

HIGHLIGHTS OF THE ECONOMIC STABILIZATION LEGISLATION

Refundable Child Tax Credit Eased - For 2008, only to the extent that the child credit exceeds the taxpayer's tax liability, the taxpayer is eligible for a refundable credit (the additional child tax credit) equal to 15% of earned income in excess of a threshold dollar amount of \$8,500 (\$12,050 before this law change).

Qualifying Child - The 2008 Adoption Act makes several changes to the qualifying child rules. The Act that will be effective beginning in 2009:

- Requires that a qualifying child be younger than the claimant;
- Requires that a qualifying child be unmarried;
- Restricts qualifying child tax benefits to the child's parents; and
- Denies the child tax credit to taxpayers who are dependents.

Home Mortgage Debt Forgiveness Relief – The up-to \$2 million (\$1 million for married individuals filing separately) debt relief income exclusion for acquisition debt relief on a taxpayer's principal residence has been extended through 2012.

Deduction for State and Local Sales Taxes - The itemized deduction for state and local sales tax has been extended through 2009.

Deduction of Qualified Tuition & Related Expenses - The above-the-line deduction for qualified tuition and related expenses (same definition as education credit) has been extended through 2009.

Educator Above-the-Line Expenses - The \$250 above-the-line deduction for teachers (kindergarten through 12th grade) has been extended through 2009.

Standard Deduction for Real Property Taxes - Section 63(c)(1), as added by the Housing Assistance Tax Act of 2008, provided for an additional standard deduction for property taxes. This provision was originally slated to be for 2008 only but has been extended to include 2009.

Tax-Free IRA to Charity Distributions - The provision that permits taxpayers age 70½ and over to make direct distributions (up to \$100,000) from their IRA account to a charity has been reinstated for 2008 and 2009. The distribution is tax-free, and there is no charitable deduction. This provision can be very beneficial to taxpayers who have social security income and/or do not itemize their deductions.

AMT Exemption Amount for 2008 Increased - The AMT exemptions have been increased for 2008: \$69,950 for married individuals filing jointly, \$46,200 for unmarried individuals and \$34,975 for married individuals filing separately. The AMT phase-out rules remain unchanged.

AMT Relief for Nonrefundable Personal Credits - Nonrefundable personal credits will offset the AMT for 2008. Those credits include the dependent care credit, elderly and disabled credit, Hope and Lifetime Learning credits, adoption credit, child credit, mortgage credit, saver's credit and residential and home energy credits.

Increased AMT Refundable Long-Term Unused Credits - Prior to this change and for purposes of claiming the long-term unused minimum tax credit, the refundable credit amount was limited to the greatest of (1) \$5,000, (2) 20% of the long-term carryover or (3) the AMT refundable credit amount (if any) for the prior year— before any reduction by reason of AGI. Under the Act, the \$5,000 limitation has been removed, and the 20% limit has been increased to 50%.

In addition, the Act provides for abatement of any underpayment of tax outstanding on the date of the enactment of this subsection which is attributable to the application of Section 56(b)(3) for any taxable year ending before January 1, 2008, and any interest or penalty with respect to such underpayment which is outstanding on such date of enactment, is hereby abated. The amount determined under subsection (b)(1) shall not include any tax abated under the preceding sentence. The Act also provides for an increase in credit for any interest and penalties already paid.

Home Energy Credit – The Section 25C credit for certain energy-efficient property installed on the taxpayer's principal residence that originally expired in 2007 has been reinstated for 2009 only. This provision allows a nonrefundable \$500 credit for the installation of qualified windows, skylights, air circulation systems, hot water boilers and other energy-efficient equipment.

The 2008 Energy Act adds biomass fuel stoves to the list of energy-efficient building property that qualifies for the nonbusiness energy credit. Thus, energy-efficient building property includes a stove that burns "biomass fuel," to heat a dwelling unit located in the U.S. that the taxpayer uses as a residence, or to heat water for use in the residence, and that has a thermal efficiency rating of at least 75%. The Act also removes geothermal heat pumps from the Sec. 25C credits and adds them to the more generous Sec. 25D category. The type of water heater that qualifies has been broadened to include natural gas, propane or oil heaters with a thermal efficiency of at least 90%. The Act also added asphalt roofs, which include the appropriate cooling granules.

