S corp. This reduction would apply to C corps that convert to S corps in tax years beginning in 2009 and 2010. The House bill does not contain a similar provision.

Impact *The built-in gains tax prevents C corps from avoiding corporate level tax on the disposition of appreciated assets it acquired while a C corp by first converting to S status. However, it also discourages S conversions in situations in which the business may not otherwise survive under C corp rules. The Senate bill would give shareholders more flexibility during the current economic crisis.*

Broadband Technology

The Senate bill provides an investment tax credit for broadband investments in unserved, under-served and rural areas in 2009 and 2010. The credit would range from 10 to 20 percent, depending on the type of broadband service and the location of the service. There is no similar provision in the House bill.

NOL Limitations on Banks Reinstated

The final stimulus package is expected to provide that Notice 2008-83 would have no effect for ownership changes after January 16, 2009, with respect to which there was no written agreement before that date. In Notice 2008-83, the IRS provided relief from the NOL limitations for corporations acquiring a financially-strapped bank. Consequently, the losses were not limited by the normal Code Sec. 382 loss limitations.

Comment *Many lawmakers have criticized the IRS for issuing Notice 2008-83 claiming that the agency over-stepped its authority without giving proper deference to Congress. They also lamented the loss of revenue resulting from a tax break to those who could afford to take care of themselves.*

New Markets Tax Credit

The Senate bill increases the New Markets Tax Credit (NMTC) program by authorizing additional allocations for 2008 and 2009. The House bill does not authorize additional allocations for the NMTC and the difference will need to be resolved by lawmakers.

COBRA Benefits

The final stimulus package agreement is expected to temporarily enhance COBRA coverage. Laid-off workers would pay a portion of the COBRA premium and the former employer would pay the remaining portion of the premium. The employer would be able to credit its share of the subsidy against wage withholdings and payroll taxes.

Comment *The Treasury would reimburse the employer if the employer's share for COBRA coverage exceeds the amount of wage withholdings or payroll taxes that the employer reports to the IRS. The subsidy is excluded from the former-employee's gross income.*

Executive Compensation

The Senate bill caps executive pay for TARP recipients at \$400,000 annually and also requires TARP recipients that paid bonuses of more than \$120,000 per individual to their directors and officers to redeem U.S. government preferred stock in an amount equal to excess bonuses for 2008 or pay a 35 percent excise tax.

Comment *The Treasury Department has independently announced strict TARP executive compensation standards. The new restrictions limit to \$500,000 the total amount of compensation paid to senior executives, except for restricted stock. Treasury also expanded existing "clawback" and golden parachute standards.*

ENERGY INCENTIVES

The energy incentives in the final stimulus package are expected to be targeted to individuals and businesses. President Obama has pledged to significantly expand the development and production of alternative sources of energy, such as biomass, solar and wind energy, in part to create new "green collar" jobs.

Comment *Many observers believe that these energy tax provisions represent only the first installment on more energy legislation later this year. Additional legislation, however, is likely to include increased taxes on fossil fuels, since subsequent tax legislation likely will return to a "paygo" environment in which tax breaks must be offset with revenue raisers.*

Residential Energy Property Credit

The Senate bill increases the Code Sec. 25C residential energy property tax credit from 10 percent to 30 percent, raises the maximum cap to a \$1,500

aggregate amount for 2009 and 2010 installations, eliminates the \$500 lifetime cap, and makes several other modifications. The changes would be effective for eligible property placed in service after December 31, 2008, and before January 1, 2011.

Impact *With higher heating and air-conditioning costs likely in the future, the renewed and enhanced residential energy credit and the fuel savings realized from those installations should accelerate the "pay-back" period required for such home improvements. The credit was in effect in prior years through 2007 but Congress allowed it to lapse for 2008. The general lifetime maximum was \$500 for qualifying improvements. Pre-2008 credits, however, would not be counted toward the new \$1,500 maximum.*

Comment *Improvements eligible for the Code Sec. 25C credit include insulation materials, exterior windows including skylights, exterior doors, central air conditioners, natural gas, propane or oil water heaters or furnaces, hot water boilers, electric heat pump water heaters, certain metal roofs, stoves using renewable plant-derived fuel, and advanced main air circulating fans.*

Residential Energy Efficient Property Credit

The final stimulus package is expected to remove the credit caps under the Code Sec. 25D residential energy efficient property credit for solar hot water property, geothermal heat pumps and wind energy property.

New Energy R&D Credit

The final stimulus package is expected to create a new credit for qualified energy research expenses paid or incurred

in 2009 and 2010. The proposed credit would provide an enhanced 20 percent for research expenses incurred in the development of fuel cells, battery technology, renewable energy, energy conservation technology, efficient transmission and distribution of electricity, and carbon capture and sequestration.

