

Emergency Economic Stabilization Act of 2008

The crisis in the financial markets, the housing slump and the credit crunch are straining our fragile economy. Consumer and business spending is down and everyone is looking for ways to make their money go further. On October 3, the President signed into law an \$850 billion financial markets rescue package, the *Emergency Economic Stabilization Act of 2008* with more than \$150 billion in tax incentives.

Time for planning. The *Emergency Economic Stabilization Act of 2008* is one of the largest tax laws in recent years. You may be able to take advantage of one or more tax incentives. There is still time in 2008 to utilize these incentives in your strategic tax planning. Planning to take maximum advantage of these incentives in 2009 also should start now.

Troubled Assets Relief Program. Congress gave the Treasury Department sweeping powers to purchase "troubled assets" from banks and other institutions. Many of these troubled assets are linked to home mortgages. However, the housing slump has sent millions of homeowners into foreclosure, making these assets much less valuable. If a bank or other institution seeks to participate in the rescue program, it must agree to new curbs on executive compensation. In some situations, the Treasury Department can set limits on the compensation of an entity's executives. On other cases, the Treasury Department can limit how much the company deducts for executive compensation. Congress also authorized the Treasury Department to prohibit or limit golden parachute payments.

Tax cuts. Originally, the rescue package did not include the "extenders," energy incentives and disaster relief. Only after the House defeated the original rescue package on September 30 did the Senate add these "sweeteners" to win more support for the rescue plan. The Senate's strategy worked. On October 3, the House passed the Senate's version of the rescue plan including the tax incentives. President Bush signed the bill into law later that day. Many of the tax incentives in the rescue are commonly known as **extenders**. These are popular but temporary tax breaks which expire every year or two years unless Congress extends them. Some of these temporary tax cuts have been extended so many times that individuals and businesses mistakenly believe they are permanent when, in reality, they are still temporary. The temporary nature of these incentives makes tax planning challenging because you may be able to take a credit or deduction in

one year but not in a future year. Fortunately, the extenders under the new law have been passed soon enough to enable use of year-end tax planning strategies that can maximize 2008 tax savings retroactively to the start of 2008, as well as 2009 tax breaks right from the start of the new year.

Individual incentives. Many of the individual incentives are familiar. The new law extends the state and local sales tax deduction (which you can take in lieu of deducting state and local income taxes); higher education tuition deduction, teachers' classroom expense deduction, and tax-free distributions from IRAs for charitable purposes. In all, more than a dozen important tax breaks have been extended. These incentives are now available for 2008 and 2009.

The rescue package includes good news for individuals who pay alternative minimum tax (AMT). Congress has authorized an AMT "patch" for 2008 to help keep middle-income individuals out of the reach of the AMT by giving them higher exemption amounts and allowing taxpayers to take nonrefundable personal credits to reduce their AMT liability. The 2008 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 for 2008.

New to the AMT patch for 2008 is targeted help for individuals with worthless stock options. At the height of the dot-com boom, many individuals received incentive stock options (ISOs) that were valuable at that time but became worthless after the dot-com bubble burst. The rescue plan abates AMT liability stemming from the exercise of ISOs along with interest and penalties on the unpaid amounts. Additionally, all individuals, including those who paid their ISO AMT liabilities, may accelerate the refund of the minimum tax credit that has not been used.

If you install qualifying energy conservation property, such as exterior windows and doors, in your home you may be eligible for a tax break. The new law extends a number of energy conservation tax incentives and creates a new tax credit for individuals who purchase a plug-in electric vehicle. Solar power, too, has been given a tremendous boost. Both the availability of an unlimited credit for its installation and extensive tax breaks for the solar industry as a whole will drive down energy costs for everyone but especially those with homes that "go solar," at least in part.

Business tax incentives. The business tax incentives in the rescue package are extensive. The largest business extender is the research tax credit. This credit is available for qualifying research expenses, including wages. The rescue package extends the research tax credit to amounts paid or incurred in 2008 and 2009. It also increases the alternative simplified research credit to 14 percent starting next year, a tremendous incentive now for smaller firms to finally use the research credit to grow their business.

Many businesses remodel or otherwise make improvements to their facilities on a regular schedule. These improvements are usually depreciated over 39 years. The rescue package shortens that period to fifteen years for qualifying leasehold, restaurant and retail improvements. However, this special treatment is temporary, so timing these improvements becomes critical. Businesses that donate food to charitable organizations and books and computers to schools may be eligible for a tax deduction. The rescue package extends these tax breaks through 2009.

Employees may exclude certain employer-paid transportation fringe benefits from their incomes. The rescue package adds commuting by bicycle to the types of commuting eligible for the exclusion. Producers of alternative energy, such as electricity from solar power, biomass and wind facilities also benefit under the rescue package. Congress extended and enhanced various alternative energy tax incentives. Tax breaks for energy efficient improvements to commercial buildings and energy efficient appliances likewise are extended and in some cases enhanced. With the price of heating and air conditioning steadily rising, these tax breaks should considerably reduce the pay-back time for these improvements.

Revenue raisers. To pay for a portion of these tax incentives, Congress included several revenue raisers in the rescue package. For those affected, they also are being referred to as "tax increases." One of the most wide-reaching is broker basis reporting. The rescue package requires brokers to report the adjusted basis of publicly-traded securities and indicate whether gain is long-term or short-term. Securities subject to the new reporting requirement include stocks, bonds, debentures, commodities, derivatives, and other financial instruments designated by Treasury. The reporting requirement takes effect for stocks acquired in 2011, mutual funds acquired in 2012, and other securities acquired in 2013.

The rescue package also caps the Code Sec. 199 domestic production activities deduction for oil and gas companies. Additionally, it tightens the rules for oil and gas companies to pay taxes on overseas income. Two special taxes, the oil spill tax and the FUTA surtax, are extended under the new law.