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February 18, 2009

Mr. A Smith

Dear Mr. Smith:

THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

H.R. 1, the "American Recovery and Reinvestment Act of 2009"—the Recovery Act—was signed into law by the President on February 17, 2009. This new law includes many business tax breaks, such as extended bonus depreciation, boosted expensing, and tax-deferred debt forgiveness income on the repurchase of qualifying debt. Tax breaks for individuals include a refundable "making work pay" stimulus credit, enhanced child tax credit and EITC, an improved homebuyer credit, a new deduction for state sales and excise taxes paid on new vehicles, and a sweetened higher education credit. There's a one-year AMT patch as well.

The Recovery Act is over 1,100 pages and covers an extraordinary number of tax relief provisions. However, I'm writing to give you an overview of the more widely applicable tax changes specifically effecting both individuals and families and small businesses.

TAX RELIEF FOR INDIVIDUALS AND FAMILIES

"Making Work Pay" Tax Credit. The bill would cut taxes for more than 95% of working families in the United States. For 2009 and 2010, the bill would provide a refundable tax credit of up to $400 for working individuals and $800 for working families. This tax credit would be calculated at a rate of 6.2% of earned income, and would phase out for taxpayers with adjusted gross income in excess of $75,000 ($150,000 for married couples filing jointly). Taxpayers can receive this benefit through a reduction in the amount of income tax that is withheld from their paychecks, or through claiming the credit on their tax returns.

Economic Recovery Payment to Recipients of Social Security, SSI, Railroad Retirement and Veterans Disability Compensation Benefits. The bill would provide a one-time payment of $250 to retirees, disabled individuals and SSI recipients receiving benefits from the Social Security Administration, Railroad Retirement beneficiaries, and disabled veterans receiving benefits from the U.S. Department of Veterans Affairs. The one-time payment is a reduction to any allowable Making Work Pay credit.

Refundable Credit for Certain Federal and State Pensioners. The bill would provide a one-time refundable tax credit of $250 in 2009 to certain government retirees who are not eligible for Social Security benefits. This one-time credit is a reduction to any allowable Making Work Pay credit.

Increase in Earned Income Tax Credit. The bill would temporarily increase the earned income tax credit for working families with three or more children. Under current law, working families with two or more children currently qualify for an earned income tax credit equal to forty percent (40%) of the family's first $12,570 of earned income. This credit is subject to a phase-out for working families with adjusted gross income in excess of $16,420 ($19,540 for married couples filing jointly). The bill would increase the earned income tax credit to forty-five percent (45%) of the family's first $12,570 of earned income for families with three or more children and would increase the beginning point of the phase-out range for all married couples filing a joint return (regardless of the number of children) by $1,880.

Increase Eligibility for the Refundable Portion of Child Credit. The bill would increase the eligibility for the refundable child tax credit in 2009 and 2010. For 2008, the child tax credit is refundable to the extent of 15 percent of the taxpayer's earned income in excess of $8,500. The bill would reduce this floor for 2009 and 2010 to $3,000.

"American Opportunity" Education Tax Credit. The bill would provide financial assistance for individuals seeking a college education. For 2009 and 2010, the bill would provide taxpayers with a new "American Opportunity" tax credit of up to $2,500 of the cost of tuition and related expenses paid during the taxable year. Under this new tax credit, taxpayers will receive a tax credit based on one hundred percent (100%) of the first $2,000 of tuition and related expenses (including books) paid during the taxable year and twenty-five percent (25%) of the next $2,000 of tuition and related expenses paid during the taxable year. Forty percent (40%) of the credit would be refundable. This tax credit will be subject to a phase-out for taxpayers with adjusted gross income in excess of $80,000 ($160,000 for married couples filing jointly).

Computers as Qualified Education Expenses in 529 Education Plans. Section 529 Education Plans are tax-advantaged savings plans that cover all qualified education expenses, including: tuition, room & board, mandatory fees and books. The bill provides that computers and computer technology qualify as qualified education expenses.

Refundable First-time Home Buyer Credit. Last year, Congress provided taxpayers with a refundable tax credit that was equivalent to an interest-free loan equal to 10 percent of the purchase of a home (up to $7,500) by first-time home buyers. The provision applies to homes purchased on or after April 9, 2008 and before July 1, 2009. Taxpayers receiving this tax credit are currently required to repay any amount received under this provision back to the government over 15 years in equal installments, or, if earlier, when the home is sold. The credit phases out for taxpayers with adjusted gross income in excess of $75,000 ($150,000 in the case of a joint return). The bill eliminates the repayment obligation for taxpayers that purchase homes after January 1, 2009, increases the maximum value of the credit to $8,000, and removes the prohibition on financing by mortgage revenue bonds, and extends the availability of the credit for homes purchased before December 1, 2009. The provision would retain the credit recapture if the house is sold within three years of purchase.

Sales Tax Deduction for Vehicle Purchases. The bill provides all taxpayers with a deduction for State and local sales and excise taxes paid on the purchase of new cars, light truck, recreational vehicles, and motorcycles through 2009. This deduction is subject to a phase-out for taxpayers with adjusted gross income in excess of $125,000 ($250,000 in the case of a joint return).

