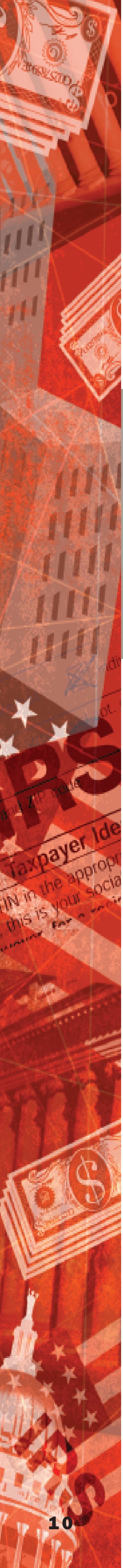
Anthony P. Curatola, Editor



American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act contains several tax breaks for individuals, including modifications to the credit for first-time homebuyers, enhancements to the American Opportunity Tax Credit, and yet more changes to the Alternative Minimum Tax.

The American Recovery and Reinvestment Act of 2009 (ARRA) (P.L. 111-5) was signed into law on February 17, 2009. This latest piece of tax legislation provides additional tax relief for businesses and individuals as well as additional tax incentives for energy conservation. This article focuses on a few of the tax breaks intended for individuals in 2009 and 2010.

First-time Home-buying Provisions

The January 2009 Taxes column discussed new Internal Revenue Code (IRC) §36, labeled the First-Time Homebuyer Credit. This provision provides a tax credit to first-time homebuyers of a principal residence on or after April 9, 2008, and before July 1, 2009. The credit is the lesser of 10% of the purchase price of the residence or $7,500. The credit is appealing at first blush, but then the taxpayer quickly learns that it's really a loan. The taxpayer is required to repay the entire credit over 15 years beginning in 2010.

Act §1006 of the ARRA modifies this credit for first-time homebuyers after December 31, 2008, and extends the provision through December 31, 2009, purchases. One modification increases the tax credit limit to the lesser of 10% of the purchase price of the residence or $8,000. Another modification removes the tax credit repayment provision. Thus, the $8,000 credit under ARRA is a true credit. But be careful. First-time homebuyers in 2008 are eligible for the tax credit of $7,500 (not $8,000), and, more importantly, the $7,500 must be repaid over the 15 years.

ARRA also provides a special election for the 2009 home purchaser, who can elect to claim the tax credit in 2008 or 2009 by filing Form 5405. By claiming the tax credit in 2008 for the 2009 purchase, the taxpayer isn't subject to the 2008 first-time homebuyer rules (i.e., the $7,500 limit or repayment). But this election does raise some tax filing questions and tax planning issues. The IRS released IR-2009-27 to address one of the issues confronting taxpayers: How does a taxpayer claim the credit in 2008 if he or she purchases the house after filing a 2008 tax return? The filing options as provided, in part, by IR-2009-27 are:

1. Taxpayers can request a six-month extension to October 15 by filing Form 4868. Requesting an extension doesn't prevent a taxpayer from filing electronically. An individual income tax return can still be filed electronically up through October 15, but a taxpayer can't file electronically after that date even if he or she has been granted an extension to file a return beyond that date. If October 15 falls on a Saturday, Sunday, or legal holiday, the due date is the next succeeding day that isn't a Saturday, Sunday, or legal holiday.
2. A taxpayer who has filed already can simply file an amended tax return. If this election is chosen, the amended return can't be filed electronically—it must be filed via snail mail. The tax credit payment from this form of tax filing is significantly slower than electronic filing.
3. A taxpayer may elect to claim the tax credit on his or her

2009 tax return. By delaying the credit until 2009, the taxpayer may be eligible for more or less of the credit, depending on the individual's tax situation. Remember, the tax credit is phased out for those taxpayers with high adjusted gross income. Of course, by delaying the decision until 2009, the taxpayer has the advantage of deciding whether it's better to claim the credit in 2009 or to claim it in 2008 by filing an amended tax return for 2008.

There's a catch on the 2009 tax credit. If the taxpayer sells the residence, or it is no longer the primary residence, within 36 months of purchase, the accelerated recapture provision of IRC §36(f)(2) applies. This is the same provision that applies to the 2008 tax credit. The exceptions to this accelerated provision include death, involuntary conversion if replaced within two years, and transfer between spouses or incident to divorce.

American Opportunity Tax Credit

Beginning in 2009 and through 2010, the Hope credit is referred to as the American Opportunity Tax credit. Better yet, a number of favorable taxpayer enhancements are made to the credit. Individual taxpayers are allowed to claim a nonrefundable credit against federal income taxes of up to $2,500 (was $1,800) per eligible student per year for qualified tuition and related expenses paid for the first four years (was two years) of the student's post-secondary education in a degree or certificate program. The credit rate is 100% on the first $2,000 (was $1,200) of qualified tuition, fees, and course material (was tuition and fees) and 25% (was 50%) on the next $2,000 (was $1,200) of qualified tuition, fees, and course material (was tuition and fees).

In addition to increasing the credit amount, it's available to more taxpayers. The credit is now phased out ratably for taxpayers with modified adjusted gross income between $80,000 and $90,000 ($160,000 and $180,000 for married taxpayers filing a joint return). Also, 40% of the credit amount is now a refundable credit except if the taxpayer claiming the credit is a child with unearned income that is subject to the "kiddie tax." Finally, the nonrefundable portion of the credit may be claimed against a taxpayer's regular and alternative minimum tax liability.

At this moment, there's a glitch to this provision for 2009. The credit is based on the qualified educational expenses that are paid in the tax year for the academic period beginning in that tax year or within the first three months of the coming tax year. For example, expenses paid at the end of calendar year 2008 for the spring semester of 2009 qualify for 2008's Hope credit, not for 2009's American Opportunity Tax credit.

Alternative Minimum Tax

The ever-popular alternative minimum tax (AMT) is once again tinkered with for one year. For taxable year 2009, the individual AMT exemption amount is increased to $70,950 (was $69,950) in the case of married individuals filing a joint return and surviving spouses, to $46,700 (was $46,200) in the case of other unmarried individuals, and to $35,475 (was $34,975) in the case of married individuals filing separate returns. The AMT exemption amount remains at $22,500 in the case of an estate or trust.

The phase-out of the exemption amount, however, remains unchanged. It is phased out by an amount equal to 25% of the amount by which the individual's alternative minimum taxable income exceeds $150,000 for joint return filers and surviving spouses, $112,500 for other unmarried individuals, and $75,000 for married individuals filing separate returns or an estate or a trust.

Finally, the provision to offset the entire regular tax liability and alternative minimum tax liability by the nonrefundable personal credits is extended for taxable year 2009. As a refresher, the nonrefundable personal credits include those for dependent care, the elderly and disabled, adoption, a child, interest on certain home mortgages, savers, certain nonbusiness energy property, residential energy-efficient property, plug-in electric drive motor vehicles, D.C. first-time homebuyers, and the American Opportunity Tax and Lifetime Learning credits.

This isn't the end of the ARRA stimulus story. More is coming next month. **SF**

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