

TAX SECTION E-ALERT

October 10, 2008

TAX NEWS YOU CAN USE – THE EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

In this special-edition Tax Section E-Alert, your AICPA tax team summarizes some of the major tax provisions of interest to practitioners and businesses. H.R. 1424, The Emergency Economic Stabilization Act of 2008, was signed on October 3rd and contains over \$150 billion in tax breaks. The legislation and committee reports are available at the Library of Congress Website, <http://thomas.loc.gov/>.

Return Preparer Penalties

The Act lowered the reporting standard under section 6694 to “substantial authority” from “more likely than not” for undisclosed, non-tax shelter positions. This is the same standard that applies to taxpayers. The change is retroactive to the date when the higher standard was enacted, May 25, 2007. This is a great victory for CPAs that the AICPA had been fighting for since Congress raised the standard for preparers to a level higher than for taxpayers, creating potential conflicts of interest between CPAs and their clients.

Brokers’ Statements to Arrive Later Beginning this Filing Season

The Act extends the date by which brokers must furnish information forms to customers. This includes stock broker 1099-B forms and also other forms from brokers, including realtors. Beginning with statements furnished in 2009, brokers will avoid penalties if they furnish these forms on or before February 15 – as opposed to the old due date of January 31. This could further compress the return preparation season for practitioners.

AMT Relief

The law extends AMT relief for nonrefundable personal credits and increases the AMT exemption amounts to \$46,200 for singles and heads-of-household, \$69,950 for joint filers and surviving spouses and \$34,975 for married filing separately through 2008. The law also abates all unpaid AMT liabilities, including penalties and interest, associated with the exercise of incentive stock options before 2008. For those who have already paid AMT-ISO liability, the law accelerates the minimum tax credit associated with AMT items to allow the unused credit to be refunded over two years rather than five.

Individual Extenders

The law extends the following individual tax provisions through 2009:

- the itemized deduction for state and local sales taxes;
- the above-the-line qualified tuition and expenses deduction;
- the limited addition to the standard deduction for real property taxes paid by non-itemizers;
- the provision that allows taxpayers to make tax-free distributions of up to \$100,000 per year to qualified charities from their traditional and Roth IRAs;
- a provision allowing regulated investment companies (RICs) to designate some dividends as interest-related dividends;
- the estate tax look-through for RIC stock held by nonresidents;
- the designation of RICs as qualified investment entities under section 897; and
- the above-the-line \$250 deduction for teachers' classroom expenses.

Business Extenders

The law extends the following business tax provisions through 2009:

- Research tax credit increased to 14%; alternative incremental credit repealed; and alternative simplified credit increased;
- 15-year cost recovery for leasehold and restaurant improvement;
- Contributions of food and contributions of books and computer hardware to schools is extended, and S corp shareholders can receive pass-through charitable deductions of appreciated property equal to fair market value rather than the S corp basis in the property;
- New markets tax credit for loans to small businesses in distressed areas; and
- FUTA surcharge of .2% (on wage base up to \$7,000 per employee).

Energy Tax Provisions

The Act contains a variety of extended and new tax incentives in the energy area, including:

- Credit of up to \$500 for residential insulation, storm doors, etc. is extended to cover property placed in service through 2009;
- Deduction under 179 for energy efficient commercial buildings is extended through 2013;
- The credit to encourage production of renewable energy is extended through 2009 and expanded to include additional sources of renewable energy; and
- Solar and fuel cell credits are extended through 2016.

Child Tax Credit

For the 2008 tax year, the refundable threshold for the child tax credits would decrease from \$12,050 to \$8,500.

Brokers to Report Customer Basis

The Act requires brokers to report the customer's basis in sold securities beginning in 2011 for stocks, 2012 for mutual funds, and 2013 for other securities. The IRS and some taxpayers have had difficulty determining basis, and in some cases reported cost reflected the FMV on the date the stock was transferred into a brokerage account rather than actual cost.

The AICPA has suggested that brokers provide basis information to taxpayers in a format that would enable taxpayers and tax preparers to download the information directly into their tax return preparation software.

Foreign Deferred Comp

Beginning in 2009, compensation paid by foreign corporations or partnerships that is deferred by more than a year will be currently taxable.

Exclusion of Mortgage Debt Relief from Income

Home mortgage debt relief of up to \$2 million will continue to be excluded from cancellation of indebtedness income through 2012.

Executive Comp for Financial Institutions

Responding to taxpayer outrage over executive compensation by troubled financial institutions that have to be bailed out, Congress enacted restrictions on senior executive compensation for companies that sell more than \$300 million in assets in the Federal Government's new troubled asset recovery program (TARP). Deductible compensation for the three highest paid officers is limited to \$500,000, but unlike section 162(m), there is no exclusion for performance-based compensation. Companies participating must severely limit golden parachute payments, with possible non-deductibility for the payor and a 20% excise tax on the payee.

Community Bank Relief on Fannie and Freddie Stock Losses

Community banks can report losses on Fannie Mae and Freddie Mac preferred stock as ordinary, rather than capital losses.

Disaster Relief

The Act provides a variety of tax relief measures for disaster victims, and this alert contains only highlights. Victims and their advisers should consult the Act for details and additional relief provisions that might apply.

Businesses can deduct up to 50% of the demolition and cleanup costs incurred before 2011, can expense hazardous waste cleanup costs, and can carry back NOLs for five years instead of two. Also, small businesses in certain flood areas can get a 40 percent credit on wages up to \$5,000 from the disaster date until the end of the year. For individuals in flood areas, the 10% and \$100 floor on casualty losses is eliminated. Those who shelter disaster victims for at least 60 days can qualify for an extra personal exemption of \$500 per victim (up to four). Discharge of personal debts of flood victims would not result in income. Charitable deductions limits for individuals and corporations were suspended for contributions to Midwestern relief efforts. Through 2010, the 10 percent IRA penalty for early withdrawal of up to \$100,000 would be waived if it is a disaster assistance recovery distribution in a Midwest flood zone. For victims in presidentially declared disasters in 2008 and 2009, Section 179 expensing is increased from \$250,000 to \$350,000 for disaster area expenditures for business through 2011. First-year depreciation is increased on new and personal property investment in the disaster area and any depreciation benefits may be claimed against the AMT.

Tax Section Member Service Contact Information

Members can update their records and ask questions about Tax Section member benefits at 800-513-3037 or taxsection@aicpa.org.

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