TAX UPDATE
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Economic Stimulus Package of 2008
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Economic Stimulus Package Of 2008

Congress has passed the *Economic Stimulus Package of 2008* that introduces a rebate for individuals and equipment investment incentives. The bill's provisions are short-term changes that will expire generally by the end of 2008.

Rebates for Individuals (Act section 101)

General Rules for Rebates

Qualifying individuals will be sent rebate checks that are based on their filing status and number of dependents. The Treasury Department in a news release issued upon passage indicated that they expected checks to begin to be issued beginning in early May 2008, to be "largely completed" by summer [Treasury Department News Release TDNR HP-815, 2/7/08].

The rebate is structured as a credit against 2008 taxes [IRC §6428(a)], but the estimated value will be paid based on the taxpayer's 2007 return.

The amount of the credit/rebate is determined based upon either a "general rule" [IRC §6248(a)] or a "special rule" [IRC §6248(b)], whichever is higher. The general rule provides the credit is equal to the lesser of

- An individual's income tax liability *or*
- $600 ($1,200 for married couples filing a joint return)

However, "qualifying taxpayers" get a second shot at computing the refund. For those individuals, the credit will not be less than:

- $300 ($600 for married couples filing a joint return)
- As well, the credit would be increased by $300 times the number of qualifying children for these qualifying taxpayers.

Qualifying children are defined by reference to the child tax credit definition of qualifying children found at §24(c), which means a "qualifying child" as defined under the dependency rules of §152(c) who has not attained age 17.

Taxpayers Who Qualify

Most taxpayers will qualify to be tested under the first test (limit based on tax liability), except the following individuals that are specifically excluded:

- Nonresident alien
- Individuals with respect to whom a dependency deduction is *allowable* to another taxpayer for the taxable year
- An estate or trust [IRC §6248(e)(3)]

To be able to be tested under the second criteria for a credit in excess of the individual's tax liability, the taxpayer has to clear additional hurdles. Those individuals have to meet one of the following two tests:

- Have "qualifying income" of at least $3,000 *or*
- Have both
    - A net income tax liability that is greater than zero *and*
    - Gross income that is greater than the sum of:

- The standard deduction plus
- The individual exemption amount (twice that amount for joint returns)

Qualifying income is defined as

Earned income defined as used for the earned income credit under §32(c)(2), except that the provision that would phase out the ability to use combat zone pay for tax years beginning after December 31, 2007 would be treated as if it expired a year later.

Social security benefits (as defined under IRC §86(d))

Compensation or pension received under Chapters 11, 13 or 15 of Title 38 of the United States Code (disabled veteran pay)

Taxpayers must provide valid social security numbers on their tax return for themselves, their spouse (in the case of a joint return) and all qualifying children in order to qualify for this credit/rebate. TINs will not qualify for this purpose. [IRC §6428(h)]

Phase Out for High Income Individuals

History since the 1986 Tax Act has shown us that what Congress giveth, Congress often taketh away via phase outs, and that's true of this benefit as well. The credit is reduced by 5% of the excess of a taxpayer's adjusted gross income over $75,000 ($150,000 for a joint return) [IRC §6248(d)]. Thus for the standard credit, the reduction is fully phased out for returns with adjusted gross income over:

- $87,000 for single, head of household and married filing separate filers
- $174,000 for couples filing married joint

Individuals with children will continue to see some credit until the 5% phase out absorbs the remaining credit, effectively continuing to receive some credit until their income clears the above levels plus $6,000 times the number of qualifying children.

Advance Refund Program and 2008 Return Catch Up

2008 Checks

Even though the credit is against 2008 taxes, the IRS will be issuing checks as a prepayment of the expected tax benefit during 2007. As noted above, these checks are expected to be issued during the summer of 2008. This program is similar to one utilized the last time Congress had the IRS send out checks when the child tax credit came into the law, with the same issue of looking to qualify under either of two years.

Advance refunds are governed by §6248(g), and they are based on the taxpayer's 2007 income tax return. An individual that is an eligible individual for the taxpayer's first taxable year beginning in 2007 (which generally is the calendar year 2007) will be treated as having made an additional payment equal to the credit during 2007. That amount will be computed as if the 2008 credit had applied to 2007 [IRC §6248(g)(2)].

The IRS is prohibited from issuing any checks after December 31, 2008 under this program [IRC §6248(g)(3)].

The Technical Explanation issued by the Joint Committee on Taxation contains additional details about how Congress expects the IRS to carry out this program. Note that it is expected that the initial mailings will go out to taxpayers who file their returns on or before the unextended April 15 deadline—the Explanation notes "Taxpayers who file late or pursuant to extensions will receive their payments later."

