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Summary of the Business Tax Provisions in

# The American Recovery and Reinvestment Act of 2009

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EAST BAY TAX CLUB

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## BUSINESS TAX PROVISIONS IN THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (PL 111-5, HR 1, Enacted February 17, 2009)

### I. Extension of Enhanced First-Year Depreciation for Most Types of New Depreciable Property Placed in Service in 2009

The ARRA extends the 2008 expansion of first-year depreciation for qualified property. The deduction is generally equal to 50 percent of the property's adjusted basis. Regular depreciation may then be claimed with respect to the property's basis following reduction by first-year depreciation. The extended rules in IRC Section 168(k) are effective for property acquired and placed in service before January 1, 2010 (before January 1, 2011 for certain longer-lived property). A taxpayer may elect out of enhanced first-year depreciation for any class of property for any tax year.

Qualified property is (i) MACRS property with a recovery period of 20 years of less, (ii) water utility property, (iii) computer software not covered by IRC Section 197 amortization or (iv) qualified leasehold improvement property.

### II. Increase in Dollar Cap for Depreciating Passenger Autos Placed in Service in 2009

The IRC Section 280F(a) cap on first-year depreciation for passenger autos placed in service in 2009 is increased by $8,000. Based on 2008 caps (to be adjusted for inflation), this would place the first-year depreciation limit for a new passenger auto at $10,960.

### III. One-Year Optional Extension of Election to Swap Bonus and Accelerated Depreciation for Credits that Would Otherwise Have Been Deferred

Legislation in 2008 permitted a corporation to elect, under IRC Section 168(k)(4), to forego bonus and accelerated depreciation for eligible qualified property in exchange for the current allowance, as refundable tax credits, of certain pre-2006 credits that would otherwise have been deferred. Those credits included R&D credits and AMT credits for years prior to 2006.

The ARRA expands the definition of eligible qualified property by (i) extending the "placed-in-service" deadline to December 31, 2009 (to December 31, 2010 for aircraft and long-production-period property) and (ii) liberalizing the rules concerning progress expenditures for long-production-period property.

The ARRA also liberalizes the rules under which a corporation can elect to take advantage of these rules.

### IV. IRC Section 179 Expensing – Extension of Increased Limits from 2008

IRC Section 179 permits certain taxpayers to expense rather than depreciate the cost of new or used tangible personal property placed in service during the year. The annual expensing is subject to a limit and the limit is reduced dollar-for-dollar by the amount of Section 179 property placed in service during a year in excess of an investment ceiling.

The new law extends the expensing limit for 2009 to $250,000 and it extends the investment ceiling limit to $800,000. These extensions will not apply after 2009.

## V. Longer NOL Carryback for Small Businesses

For NOLs arising in years after 2007, the ARRA allows small businesses to elect to increase the carryback period for a 2008 or 2009 NOL from two years to any whole number of years greater than two and less than six. For this purpose, a small business is defined by cross-reference to the rules permitting the use of the cash method of accounting under IRC Section 448. The ARRA provides, however, that annual average gross receipts may be as high as $15,000,000 (rather than $5,000,000, as stated under the general rule of Section 448) for a business to be eligible for the extended NOL carryback period.

## VI. Two Groups Added to Work Opportunity Tax Credit

The new law adds unemployed veterans and “disconnected” youth to the new hires who can contribute to an employer’s Work Opportunity Credit.

## VII. Deferral of COD Income Attributable to Repurchase of Debt

New IRC Section 108(i) will allow a taxpayer, who reacquires its own debt at a discount, to include the resulting cancellation-of-debt income ratably over a five-year period, with inclusions starting in the year 2014. The new rule applies only to debt repurchased during 2009 and 2010. Taxpayers electing the five-year ratable inclusion will not have any tax attributes reduced under IRC Section 108 as a result of recognizing the forward-spread cancellation-of-debt income.

## VIII. Exclusion of Gain on Sale of QSBS Increased to 75 Percent

For qualified small business stock acquired after the date of ARRA enactment and before January 2011, a taxpayer may exclude 75 percent of the gain on sale of the QSBS. Prior law had provided for an exclusion of 50 percent of the gain.

## IX. S Corporation Built-In Gain Holding Period Temporarily Shortened to Seven Years

If a C corporation has converted to S status, and the S corporation’s seventh year in its recognition period precedes the 2009 and 2010 tax years, then the recognition period will terminate at the end of the seventh year. This provision will be helpful primarily to C corporations that converted to S status between the years 2000 and 2003, with the expectation of a full ten-year recognition period.

## X. Section 382 – Limits on Corporate Tax Carryforwards Following Change in Control

IRC Section 382 limitations on the utilization of corporate NOLs will not be triggered by ownership restructurings resulting from TARP bailouts.  Also, the ARRA prospectively repeals IRS Notice 2008-83, in which the IRS had indicated that a bank's losses on loans or bad debt reserves would not be treated as "pre-change" losses for purposes of IRC Section 382; the repeal is effective for ownership changes occurring after January 16, 2009.ng after October 3, 2008.