

**Supplement to *J.K. Lasser's Small Business Taxes 2009***  
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The tax law is not static and there have been a number of changes affecting 2008 returns, as well as returns in 2009. Since publication of the 2009 edition of *J.K. Lasser's Small Business Taxes*, Congress enacted the *Emergency Economic Stabilization Act of 2008*, the *Worker, Retiree, and Employer Recovery Act of 2009*, and the *American Recovery and Reinvestment Act of 2009*. The courts and the IRS have also spoken to many tax items that can impact your 2008 return. Here are key developments, some of which may apply to your 2008 return. Also factor in 2009 changes if they affect your quarterly estimated tax payments for 2009:

**Chapter 1 – Business Organization**

***Business expenses of corporate owner.*** The owner of a corporation (C or S) who works for the business and receives wages reported on Form W-2 cannot deduct his or her business-related expenses on Schedule C. As one recent Tax Court decision reinforced, the expenses of an employee – even a shareholder-employee – can only be deducted as unreimbursed miscellaneous itemized deductions reported on Schedule A and deductible only to the extent they exceed 2% of adjusted gross income.

**Chapter 2 – Tax Year and Accounting Method**

***Mark-to-marketing accounting method.*** This method is advantageous to a securities trader who incurs trading losses. However, use of this method is not allowed retroactively. There is a strict deadline for making a mark-to-market election. For 2008, for example, the election had to have been made by April 15, 2008 (for 2009, the election must be made no later than April 15, 2009) by a statement attached to the return for the year. According to a recent appellate court decision, the election cannot be made on an amended return after the election deadline.

**Chapter 4 – Income or Loss from Business Operations**

***Net operating loss.*** For losses arising in 2008, small business taxpayers can opt for a longer carryback period. The usual carryback period is two years; for 2008 losses, a taxpayer can choose a three-, four-, or five-year carryback. To qualify the business must have average gross receipts of \$15 million or less.

As soon as the 2008 income tax return has been prepared, eligible taxpayers can file amended returns for prior years or apply for a quick refund on Form 1045 for individuals (e.g., sole proprietors and owners of pass-through entities) or Form 1139 for C corporations.

**Chapter 5 – Capital Gains and Losses**

**Qualified small business stock.** For stock acquired after February 17, 2009, and before January 1, 2011, and held for at least five years, gain from the sale of such stock that otherwise would qualify for a 50% exclusion can be excluded up to 75%.

**Built-in gains tax.** When C corporations convert to S status with appreciated assets, they must pay tax at the corporate level if the S corporation sells the stock within a set period (usually 10 years). The built-in gains period is reduced to seven years for corporations that convert in 2009 and 2010.

## **Chapter 7--Employee Compensation**

**Payroll adjustments.** The American Recovery and Reinvestment Act of 2009 made two important changes that will require adjustments in your payroll action:

- Withholding tables for 2009 have been revised to reflect the new “making work pay credit” for employees. There are no other obligations on employers to obtain information from workers in order to know if workers are eligible for this credit. Those with income above \$75,000, or \$150,000 for joint filers, have a reduced credit and once income tops \$95,000, or \$190,000 for joint filers, there’s no credit allowed.
- Businesses with more than 20 employees and that offer COBRA health coverage will also need to adapt to new federal subsidy for involuntarily terminated workers after September 1, 2008, through the end of 2009. The federal government will pay 65% of premiums for these former employees and the payments will be made via a reduction in an employer’s payroll taxes (with some credit if the subsidy exceeds payroll taxes).

## **Chapter 8--Travel and Entertainment Expenses**

**Business travel per diem rates.** The maximum federal per diem rate for travel from October 1, 2008, through September 30, 2009, covering lodging, meals and incidental expenses (M&IE) within the continental United States (CONUS) in most locations is \$109 per day (\$70 for lodging and \$39 for M&IE)--the same rate that had applied to the prior 12-month period. However, a number of the rates to certain areas have changed. These rates can be found at [www.gsa.gov](http://www.gsa.gov) (click on “Per Diem Rates”).

The high-low substantiate rates for high-cost and all other areas within CONUS for the period October 1, 2008, and September 30, 2009, is \$256 for travel to high-cost localities and \$158 for travel to all other areas with CONUS. Of these rates, the meal portion is \$58 for high-cost areas and \$45 for all other areas within CONUS. The \$256 and \$158 rates are higher than the rates for the prior 12-month period.

## **Chapter 9--Car Expenses**

**Plug-in electric vehicles.** A based credit amount of \$2,500 can be claimed for the purchase of an electric vehicle in 2009 through 2014; this credit does not apply for 2008.

**Standard mileage rate.** The IRS announced the standard mileage rate, used in lieu of deducting the actual costs of business driving, for 2009; it is 55¢ per mile.

Those who own their vehicles and use the standard mileage rate must reduce the vehicle's basis by 21¢ per mile.

## **Chapter 10—Repairs, Maintenance, and Energy Improvements**

**Environmental cleanup costs.** Instead of capitalizing these costs, cleanup costs (so-called "brownfield" remediation costs) in 2008 and 2009 can be expensed.

**Energy improvements.** The deduction for energy-efficient commercial buildings is extended through December 31, 2013.

## **Chapter 14--First-Year Expensing, Depreciation, Amortization, and Depletion**

**First-year expensing.** The Economic Stimulus Act of 2008 raised the dollar limit to \$250,000 for 2008 and that limit is phased out if total equipment purchases for 2008 exceed \$800,000. The American Recovery and Reinvestment Act of 2009 extends the \$250,000 and \$800,000 limits through 2009.

