

ARRA Part 1: How Businesses Can Leverage the Tax Benefits of ARRA 2009

“Death and taxes and childbirth! There’s never any convenient time for any of them.”

— Margaret Mitchell

In these challenging economic times businesses are looking at numerous ways to maximize their earnings and minimize their tax burdens and CPAs in business and industry must carefully plan to ensure that unexpected taxes do not adversely impact their organization’s future viability.

As part of a greater AICPA effort to inform CPAs during these difficult economic times and about the American Reinvestment and Recovery Act of 2009, the AICPA offers several resources for CPAs who are advising clients and businesses. This brief is part one of a two part series on ARRA meant to help members in business and industry. Be on the lookout for Part II later in June. Visit the AICPA’s [Economic Crisis Resource Center](http://economy.aicpa.org/) [http://economy.aicpa.org/] to find valuable information that can help you, your clients and businesses weather the economic storm.

ARRA Presents Some Opportunities and Challenges for Your Business

Here are some provisions from ARRA that you and your team should consider as part of your tax planning.

Carryback net operating losses for 2008—

ARRA includes a provision that allows an eligible small business (ESB)—defined as one with less than \$15 million in annual gross receipts—to elect to carryback a 2008 net operating loss (NOL) for up to 5 years. This is a significantly longer period than for businesses that do not qualify as an ESB. ARRA was enacted in February 2009 and the NOL rule was made effective only for losses incurred in 2008.

Take advantage of special estimated tax rules for small business owners—

An individual with adjusted gross income of less than \$500,000 for a joint return (\$250,000 if married filing separately), who can certify that at least 50% of the gross income shown on the preceding years return was income from a small business, will be allowed to estimate the current year’s taxes by making payments equal to 90% of the tax liability for the preceding year. For individuals that cannot meet this exception, the standard exceptions will continue to apply.

- Congress already extended the AMT patch for 2009 and raised the exemption levels accordingly. This will allow you to better estimate this year’s quarterly tax estimates.
- If you will be using the new extended Net Operating Loss (NOL) Carryback Rules, you will want to factor this into your current year’s estimated tax liability as well.

Be aware of the COBRA Health Insurance Subsidy—

Per this new provision in ARRA, terminated employees eligible for COBRA benefits will have the health insurance premium under COBRA subsidized for up to nine months. The subsidy is 65% of the insurance premium and the employer is required to notify former employees of this benefit and assist in collecting the partial premiums and offsetting the subsidy portion on the employer’s payroll tax returns.

The IRS has provided extensive guidance on this issue in [Notice 2009-27, 2009 -16 IRB](http://www.irs.gov/irb/2009-14_IRB/ar03.html#d0e82) [http://www.irs.gov/irb/2009-14_IRB/ar03.html#d0e82], and a list of FAQ’s is available on the IRS Web site.

Readjust policies related to travel and entertainment expenses—

Another tax planning consideration for companies and employees.

FOR MORE INFORMATION

The AICPA has several resources related to ARRA. For information on how it impacts small businesses, check out the article *Small Business Tax Breaks in the Stimulus Package*. Or to learn more about the tax energy incentives of ARRA, read *Clean Energy Gets a Tax Jolt*. Both are located at JournalofAccountancy.com. For a list of FAQs regarding ARRA, click [here](https://www.aicpa.org/download/news/2009/FAQs_about_ARRA_2009.pdf) or go to https://www.aicpa.org/download/news/2009/FAQs_about_ARRA_2009.pdf.

- Be sure to adjust your reimbursement policy for employees who use cars for business—the reimbursement rate was dropped as of January 1, 2009 from 58 ½ cents per mile to 55 cents per mile.
- If your organization typically reimburses mileage at the IRS rate and you do not amend your reimbursement plan to the new 55 cents per mile rate, your plan will fail the “accountable plan” test. This means that if you reimburse at 58 ½ cents per mile, you are allowed a deduction only for 55 cents per mile. What’s worse is that you will have to report the entire 3½ cents as additional compensation to your employees on their regular pay checks. This additional compensation is then subject to withholding for federal and state purposes.
- Your employees could seek to treat this as an unreimbursed employee business expense but any deduction would be limited to the two percent of adjusted gross income (AGI) limitation.

Remember, depreciation rules remain generous—

Congress extended the increased expensing limits on depreciation assets of up to \$250,000, and they also extended the 50% bonus depreciation rules for 2009. Between these two provisions there are substantial tax savings for new asset purchases.

If you have no income to offset the depreciation consider the rule under section 168 (k)(4) which allows AMT credits and R&D credit to carryforward.

Change a C corporation to an S corporation—Current law states that a business that wishes to change from a C corporation to an S corporation must pay tax on a category of assets called built in gains, unless the assets are held for 10 years. ARRA reduced this to seven years. Making the change from a C to an S corporation may make sense for some. This change in the rules makes for an easier transition and prevents

the undesirable effect of double taxation when the business is ultimately closed.

Take advantage of energy tax credits for building renewable energy power plants—Your business can claim tax credits for building a renewable energy power plant and receive tax credits for the amount invested in one of three ways: 1) a tax credit based on the amount invested or 2) a credit based on the amount of energy produced. Or instead, 3) if your business begins construction in 2009 or 2010, you can apply for a grant for energy investment credit property placed in service through 2016. For qualified renewable energy facilities, the grant is 30 percent of the investment in the facility and the property must be placed in service before 2014 (2013 for wind facilities).

You Can Continue to Find Opportunities To Save

While ARRA provides some potential opportunities for you and your employees such as those mentioned above, you can take further action to fortify your business during the economic downturn through the following actions:

Reevaluate your employee benefit plans—Consider freezing defined benefit plans. With stock values so low, it’s going to be difficult to get the funding up to the levels required by your plan. You might also consider reducing matching contributions in 401(k) or other profit sharing plans for the coming year.

Refinance your corporate or business debt—If you have business debt and you have a good relationship with your bank, consider discussing ways to lower interest rates. Also use your relationship as a way to look ahead to financing inventory and capital assets as business starts to improve.

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