As well, the Joint Committee on Taxation notes in a footnote "To the extent practicable, the Department of the Treasury is expected to utilize individuals' current direct deposit information in its possession to expedite delivery of these amounts rather than the mailing of rebate checks." That would suggest that if a taxpayer asks for direct deposit of a 2007 refund to a bank account, that same information would be used this summer to receive the rebate check. That could create issues should taxpayers change banks for some reason following the filing of their 2007 return, but before their refund check is issued.

2008 Return Second Chance

Taxpayers get a second chance at computing the tax credit when they file their 2008 income tax returns. Essentially, taxpayers compute their credit based on the actual amounts reported on their 2008 return, and compare that to the rebate check received during 2008. If the recomputed amount is higher, the taxpayer reduces their 2008 tax by the excess.

If a taxpayer computes a lower credit on their 2008 return, they do not have to repay the overpayment. [IRC §6248(f)]

Increase in §179 Expensing Limits for 2008 (act section 102)

Increased Levels

Congress again revisited the Section 179 depreciation limits under this bill. Effective for 2008

- The amount available for expensing is increased from $125,000 to $250,000 [IRC §179(b)(7)(A)] *and*

- The level at which the phase out of Section 179 expensing begins increases to $800,000 from $500,000 [IRC §179(b)(7)(B)]

Note that the inflation adjustment that was going to apply to 2008 will not apply—rather these more substantial increases will apply in lieu of the more modest inflation adjustment amounts

Effective Dates

The above adjustments only apply to *taxable years* beginning in 2008. Thus for fiscal year taxpayers, you will not be able to make use of this provision until the first year beginning in 2008, but the qualifying purchases would continue until the end of that fiscal year. So for a November fiscal year taxpayer, only purchases made on or after December 1, 2008 would qualify for this treatment, but the taxpayer could continue to purchase qualifying assets through November 30, 2009.

Note that the bonus depreciation provisions noted below do not follow the same rules, thus potentially creating some unique opportunities for fiscal year taxpayers to get enhanced benefits stretching over as long as 23 months.

Bonus Depreciation (Act Section 103)

Return of Bonus Depreciation

The bonus depreciation we first saw passed in 2002 in response to the terrorist attacks of September 11, 2001 are brought back into the law for a one year period. The bonus depreciation amount will be set at 50%. Congress accomplishes this by amending §168(k), which has remained in the law to this date, despite having essentially expired at the end of 2005.

The depreciation allowance for qualifying property shall include an allowance equal to 50% of the adjusted basis of that property [IRC §168(k)(1)(A)]. The basis of the property is reduced by the amount of the bonus depreciation before computing any otherwise allowed depreciation deduction [IRC §168(k)(1)(B)]

Qualifying property includes property in the following categories:

- Property with a recovery period of 20 years or less

- Computer software

- Water utility property

- Qualified leasehold improvement property

For automobiles subject to the limitation under §280F(d)(5) that is qualified property, the limit for first year depreciation is increased $8,000 [IRC §168(k)(2)(F)].

For purposes of determining alternative minimum taxable income, the deduction under this provision is determined without regard to any adjustment under §56 (so the taxpayer gets this deduction for minimum tax purposes).

The same special rules that we had under the 2002 Act for self-constructed property, assets with a longer production period, qualified leasehold property and property acquired from or used by related parties again have to be considered.

The bonus depreciation rules apply by default unless a taxpayer elects under §168(k)(2)(D)(iii) to not have these provisions apply.

Effective Dates

Generally these rules apply to property acquired after December 31, 2007 and before January 1, 2009. What Congress did was amend §168(k) as it currently existed and replaced the following items:

- September 10, 2001 with December 31, 2007 (related to the end of the period before qualified property can be acquired)
- September 11, 2001 with January 1, 2008 (related to the beginning of period to acquire qualified property)
- January 1, 2005 with January 1, 2009 (related to the first day you can no longer generally acquire qualified property)
- January 1, 2006 with January 1, 2010 (related to the extended period for certain specified property)

As noted under the §179 provisions, the period involved for this provision will not be exactly the same as the period for acquiring property eligible for the increased §179 deduction for fiscal year taxpayers.

As well, bonus depreciation is available to all taxpayers, not just those with acquisitions below $1,050,000 for the year and can be used to create a net operating loss eligible for carryback two years prior.

Net Operating Loss Carryback Period

At one point, a proposal surfaced to bring back another incentive from the 2002 tax bill—an expanded net operating loss carryback period. That provision was removed from the House bill before passage, and despite appearing again in the Senate bill first heard by the Senate Finance Committee, was not included in the final bill actually passed.

Net operating loss carrybacks are still limited to two years, as they were prior to the passage of this bill.