**Bonus depreciation.** The Economic Stimulus Act of allows 50% bonus depreciation for certain property placed in service in 2008. This applies to capital equipment (generally equipment and machinery with a useful life of no more than 20 years). The American Recovery and Reinvestment Act of 2009 extends bonus depreciation through 2009.

The extension of bonus depreciation means there is a higher dollar limit on depreciation for vehicles purchased in 2009. The basic first-year depreciation limit can be increased by \$8,000 to account for bonus depreciation. This applies only to the purchase of a new (not pre-owned) vehicle.

### **15-year amortization of qualified leasehold and restaurant improvements.**

Instead of depreciating these costs over 39 years, they can be amortized over 15 years. This applies to costs in 2008 and 2009. This amortization rule also applies to certain improvements to retail space.

## **Chapter 16—Retirement Plans**

**Contribution limits.** Various limits have been increased for 2009:

- 401(k) plan elective deferrals-- \$16,500 (plus \$5,500 for those age 50 and older by December 31, 2009).
- SIMPLE plan elective deferrals--\$11,500 (plus \$2,500 for those age 50 and older by December 31, 2009).

- Defined contribution plans (profit-sharing plans and SEPS) – up to \$49,000
- Defined benefit (pension) plans – up to \$195,000
- Compensation taken into account in figuring contributions and benefits-- \$245,000.

### **Chapter 19--Medical Expenses**

*Health savings accounts.* The contribution limits for 2009 have increased to \$3,000 for self-only coverage and \$5,950 for family coverage. Those age 55 or older by the end of 2009 can add another \$1,000 for the year.

To contribute to a health savings account, the person must be covered by a high-deductible health plan. For 2009, this means that the plan has a minimum deductible of \$1,150 for self-only coverage and \$2,300 for family coverage.

### **Chapter 22--Miscellaneous Business Deductions**

*Charitable contributions.* Enhanced deductions for donations of food, books, and computer equipment apply for both 2008 and 2009.

S corporation shareholders take into account their prorate share of corporate donations in 2008 and 2009, even if they exceed the shareholders' basis in their S corporation stock.

### **Chapter 23--Roundup of Tax Credits**

*Research credit.* The 20% credit has been extended for 2008 and 2009. For tax years ending after 2008, the alternative simplified credit is increased to 14% of qualified research expenses that exceed 50% of the average qualified research expenses for the previous three years. The alternative incremental research credit is repealed for tax years starting after 2008..

*Work opportunity credit.* For 2009 and 2010, there are two new categories of workers that entitle an employer to this credit: unemployed veterans and disconnected youth (those age 16 to 24 who lack education and basic job skills).

*Energy credits.* Several energy-related business credits have been extended and new credits designed to stimulate research and investments in alternative energy. For example, there is an expanded credit for small wind energy property.

### **Chapter 27--Alternative Minimum Tax**

*Exemption amounts.* The old AMT exemption amounts expired at the end of 2007. Congress increased the exemption amounts for the AMT for 2008 as follows to keep more than 21 million taxpayers from owing this tax:

- \$69,950 for married filing jointly
- \$46,200 for single taxpayers and heads of households
- \$34,975 for married filing separately

These exemption amounts apply only for 2008. For 2009, the exemption amounts have also been increased for one additional year:

- \$70,950 for married filing jointly
- \$46,700 for single taxpayers and heads of households
- \$35,475 for married filing separately

**Tax credit offsets.** Nonrefundable personal tax credits, such as education credits and the dependent care credit, can be used to offset both regular tax and the alternative minimum tax in both 2008 and 2009. So too, can certain business credits (work opportunity credit and the employer credit for FICA on tips). However, the credit for buying a hybrid vehicle cannot be used to offset AMT; those subject to AMT lose any benefit from this credit.

After 2009, the only nonrefundable personal credits that can offset AMT will be the adoption credit, the child tax credit, the American Opportunity credit, and the retirement saver's credit, unless Congress again changes the law.

## **Chapter 28--Other Taxes**

**Social Security and Medicare taxes.** The 2009 wage base for the Social Security tax portion of FICA and self-employment tax increases to \$106,800 (up from \$102,000 in 2008).

**FUTA.** The "temporary" hike in the FUTA tax rate was originally added in 1976 and was set to expire at the end of 2008. The *Emergency Economic Stabilization Act of 2008* retained the additional 0.2% FUTA surtax through 2009. This continues the FUTA tax rate at 6.2%.

**Estimated taxes.** Sole proprietors and owners of pass-through entities who pay tax on their share of business income on their personal returns usually satisfy this tax obligation through quarterly estimated taxes. Such owners with adjusted gross income for 2008 of under \$500,000 and who derived more than half their gross income for 2008 from a business with fewer than 500 employees will not have estimated tax penalties for 2009 if they pay at least 90% of the 2008 tax bill through estimated taxes and withholding during 2009. The first estimated tax payment for 2009 is due on April 15, 2009.

**Employment tax reporting.** Small employers (those with annual employment taxes of \$1,000 or less) report on an annual basis on Form 944 (rather than on a quarterly basis on Form 941. The IRS notifies eligible employers to file annually.

Regulations now allow small employers to opt to report on a quarterly basis if they anticipate employment taxes for 2009 will be more than \$1,000 or they want to file their Form 941 electronically.