Comment *Current law generally allows a taxpayer to claim a R&D credit equal to 20 percent of the amount by which the taxpayer's qualified research expenses for a tax year exceed its base amount for that year. The credit is generally available with respect to incremental increases in qualified research.*

Alternative Fuel Pump Tax Credit

The final stimulus package is expected to increase the credit for alternative fuel vehicle refueling property for commercial and retail refueling stations for 2009 and 2010. The credit currently equals 30 percent of the cost of property placed in service at each location by the taxpayer during the tax year but is limited to \$30,000. Both the House and the Senate bills increase the 30 percent credit to 50 percent (capped at \$50,000) for property placed in service in 2009 and 2010. For individuals, the credit would also be increased to 50 percent (capped at \$2,000).

Impact *A big winner from this change would be hydrogen refueling property. Although the 30 percent credit would continue to apply to hydrogen refueling property, the maximum credit for hydrogen refueling property would jump to \$200,000.*

Renewable Electricity Production Credit

The final stimulus package is expected to extend the placed-in-service date for qualified wind and other facilities under Code Sec. 45.

This provision provides a credit for electricity produced from renewable sources, such as wind.

Energy Investment Credit

Lawmakers will need to reach an agreement on enhancing the Code Sec. 48 energy investment credit. The EESA expanded the Code Sec. 48 energy investment credit to include qualified small wind energy property. A 30 percent credit presently is available for qualified small wind energy property expenses made by the taxpayer during the tax year. The credit is limited to \$4,000 for the tax year and is allowed for property placed in service before January 1, 2017. Both the House and Senate bills would remove the credit cap for qualified small wind energy property. The Senate bill would also allow a 30 percent credit for investment in a qualifying advanced energy project.

Comment *Both the House and Senate bills would also remove the provision under Code Sec. 48(a)(4) that currently reduces the amount of the credit available for taxpayers financing their qualified facility with subsidized energy financing or proceeds from a private activity bond. This would be effective for periods after December 31, 2008.*

Investment Credit Election

In lieu of producers taking the Code Sec. 45 production tax credit, the final stimulus package agreement is expected to permit taxpayers to treat certain qualified alternative energy facilities as energy property eligible for a 30 percent investment credit under Code Sec. 48. Code Sec. 45 provides a credit for the production of electricity from alternative sources of energy at qualified facilities. Both the House and Senate bills provide for this temporary election, however, the House bill limits the election to facilities placed in service in 2009 and 2010. The Senate bill allows the election

for wind property placed in service in 2009-2012 and for other property placed in service in 2009-2013.

Energy Bonds

The final stimulus package is expected to authorize additional Clean Renewable Energy Bonds (CREBs) and qualified energy conservation bonds.

Plug-in Electric Vehicles

Credit. The Senate bill – but not the House bill – modifies the qualified plug-in electric vehicle credit by increasing the 250,000 vehicle limit to 500,000. Low-speed vehicles would be excluded, but would qualify for a new 10-percent credit. The maximum credit would be \$4,000 for low-speed vehicles (up from the current base credit amount of \$2,500) and would be part of the general business credit, available for vehicles sold after December 31, 2009. The House bill does not address the plug-in electric vehicle credit.

Comment *If a vehicle is eligible for the plug-in electric vehicle credit as a qualified plug-in electric drive motor vehicle, it is not eligible for the Code Sec. 30B qualified hybrid vehicle credit.*

Section 179 expensing. Manufacturers of plug-in vehicles under the Senate bill would be allowed to elect to expense manufacturing facilities producing plug-in electric vehicles or eligible components. The deduction would be allowed at 100 percent through 2011 and then 50 percent from 2012 through 2014. In lieu of taking a deduction, the taxpayer can elect to receive a direct loan from the Treasury Department.

Carbon Dioxide Sequestration

The Senate bill – but not the House bill – would modify the Code Sec. 45Q carbon dioxide sequestration credit. Generally, carbon dioxide used as a tertiary injectant would need to be disposed of by the taxpayer in a secure geological storage. Lawmakers will need to decide

whether to include this provision in the final stimulus package.

HELP FOR STATE/ LOCAL GOVERNMENTS

President Obama is urging Congress to provide fiscal relief for states facing large budget deficits through direct spending and tax relief. The relief is designed to prevent cuts in health care, education, law enforcement and other programs, to avoid tax increases, and to increase spending on infrastructure improvements.

