

The Emergency Economic Stabilization Act of 2008

On October 3, 2008, President Bush signed H.R. 1424, the Emergency Economic Stabilization Act of 2008 (the "Act"). The Act, often referred to in the media as the "bailout" or "rescue" bill, is a legislative package that is made up of the Troubled Assets Relief Program (TARP), the Energy Improvement and Extension Act, and the Tax Extenders and Alternative Minimum Tax Relief Act.

Key provisions of the Act include:

Financial Bailout Provisions

Authorization of government to purchase troubled assets: The Act creates a new Troubled Assets Relief Program (TARP), which authorizes the federal government to purchase "troubled assets" (which includes residential and commercial mortgages, and securities, obligations, or other instruments that are based on or related to such mortgages) from financial institutions either directly or through auctions.

Imposition of limits on executive compensation: In a case where the Treasury Department purchases troubled assets directly from a financial institution, the Act allows the Treasury to set compensation standards, prohibits golden parachutes, and allows the Treasury to recover "unearned" bonuses previously paid out. In cases where a financial institution sells more than \$3 million through the TARP program, and participates in an auction purchase, the Act limits the annual deductible compensation to CEOs, CFOs, and other executives to \$500,000, and limits golden parachutes.

Allowance of ordinary income tax treatment for Fannie Mae and Freddie Mac preferred stock losses: The Act allows specified financial institutions to treat losses incurred in the sale or exchange of preferred stock in Fannie Mae or Freddie Mac as ordinary losses. This treatment generally applies to the sale of preferred stock held on September 6, 2008, or sales or exchanges of preferred stock on or after January 1, 2008, and before September 7, 2008.

Extension of mortgage forgiveness exclusion: The tax code generally treats cancelled debt as taxable income. The Mortgage Forgiveness Debt Relief Act of 2007 excluded from gross income discharges of up to \$2 million of indebtedness (\$1 million if married filing separately) secured by a principal residence and incurred in the acquisition, construction or substantial improvement of the residence. The Act extends this exclusion from December 31, 2009, to December 31, 2012.

Temporary increase in FDIC insurance amount: The Act increases the FDIC and Credit Union Share Insurance Fund deposit insurance limit applicable to depository institutions and credit unions from \$100,000 to \$250,000. The increase will be in effect only until December 31, 2009.

AMT Relief

Another AMT "patch": The Act includes another AMT patch for the 2008 tax year. Consequently, for 2008 only, the AMT exemption amounts are \$69,950 for married couples filing jointly and surviving spouses, \$46,200 for single taxpayers and heads of household, and \$34,975 for married couples filing separately.

Further, for 2008, taxpayers can continue to apply nonrefundable personal tax credits to reduce AMT liability as well as regular federal tax liability. Additionally, the Act accelerates the application and refundability of unused long-term minimum tax credit, and provides specific relief for AMT liability that results from the exercise of incentive stock options (ISOs).

Extended Tax Breaks-Individuals

Extension of additional standard deduction: The Act extends a provision allowing an additional standard deduction for real property taxes paid by taxpayers who do not itemize that was enacted earlier this year by the Housing and Economic Recovery Act of 2008. The amount of the deduction is the lesser of the amount allowable as a deduction of state and local real property taxes, or \$500 (\$1,000 for married persons filing a joint return). The provision was set to expire at the end of 2008, but is now extended through 2009.

Extension of deduction for state and local taxes: The Act further extends a provision originally enacted as part of the American Jobs Creation Act of 2004, and extended through 2007 by the Tax Relief and Health Care Act of 2006, that allows individual taxpayers to elect to take an itemized deduction for state and local general sales taxes instead of the itemized deduction for state and local income taxes. The Act extends this provision through 2009.

Extension of deduction for qualified higher education expenses: The Act extends the above-the-line deduction for qualified tuition and related expenses through 2009. The maximum deduction is \$4,000 for taxpayers with an adjusted gross income (AGI) of \$65,000 (\$130,000 for married persons filing jointly) or below, and \$2,000 for taxpayers with an AGI of \$80,000 (\$160,000 for married persons filing jointly) or less. Taxpayers whose AGI exceeds those amounts are not entitled to a deduction.

Extension of deduction for teacher's classroom expenses: There is an above-the-line deduction for up to \$250 annually for classroom expenses paid for or incurred by an eligible educator for books, supplies, computer and other equipment, and other supplementary materials. The Act extends this deduction through 2009.

