

# Executive's Tax & Management Report

Wealth-building strategies plus  
late-breaking tax news

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## Generating Cash Flow in a Cash-Poor Economy

By Anita Hamilton

The downturn in the economy has taxpayers looking for ways to generate cash flow. Many recent legislative changes, in addition to some traditional tax planning strategies, can help taxpayers achieve this goal.

### Net Operating Loss Carryback

The expanded net operating loss (NOL) carryback period for small businesses as provided by the American Recovery and Reinvestment Act of 2009 [P.L. 111-5] has been modified by the Worker, Homeownership and Business Assistance Act of 2009.

The 2009 Worker Act [P.L. 111-92] allows businesses other than small businesses to carry back NOLs to more than two—and less than six—years. However, the amount of the NOL that may be carried back to the fifth tax year preceding the year of loss cannot exceed 50 percent of the taxpayer's taxable income for the carryback year computed without regard to the NOL for the loss year or any tax year thereafter. This applies to NOLs for 2008 and 2009.

Under the 2009 Worker Act, small businesses can elect the extended

### Tip Reporting Program Extended for Two Years

Employers in the food and beverage industry can continue participating in an IRS program that simplifies the recordkeeping burden for reporting tip income. The Attributed Tip Income Program (ATIP), which was originally set to expire on December 31, 2009, was recently extended to December 31, 2011, under Rev. Proc. 2009-53 (IRB 2009-49, Dec. 1, 2009).

Participating employers report employees' tip income based on a formula that uses a percentage of gross receipts, which are generally allocated among employees based on the practices of the restaurant, according to the IRS.

The ATIP program is beneficial to both employees and employers, since employees do not have to keep documentation for their tips, and the IRS will not initiate a tip examination during the period that both employer and employee participate.

To enroll in ATIP, employers need only check the designated box on Form 8027, *Employer's Annual Information Return of Tip Income and Allocated Tips*. Employees sign an agreement with their employer to have their tip income computed under the program and reported as wages.

To obtain Form 8027, visit [IRS.gov](http://IRS.gov) or call 1-800-TAX-FORM (829-3676). ■

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carryback period for 2008 and 2009 NOLs, and other businesses can elect to carry back a 2008 or 2009 NOL. Previous law allowed NOLs to be carried back two years and forward 20 years. The 2009 Worker Act provides an opportunity for taxpayers to recapture a portion of taxes paid in previous years.

**Code Sec. 179 and Bonus Depreciation**

An additional deduction for 2009 is the increased Internal Revenue Code Section ("Code Sec.") 179 depreciation expense deduction. It was extended to apply to tax years beginning in 2009. Thus, for tax years beginning in 2008 and 2009, the dollar limitation is \$250,000 and the investment limitation is \$800,000. The annual dollar limitation is reduced dollar for dollar by the cost of Code Sec. 179 property placed in service during the tax year in excess of the investment limitation. Code Sec. 179 allows a taxpayer an election to expense, rather than to capitalize and depreciate, its investment in Code Sec. 1245 tangible depreciable property and certain computer software that is purchased in the tax year for use in the active conduct of a trade or business.

The Economic Stimulus Act of 2008 [P.L. 110-185] allowed additional first-year depreciation for assets acquired and placed into service in 2008. The 2009 Recovery Act extends bonus depreciation for one year. A trade or business may depreciate an additional 50 percent of the cost of new assets acquired and placed in service through 2009.

Under Code Sec. 168(k)(2)(A), the types of property eligible for bonus depreciation include the following:

- Tangible property that is depreciable under the Modified Accelerated Cost Recovery System (MACRS) and has a recovery period not exceeding 20 years

- Purchased computer software
- Water utility property
- Qualified leasehold improvement property

Fifty-percent bonus depreciation is taken on top of regular depreciation reported for the year the property is placed in service.

Code Sec. 179 depreciation operates independently from bonus depreciation. Code Sec. 179 depreciation is computed first, then bonus depreciation is computed on the taxpayer's basis in the qualifying property as reduced by the Code Sec. 179 allowance.

Under Code Sec. 179, taxpayers elect the assets to which they would like the depreciation allowance to apply, which creates planning opportunities for businesses. For example, one planning opportunity would be to allocate the Code Sec. 179 expense allowance to property with the longest recovery period.

Another planning opportunity for depreciable assets is to consider a cost segregation study of building components, if applicable. By classifying building components as personal property, a taxpayer will save federal taxes and increase cash flow by accelerating depreciation deductions during the early years of a building's recovery. The additional depreciation that can be generated by a cost segregation study and applicable bonus depreciation could allow the taxpayer an overall loss for the year. This loss could present an opportunity for an immediate refund of prior years' taxes.

Personal property of new construction may qualify for 50-percent bonus depreciation under Code Sec. 168(k), if the personal property is acquired after December 31, 2007, and placed in service before January 1, 2010.

**NOTE** ► It is necessary to determine if a binding acquisition

contract is in effect prior to January 1, 2008. If so, this may disallow the eligible bonus depreciation.

Examples of items that have been classified as personal property and that may be eligible for bonus depreciation follow:

- Removable carpet
- Vinyl wall coverings
- Window treatments
- Moveable partitions
- Counters
- Cabinets

- Shelving
- Signs
- Security lighting
- Various other items

If a cost segregation study is desirable to a taxpayer, it is advisable to use a group who specializes in cost segregation studies because the IRS standards for the study are high. Cost segregations offer great tax benefits by accelerating depreciation through the identification of shorter lives for personal property, thus allowing a

taxpayer to benefit from Code Sec. 179 depreciation and bonus depreciation that is currently allowable for qualifying property.

If you purchased business equipment or constructed a building that was put into service in 2008 or 2009, then you may want to take advantage of these tax provisions to maximize potential tax savings or tax refunds.

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