Temporary suspension of taxation of unemployment benefits. Under current law, all federal unemployment benefits are subject to taxation. The average unemployment benefit is approximately $300 per month. The proposal temporarily suspends federal income tax on the first $2,400 of unemployment benefits per recipient. Any unemployment benefits over $2,400 will be subject to federal income tax. This proposal is in effect for taxable year 2009.

Extension of AMT relief for 2009. The bill would provide more than 26 million families with tax relief in 2009 by extending AMT relief for nonrefundable personal credits and increasing the AMT exemption amount by $70,950 for joint filers and $46,700 for individuals.

TAX INCENTIVES FOR BUSINESSES

Extension of Bonus Depreciation. Businesses are allowed to recover the cost of capital expenditures over time according to a depreciation schedule. Last year, 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 fifty percent of the cost of depreciable property (e.g., equipment, tractors, wind turbines, solar panels, and computers) acquired in 2008 for use in the United States. The bill would extend this temporary benefit for capital expenditures incurred in 2009.

Election to Accelerate Recognition of Historic AMT/R&D Credits. Last year, Congress temporarily allowed businesses to accelerate the recognition of a portion of their historic AMT or research and development (R&D) credits in lieu of bonus depreciation. The amount that taxpayers may accelerate is calculated based on the amount that each taxpayer invests in property that would otherwise qualify for bonus depreciation. This amount is capped at the lesser of six percent (6%) of historic AMT and R&D credits or $30 million. The bill would extend this temporary benefit through 2009.

Extension of Enhanced 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 expenses in the year of acquisition in lieu of recovering these costs over time through depreciation. Until the end of 2010, small business taxpayers are allowed to write-off up to $125,000 (indexed for inflation) of capital expenditures subject to a phase-out once capital expenditures exceed $500,000 (indexed for inflation). Last year, Congress temporarily increased the amount that small businesses could write-off for capital expenditures incurred in 2008 to $250,000 and increased the phase-out threshold for 2008 to $800,000. The bill would extend these temporary increases for capital expenditures incurred in 2009.

5-Year Carryback of Net Operating Losses for Small Businesses. Under current law, net operating losses (“NOLs”) may be carried back to the two taxable years before the year that the loss arises (the “NOL carryback period”) and carried forward to each of the succeeding twenty taxable years after the year that the loss arises. For 2008, the bill would extend the maximum NOL carryback period from two years to five years for small businesses with gross receipts of $15 million or less.

Delayed Recognition of Certain Cancellation of Debt Income. Under current law, a taxpayer generally has income where the taxpayer cancels or repurchases its debt for an amount less than its adjusted issue price. The amount of cancellation of debt income (“CODI”) is the excess of the old debt’s adjusted issue price over the repurchase price. Certain businesses will be allowed to recognize CODI over 10 years (defer tax on CODI for the first four or five years and recognize this income ratably over the following five taxable years) for specified types of business debt repurchased by the business after December 31, 2008 and before January 1, 2011.

Incentives to Hire Unemployed Veterans and Disconnected Youth. Under current law, businesses are allowed to claim a work opportunity tax credit equal to 40 percent of the first $6,000 of wages paid to employees of one of nine targeted groups. The bill would create two new targeted groups of prospective employees: (1) unemployed veterans; and (2) disconnected youth. An individual would qualify as an unemployed veteran if they were discharged or released from active duty from the Armed Forces during the five-year period prior to hiring and received unemployment compensation for more than four weeks during the year before being hired. An individual qualifies as a disconnected youth if they are between the ages of 16 and 25 and have not been regularly employed or attended school in the past 6 months.

Small Business Capital Gains. Under current law, Section 1202 provides a fifty percent (50%) exclusion for the gain from the sale of certain small business stock held for more than five years. The amount of gain eligible for the exclusion is limited to the greater of 10 times the taxpayer’s basis in the stock, or $10 million gain from stock in that small business corporation. This provision is limited to individual investments and not the investments of a corporation. The non-excluded portion of section 1202 gain is taxed at the lesser of ordinary income rates or 28 percent, instead of the lower capital gains rates for individuals. The provision allows a seventy-five percent (75%) exclusion for individuals on the gain from the sale of certain small business stock held for more than five years. This change is for stock issued after the date of enactment and before January 1, 2011.

Temporary Small Business Estimated Tax Payment Relief. The bill reduces the 2009 required estimated tax payments for certain small businesses.

Temporary Reduction of S Corporation Built-In Gains Holding Period from 10 Years to 7 Years. Under current law, if a taxable corporation converts into an S corporation, the conversion is not a taxable event. However, following such a conversion, an S corporation must hold its assets for ten years in order to avoid a tax on any built-in gains that existed at the time of the conversion. The bill would temporarily reduce this holding period from ten years to seven years for sales occurring in 2009 and 2010.

Repeal of Treasury Section 382 Notice. Last year, the Treasury Department issued Notice 2008-83, which liberalized rules in the tax code that are intended to prevent taxpayers that acquire companies from claiming losses that were incurred by the acquired company prior to the taxpayer's ownership of the company.

Treatment of Certain Ownership Changes. The bill would clarify the application of section 382 to certain companies restructuring pursuant to the Emergency Economic Stabilization Act of 2008.

Please call our offices at 804-527-1815 for details of how the new changes may affect you, your family, your investments, or your business.

Very truly yours,
PIASCIK & ASSOCIATES, P.C.

Ryan L. Losi
Executive Vice President