Extension of tax-free distributions from IRAs for charitable purposes: The Act permits taxpayers to make tax-free distributions of up to \$100,000 from IRAs for charitable purposes through December 31, 2009. This provision had previously expired December 31, 2007.

Modification of refundable child tax credit: The Act lowers the 2008 earned income threshold for purposes of the refundable portion of the child tax credit to \$8,500 (from \$12,050).

Tax Provisions-Businesses

Extension and modification of R & D tax credit: The Act extends the research and development tax credit to cover expenses paid or incurred on or before December 31, 2009, and increases the alternative simplified credit from 12 percent to 14 percent of qualified research expenses that exceed 50 percent of the average qualified research expenses for the three preceding tax years.

Extension of renewable energy tax credit: The Act modifies the credit and extends the placed-in-service period through the end of 2009 for qualified wind

facilities. The placed-in-service period for other energy sources such as geothermal, closed-loop biomass, hydropower, landfill gas, and trash combustion facilities is also extended through December 31, 2010. The Act also creates a new energy production category--marine renewable--which is energy derived from waves, tides, and currents.

Extension of FUTA surtax: The bill extends the Federal Unemployment Tax Act (FUTA) surtax of 0.2 percent through 2009.

Extensions of other business tax incentives: The Act extends through 2009 several business tax incentives including:

- Indian employment tax credit

- New market credit

- The 15-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant property

- Deduction for charitable contributions of food inventory

- Deduction for charitable contributions of book inventory to public schools

- Deduction for corporate contributions of computer equipment for education purposes

- Qualified Zone Academy Bonds

- Rehabilitation tax credit for Gulf Opportunity (GO) Zone buildings

- Work opportunity tax credit for employers who hire employees who were affected by Hurricane Katrina is extended through August 28, 2009

Energy Incentives

Extension and modification of residential energy tax credits: The Act extends the tax credit for residential energy-efficient property from 2009 to 2016. The Act removes the \$2,000 maximum limit on solar electric property. Further, the Act adds new types of equipment that qualify for the credit: (1) wind energy equipment, which qualifies for a tax credit of up to 30 percent of the cost, capped at \$4,000, and (2) geothermal heat pumps, which qualify for a credit of up to 30 percent of the cost, capped at \$2,000. Additionally, the residential energy conservation property credit, which provides a credit of up to \$500 for purchasing energy-saving products, such as windows, insulation, and HVAC systems is extended through 2009. The Act adds two new types of improvements that qualify for the credit: (1) biomass fuel stoves with a thermal efficiency rating of 75 percent or more, and (2) asphalt roofs with cooling granules. The Act also clarifies that water heaters must have either an energy factor of at least 0.80 or a thermal efficiency rating of at least 90 percent to qualify for the credit. Note, however, that while the credit is worth up to \$500 for various improvements, the credit is limited to \$200 for windows and to \$300 for biomass fuel stoves.

Creation of tax credit for electric vehicles: The Act creates a new tax credit of \$2,500 to \$7,500 for plug-in electric vehicles. The credit will start to phase-out after 250,000 qualifying electric vehicles are sold. Vehicles that qualify will need to be certified under the Clean Air Act and meet the California low-emission standards. Higher tax credits are also available for electric vehicles with gross vehicle weight ratings of more than 10,000 pounds.

Creation of tax-free fringe benefits for bicyclists: The Act provides a new tax break for people who commute by bicycle. Employers can provide a tax-free fringe benefit of up to \$20 per month to cover "reasonable expenses incurred by the employee" for the purchase, improvement, repair, and storage of a bicycle

that is regularly used to commute between the employee's home and office. This bicycle fringe benefit will begin in 2009.

Disaster relief

Temporary tax relief for areas damaged by 2008 Midwestern severe storms, tornados, and floods: The Act applies and modifies certain GO Zone and Hurricane Katrina tax relief measures to the "Midwestern disaster area." The term "Midwestern disaster area" means: (1) an area declared a major disaster area by the President on or after May 20, 2008, and before August 1, 2008, by reason of severe storms, tornados, or flooding occurring in any of the States of Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, and Wisconsin, and (2) determined by the President to warrant individual or individual and public assistance from the federal government for damages attributable to such severe storms, tornados, or flooding.

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