

American Recovery and Reinvestment Act of 2009 Signed Into Law Today

February 17, 2009

On February 13, 2009, the House and Senate passed H.R. 1, The American Recovery and Reinvestment Act of 2009 (ARRA). This afternoon, President Obama signed the \$787 billion economic stimulus bill into law.

Gray Plant Mooty's Economic Recovery Team is closely monitoring this new legislation and its impact on our clients. In addition to providing frequent e-alerts, GPM's Economic Recovery Team will host a forum on the stimulus package in the near future. **Please watch for your invitation and plan to attend.**

The legislation includes billions of dollars in spending on investments in renewable energy, infrastructure, education, health care, as well as aid to state governments and tax breaks for businesses and individuals. Notable components of the bill include:

REINVESTMENT IN RENEWABLE ENERGY

- **Three-year Extension of Renewable Energy Production Tax Credit.** The bill extends the "placed-in-service" date for three years for wind facilities, as well as closed-loop biomass, open-loop biomass, geothermal, hydropower, and other renewable facilities.
- **Temporarily Allows Production Tax Credit to be claimed as Investment Tax Credit.** Facilities can temporarily take the 30% investment tax credit in lieu of the 10-year production tax credit.
- **Extends Investment Tax Credit to Include Businesses Financed with Development Bonds.** The bill eliminates the restriction on taking investment tax credits if your business was recently financed with development bonds.
- **Removal of Dollar Limitations on Certain Energy Credits.** Removes the \$4,000 tax credit limit for wind, the \$2,000 tax credit for solar water heating, and other tax credit caps for a variety of other renewable facilities.
- **Clean Renewable Energy Bonds (CREBs).** The bill authorizes an additional \$1.6 billion of new clean renewable energy bonds to finance facilities that generate electricity from the following resources: wind; closed-loop biomass; open-loop biomass; geothermal; small irrigation; hydropower; landfill gas; marine renewable; and trash combustion facilities.
- **Qualified Energy Conservation Bonds.** The bill authorizes an additional \$2.4 billion of qualified energy conservation bonds to finance State, municipal and tribal government programs and initiatives designed to reduce greenhouse gas emissions.

- **Tax Credits for Energy-Efficient Improvements to Existing Homes.** The bill would extend the tax credits for improvements to energy-efficient existing homes through 2010.
- **Increased Tax Credits for Alternative Refueling Gas Pumps.** Increases the tax credits for gas stations or other businesses that install alternative fueling options from 30% to 50%.
- **Increased Credit for Investment in Advanced Energy.** Allocation of \$2.3 billion for a 30% investment tax credit for production (or technology in production) of renewable energy, energy storage, conservation and other alternative energy advancements.
- **Other renewable energy provisions:**
 - \$2,500 base tax credit for purchasing plug-in electric vehicles
 - Increase in tax-free benefit for transit to \$230/month
 - Increase credit for businesses capturing carbon dioxide

EDUCATION AND INFRASTRUCTURE INVESTMENT

- **Tax Credit for Qualified School Construction.** The bill allocates \$22 billion for tax credit bonds for the construction, rehabilitation, or repair of public school facilities.
- **Extension and Increase in Authorization for Qualified Zone Academy Bonds (QZABs).** The bill would allow an additional \$1.4 billion of QZAB issuing authority to State and local governments in 2009 and 2010, which can be used to finance renovations, equipment purchases, developing course material, and training teachers and personnel at a public school below college level located in an empowerment zone.
- **Increase in Education Tax Credit and Expenses.** Provides taxpayers with a credit of up to \$2,500 for tuition and books. Education savings plans (529s) can now be used for computer and computer technology.
- **Eliminate Costs Imposed on State and Local Governments by the Alternative Minimum Tax (AMT).** Last year, Congress excluded one category of private activity bonds (tax-exempt housing bonds) from the AMT. The bill would exclude the remaining categories of private activity bonds from the AMT if the bond is issued in 2009 or 2010. The bill also allows AMT relief for current refunding of private activity bonds issued after 2003 and refunded during 2009 and 2010.
- **Delay Application of Withholding Requirement on Certain Governmental Payments for Goods and Services.** The provision would delay for one year (through December 31, 2011) the application of the three percent withholding requirement on government payments for goods and services in order to provide time for the Treasury Department to study the impact of this provision on government entities and other taxpayers.
- **Tax Credit Bond Option for State and Local Governments ("Build America Bonds").** For 2009 and 2010, the bill would provide State and local governments with the option of issuing a tax credit bond instead of a tax-exempt governmental obligation bond.

