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and strong communities across New York State

Federal Stimulus Provisions Update February 25, 2009

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The recently enacted federal stimulus plan includes a number of provisions which could benefit businesses, some of which are summarized in brief below. Separate updates on provisions specifically related to unemployment insurance and labor/human resources can be found at the [Business Council's Unemployment Insurance Committee page](#); and [Labor/HR page](#).

SBA 504 Certified Development Company Program

Provides \$636 million for new direct lending and guarantee authorities which provides growing businesses with long-term, fixed rate financing for major fixed assets, such as land and buildings. The CDC program is a joint investment that requires private lenders to provide up to 50% of project costs, and the SBA to provide up to 40% while owners inject 10%. Funds cannot be used for working capital or inventory, consolidating or repaying debt, or refinancing. The SBA is authorized to guarantee up to 90% of small business loans originating under the 504 program.

Business & Industry Loan Guarantee Program

\$150 million is appropriated for the program to guarantee up to \$3 billion in loans made by eligible local lenders to businesses to benefit rural areas. This program typically guarantees losses of up to 80% of the original loan amount. Guaranteed loans are for businesses in rural areas up to 50,000 population, and priority is given to applications for loans in rural communities of 25,000 or less.

Depreciation Rules

Businesses are allowed to recover the cost of capital expenditures over time according to a depreciation schedule. As part of the 2008 stimulus law, 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 for use in the US. The 2009 stimulus extends through 2009 the bonus depreciation rules from last year's stimulus act for capital expenditures incurred in 2009.

The extended rule would allow a 50% bonus depreciations for certain property placed in service by businesses in 2009, which would be allowed against both the regular tax system and the AMT. This would allow businesses to deduct from their taxes 50% of the value of that property in addition to amounts that they could otherwise claim under depreciation rules after the item's value is adjusted to account for the "bonus" depreciation. If the business elects to take the bonus depreciation, then they would claim the remaining value of the item over the normal depreciation period.

Operating Loss "Carryback"

Permits businesses to carryback their operating losses in 2008 and 2009 for up to five years, rather than the two permitted under current law. Businesses choosing the longer period must reduce the losses by 10%. Companies that received funds under the TARP as well as Fannie Mae & Freddie Mac are not eligible for the longer carryback period.

Small Business Capital Gains

Current law provides a 50% exclusion from the gain from the sale of small business stock held for more than 5 years. The amount of gain eligible for the exclusion is limited to the greater of 10 times the taxpayers basis in stock, or a \$10 million gain from stock in that small business corporation. The stimulus allows a 75% exclusion for individuals on the gain from the sale of certain small business stock held for more than five years. The change is for stock issued after the date of enactment and before 1/1/2011. It is limited to individual investments and not the investments of a corporation. The non-excluded portion of the gain would be taxed at the less of ordinary income rates or 28%, instead of the lower capital gains rates for individuals.

Extension of Increased Small Business Expensing

In order to help small businesses quickly recover the cost of certain capital expenses, small business taxpayers may elect to write off the cost of these expense in the year of acquisition in lieu of recovering these costs over time through depreciation. In 2008, Congress temporarily increased the expensing limits to \$250,000 and the phase-out to \$800,000. The stimulus extends increased small businesses expensing for businesses making investments in plants and equipment in 2009.

Temporary Reduction of S Corporation Built-In Gains Holding Period

Under current law, if a taxable corporation converts into an S corporation, the conversion is not a taxable event. Following such a conversion, however, an S corporation must hold its assets for 10 years in order to avoid a tax on any built-in gains that existed at the time of the conversion. The stimulus temporarily reduces this holding period from 10 years to 7 years for sales occurring in 2009 and 2010.

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