

# *COSTELLO COMPANY, LLC*

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## **AMERICAN RECOVERY AND REINVESTMENT**

### **ACT OF 2009**

#### **Small Business Tax Breaks in the Stimulus Bill**

**Bonus depreciation:** IRC section 168(k) is amended to extend the 50% first-year bonus depreciation through 2009 (through 2010 for certain transportation property and aircraft).

The election to accelerate AMT and research credits in lieu of taking the bonus depreciation (which had been introduced last year by the Housing Assistance Tax Act, P.L. 110-289) is also extended to qualifying property placed in service through 2009. Special rules apply to taxpayers who had already made this election for property placed in service in 2008.

**Section 179 expensing:** The increase in the section 179 expensing amount to \$250,000 and the increase in the phaseout threshold to \$800,000 are both extended through 2009. The amounts had originally been temporarily increased (for 2008) by the Economic Stimulus Act of 2008, P.L. 110-185.

**Carryback of small business NOLs:** Eligible small businesses are allowed to carry their 2008 net operating losses (NOLs) back for five years (section 172(b)(1)(H)). An eligible small business is one that has average gross receipts of \$15 million or less (using the gross receipts test from section 448(c)). The act gives Treasury authority to publish anti-abuse rules relating to this provision.

**Small business estimated taxes:** Qualified individuals are allowed (for 2009 only) to make estimated tax payments that equal only 90% of their preceding tax year liability instead of 100% (under section 6654(d)(1)). To be a qualified individual, the taxpayer must have adjusted gross income (AGI) of less than \$500,000 and more than 50% of the individual's gross income must come from a small business (a business with an average of fewer than 500 employees).

**Work opportunity tax credit:** The act creates two new targeted groups for the work opportunity tax credit, "disconnected youth" and unemployed veterans. Employers who hire members of these groups during 2009 or 2010 may be eligible to take the credit.

**Discharge of business indebtedness:** The act allows certain businesses to recognize cancellation of indebtedness income over five years, starting in 2014, if the business repurchases specific types of debt in 2009 or 2010.

**Qualified small business stock:** The section 1202 exclusion of gain from the sale of qualified small business stock is increased from 50% to 75%, for stock acquired after the enactment date and before Jan. 1, 2011.

**S corporations:** The recognition period for assets subject to the built-in gains tax is reduced from 10 years to seven years for S corporation tax years beginning in 2009 and 2010.

**Limitations of loss carryforwards:** For businesses that have ownership changes pursuant to a restructuring plan required by a Treasury loan agreement or line of credit under the bailout provisions of the Emergency Economic Stabilization Act, P.L. 110-343, the section 382 limitation on loss carryforwards will not apply.

**New markets tax credit:** The section 45D new markets tax credit investments limit is increased for 2008 and 2009 to \$5 million.

**Energy credits:** The act also includes a number of energy incentives aimed at both individuals and businesses, including increases in the section 25C residential energy property credit, the section 25D residential energy efficiency property credit, and the energy investment credit under section 48.

## Individual Tax Breaks in the Stimulus Bill

With its new and expanded tax benefits for individuals, the American Recovery and Reinvestment Act of 2009 seeks to get more money into the pockets of American consumers. College students and their families, homebuyers, and buyers of new cars are among the potential beneficiaries, but so too are low-income Americans, with the act's continuation and expansion of such tax breaks as a higher eligibility limit for the earned income tax credit. Here are some of the most prominent features:

**Higher education:** The American opportunity tax credit is a temporary (for tax years beginning in 2009 and 2010) increase and expansion of the Hope scholarship credit. It increases the maximum credit per student from \$1,800 to \$2,500 and extends its availability from the first two years of postsecondary education to four years. Nonrefundable under prior law, the credit now becomes 40% refundable. The phaseout range is increased from the current \$50,000–\$60,000 for single filers to \$80,000–\$90,000. The joint filer phaseout, currently \$100,000–\$120,000, increases to \$160,000–\$180,000. Expenses for course materials, such as textbooks, are added to the definition of qualified tuition and related expenses eligible for the credit.

**Homebuyer's credit:** The act increases the amount of the first-time homebuyer's credit from \$7,500 to \$8,000 and eliminates the repayment requirement for houses purchased in 2009. The credit, added by the Housing Assistance Act of 2008, P.L. 110-289, is refundable, but for homes purchased between April 9, 2008, and Dec. 31, 2008, it must be recaptured ratably over 15 years, or earlier if the home is sold. The stimulus act waives the recapture requirement for homes purchased after Jan. 1, 2009, and extends the sunset of the credit from June 30, 2009, to Dec. 1, 2009.

The amount of the credit remains 10% of the purchase price of a principal residence of a taxpayer who has not owned a U.S. principal residence in the previous three years. Recapture still applies if the taxpayer disposes of the home or no longer uses it as a principal residence within three years after purchase. The waiver of recapture isn't retroactive to before 2009.

People who ran out under the old provision and settled on a house before Dec. 31, got a \$7,500 credit, but they have a payback that starts in 2010."

**Making work pay credit:** Intended to partially offset an employee's portion of Social Security payroll taxes, this temporary credit is 6.2% of earned income up to a total credit of \$400 for individuals and \$800 for joint filers. It is retroactive to the beginning of 2009. It begins phasing out at a rate of 2% of modified adjusted gross income (MAGI) above \$75,000 for individuals and \$150,000 for joint filers.

**New car sales tax deduction:** Buyers of new cars and light trucks may deduct the portion of state and local sales and excise taxes attributable to the first \$49,500 of the vehicle's purchase price. This is an above-the-line deduction and is allowed against alternative minimum tax (AMT). The deduction will be phased out for single taxpayers with MAGI in excess of \$125,000 for the tax year (\$250,000 for joint filers). Taxpayers who elect under section 164(b)(5) to take the state and local sales tax deduction in lieu of deducting state and local income tax cannot also take the new car sales tax deduction.

**AMT patch:** For 2009, the AMT exemption is increased to \$46,700 for singles and \$70,950 for joint filers.

**Section 529 plans may buy computers:** For 2009 and 2010, the cost of computers and related technology qualifies as higher education expenses for purposes of the rules governing distributions from a section 529 qualified tuition plan, as long as the beneficiary of the plan is enrolled at an eligible educational institution. Internet access charges are also covered, as well as software, so long as it's not for sports, games or hobbies (unless the software is predominantly educational in nature).

**Qualified transportation fringe benefit increase:** Another reason to vanpool or take public transit to work arrived with a near doubling of the exclusion amount for a transportation fringe benefit from \$120 to \$230 per month (the same as the qualified parking amount). This higher limit is effective starting March 2009 and through 2010 with an annual inflation adjustment.

**Child tax credit and other items:** The act extends for 2009 and 2010 the lower, \$3,000 income threshold for refundability of the section 24 child credit, meaning more of it is refundable to low-income taxpayers. Other items directly benefiting less-affluent taxpayers or those in financial distress include a temporary increase in the earned income tax credit for 2009 and 2010, a one-time \$250 payment to persons on fixed incomes not eligible for the making work pay credit and a temporary exclusion of \$2,400 of unemployment benefits from taxable income for 2009.