Impact *A study by Obama Administration economic officials concluded that fiscal relief to states would account for nearly 20 percent of the jobs generated by the stimulus package in 2009 and 2010. Jobs generated or preserved from direct and indirect effects of state and local government relief would total 821,000 jobs through the fourth quarter of 2010, out of a total of 3.7 million jobs estimated to be created under the entire stimulus package.*

Comment *Both the House and Senate bills extend federal prevailing wage rates (under the Davis Bacon Act) to projects financed with certain tax-favored bonds. It is uncertain if this provision will survive in the final stimulus package.*

AMT Limits on New Private Activity Bonds

Interest on tax-exempt bonds is a tax-preference item subject to the individual alternative minimum tax (AMT) if the bonds are private activity bonds. Seventy-five percent of the interest is a corporate AMT preference. In 2008, Congress excluded private activity bonds for housing from the AMT. The final stimulus package is expected to expand the exclusion to

all private activity bonds issued in 2009 and 2010.

Recovery Zone Bonds

The final stimulus package is expected to create new categories of tax credit bonds for 2009 and 2010 to be invested in economic recovery zones. Recovery zone bonds would be allocated to states based on their unemployment rates and may be issued in 2009 and 2010.

Impact *Municipalities would be able to use these bonds to invest in infrastructure, job training, education, and other economic development in areas with significant poverty, unemployment or home foreclosures.*

Industrial Development Bonds

The Senate bill would extend the scope of state and local government-issued industrial development bonds to reach more types of manufacturing facilities, particularly those manufacturing intangible property. The House bill does not include this provision and the difference will need to be resolved by lawmakers.

Build America Bonds

The Senate bill allows state or local governments to elect to receive a direct payment from the federal government equal to the subsidy that would otherwise be delivered through a federal tax credit.

Tax-Exempt Interest Paid To Financial Institutions

The Tax Code imposes limits on the deductibility of interest expense allocable to investments in tax-exempt municipal bonds held by financial institutions. The final stimulus package is expected to create a safe harbor for financial institutions and also modify the existing qualified small issuer exception.

Low Income Housing Credit

The Low Income Housing Credit (LIHC) for any tax year for any build-

ing may not exceed the housing credit allocated to that building by a state housing credit agency. The House bill allows taxpayers to substitute federal government grants to states for low-income housing projects in lieu of the low-income housing credit allocation for 2009. The Senate bill authorizes an acceleration of the LIHC so investors may claim 20 percent of the credit in the first three years with the balance over the remaining credit period.

Qualified School Construction Bonds

The final stimulus package is expected to provide for a new category of state and local government-issued tax-credit bonds, known as qualified school construction bonds (with some minor differences to be ironed-out at conference). Proceeds from the bond issue must be used to construct, repair or rehabilitate a public school or to purchase land on which a school will be built.

Impact *The market for school bonds will increase as bond purchasers are offered the opportunity to acquire tax-credit bonds.*

Qualified Zone Academy Bonds (QZABs)

The final stimulus package is expected to increase the annual limit on QZABs.

Impact *QZABs are a form of tax-credit bonds. A qualified zone academy is a public school or academic program in a public school below college level that is located in an empowerment zone or enterprise community.*

Tribal Economic Development Bonds

The final stimulus package is expected to authorize Indian tribal governments to temporarily issue "tribal economic development bonds." Interest on these bonds would be tax-exempt.

High-Speed Rail Bonds

The final stimulus package may fine-tune the maximum speed requirements for high-speed intercity rail facilities for purposes of high-speed rail bonds.

Withholding On Government Contractors

After December 31, 2010, government agencies are required to withhold three percent of payments they make to contractors. The House bill repeals this withholding requirement on government contractors. The Senate bill delays the withholding requirement for one year. Lawmakers will need to resolve differences in the House and Senate bills.

More Tax Legislation Coming

Although emergency stimulus relief is the first order of business this year, Congress and the Obama administration are likely to pass more tax legislation in 2009 to deal with certain sunset provisions as well as other pressing economic needs. They include:

- **Estate tax.** The estate tax is currently set to sunset after 2009 but then reappear in 2011. Congress is likely to make the current estate tax exemption of \$3.5 million (\$7 million for married couples) permanent before the end of 2009.
- **Retirement savings.** In 2008 year-end legislation, Congress suspended required minimum distributions from IRAs, 401(k)s and similar arrangements for 2009 in response to the economic crisis. Lawmakers could extend that treatment to 2010 and, in addition, relax some of the rules for need-based distributions from IRAs and similar plans.
- **Extenders.** A host of temporary tax incentives are scheduled to expire at the end of 2009, including the state and local sales tax deduction, the teachers' classroom expense deduction and tax-free distributions from IRAs for charitable purposes. Congress is unlikely to allow these popular tax incentives to expire permanently.
- **And more.** Over 50 tax bills that addressed a variety of other issues were introduced during the first two weeks of the 111th Congress. Likely, many more provisions will be introduced for Congressional consideration this year.

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