STATE FISCAL AND HEALTH CARE RELIEF

- **Temporary Federal Medical Assistance Percentage (FMAP) Increase.** The bill increases FMAP funding for a 27-month period beginning 10/1/2008 through 12/31/2010, with an across-the-board increase to all states of 6.2% and a similar increase for territories.

- **Temporary Increase in Disproportionate Share Hospital (DSH) Payments.** The bill increases states' FY2009 annual DSH allotments by 2.5%, and increases states' FY 2010 by 2.5% above the new FY2009 DSH allotment.
- **Extension of Transitional Medical Assistance (TMA).** The bill extends TMA beyond the current expiration date of June 30, 2009, to December 31, 2010.
- **Prompt Payment Requirements for Nursing Facilities and Hospitals.** The bill temporarily applies Medicaid prompt pay requirements to nursing facilities and hospitals.
- **Funding for Health Information Technology (HIT) through Medicare and Medicaid Incentives.** This bill promotes the use of HIT, such as electronic health records, by:
 - requiring the government to take a leadership role to develop standards by 2010 that allow for the nationwide electronic exchange and use of health information to improve quality and coordination of care;
 - investing \$19 billion in HIT infrastructure and Medicare and Medicaid incentives to encourage doctors, hospitals, and other providers to use HIT to electronically exchange patients' health information; and
 - strengthening Federal privacy and security law to protect identifiable health information from misuse as the health care sector increases use of HIT.

TAX INCENTIVES FOR BUSINESSES

- **Extension of Bonus Depreciation.** Last year, Congress temporarily allowed businesses to recover the costs of capital expenditures made in 2008 faster than the ordinary depreciation schedule would allow by permitting these businesses to immediately write-off 50% of the cost of depreciable property acquired in 2008 for use in the United States. The bill would extend this temporary benefit for capital expenditures incurred in 2009.
- **Election to Accelerate Recognition of Historic AMT/R&D Credits.** Last year, Congress temporarily allowed businesses to accelerate the recognition of a portion of their historic AMT or research and development (R&D) credits in lieu of bonus depreciation. The bill would extend this temporary benefit through 2009.
- **Extension of Enhanced Small Business Expensing.** Last year, Congress temporarily increased the amount that small businesses could write-off for capital expenditures incurred in 2008 to \$250,000 and increased the phase-out threshold for 2008 to \$800,000. The bill would extend these temporary increases for capital expenditures incurred in 2009.
- **5-Year Carryback of Net Operating Losses for Small Businesses.** For 2008, the bill would extend the maximum NOL carryback period from two years to five years for small businesses with gross receipts of \$15 million or less.
- **Delayed Recognition of Certain Cancellation of Debt Income (CODI).** Certain businesses will be allowed to recognize CODI over 10 years (defer tax on CODI for the first four or five years and recognize this income ratably over the following five taxable years) for specified types of business debt repurchased by the business after December 31, 2008 and before January 1, 2011.
- **Small Business Capital Gains.** The provision allows a 75% exclusion for individuals on the gain from the sale of certain small business stock held for more than five years.

- **Temporary Small Business Estimated Tax Payment Relief.** The bill reduces the 2009 required estimated tax payments for certain small businesses.
- **Temporary Reduction of S Corporation Built-In Gains Holding Period from 10 Years to 7 Years.** The bill temporarily reduces this holding period from ten years to seven years for sales occurring in 2009 and 2010.
- **Repeal of Treasury Section 382 Notice.** The bill repeals Treasury Department Notice 2008-83, which liberalized rules in the tax code that are intended to prevent taxpayers who acquire companies from claiming losses that were incurred by the acquired company prior to the taxpayer's ownership of the company.
- **Treatment of Certain Ownership Changes.** The bill clarifies the application of section 382 to certain companies restructuring pursuant to the Emergency Economic Stabilization Act of 2008.