Business Provisions in H.R. 1

The American Recovery and Reinvestment Act (ARRA) does not include direct spending or loan provisions for businesses. The bill does contain tax extensions and provisions that affect businesses including:

Extension of Bonus Depreciation: Last year, Congress allowed businesses to recover the costs of capital expenditures made in 2008 faster than the ordinary depreciation schedule would allow by allowing businesses to immediately write-off 50 percent of the cost of depreciable property acquired in 2008. The bill would extend this temporary benefit for capital expenditures incurred in 2009.

Extension of Enhanced Small Business Expensing: Small business taxpayers may elect to write-off the cost of certain capital expenses in the year of acquisition in lieu of recovering the costs over time through depreciation. Last year, Congress temporarily increased the amount that small businesses could write-off for capital expenditures incurred in 2008 to $250,000 from $125,000 and increased the phase-out threshold for 2008 to $800,000 from $500,000. The bill would extend these temporary increases for capital expenditures incurred in 2009.

5-Year Carryback of Net Operating Losses for Small Businesses: For 2008, the bill would extend the maximum net operating losses (NOL) carryback period from two years to five years for small businesses with gross receipts of $15 million or less. Under current law, NOLs may be carried back to the two taxable years before the year that the loss arises and carried forward to each of the succeeding 20 taxable years after the year that the loss arises.

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 Alternative Minimum Tax or research and development (R&D) credits in lieu of bonus depreciation. The amount that taxpayers may accelerate is based on the amount that each taxpayer invests in property that would otherwise qualify for bonus depreciation. The amount is capped at the lesser of six percent of historic AMT and R&D credits or $30 million. The bill would extend the temporary benefit through 2009.

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 the 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.

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 taxable. However, following such a conversion, an S corporation must hold its assets for 10 years to avoid a tax on any built-in gains that existed at the time of the conversion. The bill would temporarily reduce the holding period from ten years to 10 years for sales occurring in 2009 and 2010.

Industrial Development Bonds: Under current law, certain manufacturing facilities are eligible for tax-exempt bond financing. Section 144(a)(12)(C) specifically limits the definition of a manufacturing facility for the purposes of such financing to facilities that are used in the manufacturing or production of tangible personal property. The proposal amends the definition of manufacturing facility to any facility used in the manufacturing, creation or production of tangible or intangible property described in section 197(d)(1)(C)(iii). Intangible property is any patent, copyright, formula, process, design, pattern, knowhow, format or other similar item. The proposal also clarifies which physical components of a manufacturing facility qualify as "ancillary" and therefore are subjected to a 25 percent limitation in the amount of bond issuance used to build or re-construct those components.

Advanced Energy Investment Credit: The proposal establishes a new 30 percent investment tax credit for facilities engaged in the manufacture of advanced energy property. Credits are available only for projects certified by the Secretary of the Treasury, in consultation with the Secretary of Energy, through a competitive bidding process. Advanced energy property includes technology for the production of renewable energy, energy storage, energy conservation, efficient transmission and distribution of electricity, and carbon capture and sequestration.

Information provided by the House Committee on Ways and Means