Residential Energy-Efficient Property (REEP) Credit – The Sec. 25D credits that were set to expire after 2008 have been extended through 2016. This includes the credit for the installation of solar water heating systems (excluding swimming pools) and qualified fuel cell property. The Act also increased the maximum credit from \$2,000 to \$4,000 and allows REEP credit for residential wind property and geothermal heat pumps. The Act also allows the REEP credit to be claimed against the AMT.

Preparer Penalty Eased - The controversial “more likely than not” standard for the imposition of the unreasonable opposition penalty for undisclosed positions has been changed to the same standard that a taxpayer must meet. Thus, the “more likely than not” standard has been replaced with the “substantial authority” standard.

Certain Farming Machinery & Equipment Treated as 5-Year Property - Machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) which is used in a farming business (as defined in Section 263A(e)(4)), the original use of which commences with the taxpayer after December 31, 2008, and which is placed in service before January 1, 2010) is treated as 5-year property.

Plug-In Electric Drive Vehicle Credit - The 2008 Energy Act adds a tax credit for “new qualified plug-in electric drive motor vehicles” (NQPEDMVs) purchased before January 1, 2015. Subject to a limit based on weight, the applicable credit amount is the sum of: (1) \$2,500; plus (2) \$400 for each kilowatt hour of traction battery capacity in excess of 6 kilowatt hours. The maximum credit for vehicles weighing 10,000 pounds or less is \$7,500. Larger maximums apply to heavier vehicles. When the vehicle is used partially for business, the credit is allocated between personal and business credits. This credit has a phase-out provision similar to the hybrid credit and will begin to phase out after 250,000 units.

Business Energy Credit – The 10%/30% business energy credit for solar, qualified fuel cell and microturbine property is extended through December 31, 2016.

The Act also adds small wind energy property to the list eligible for the 30% business energy credit and increases the credit limitation for qualified fuel cell property from \$500 to \$1,500 for each ½ kilowatt of capacity. The 10% category is expanded to include combined heat and power system property. The additions are effective October 3, 2008.

Bicycle Added to Employer Fringe Benefits - The 2008 Energy Act adds “qualified bicycle commuting reimbursement” to the list of qualified transportation fringe benefits. Up to \$20 per month is allowed for reasonable expenses incurred by the employee during that calendar year for the purchase of a bicycle and bicycle improvements, repair and storage if the bicycle is regularly used for travel between the employee's residence and place of employment.

Contractor Efficient Home Credit - An eligible contractor may claim a business credit for each qualified new energy-efficient home that the contractor constructs and which is acquired by a person from the contractor for use as a residence. The credit is either \$2,000 (for a 50% energy reduction in energy usage) or \$1,000 (for a 30% energy reduction in energy usage). This credit has been extended through 2009.

Energy-Efficient Commercial Building Property - A deduction is allowed in an amount equal to the cost of “energy-efficient commercial building property” placed in service during the tax year. The maximum deduction for any building for any tax year is the excess (if any) of the product of \$1.80, and the square footage of the building, over the aggregate amount of the deduction for the building for all earlier tax years. This credit is extended through 2013.

Domestic Production Deduction - A change generally reduces the DPD of oil and gas production by 3% effective in 2009.

Casualty Losses – The \$100 floor for personal-use property has been increased to \$500 for 2009 only. The 10% of AGI limit on personal casualty losses is waived in federally declared disasters in 2008 and 2009. The 2008 Extenders Act law introduces the new definition of a “federally declared disaster,” and some of the provisions of a federally declared disaster area are modified.

Qualified Disaster Losses – Qualified disaster losses from pre-2010 disasters can be carried back 5 years and are fully deductible against the AMT.

Qualified Restaurant Property - The 2008 Extenders Act provides that qualified restaurant property means any property that is: (1) a building, if that building is placed in service after December 31, 2008, and before January 1, 2010, or an improvement to a building, if more than 50 percent of the building's square footage is devoted to preparation of, and seating for on-premises consumption of, prepared meals.

Retail Space Improvements - The 2008 Extenders Act provides that any qualified retail improvement property placed in service after December 31, 2008, and before January 1, 2010, must be depreciated over 15 years under MACRS.

Film and TV Production Expense Election – The election to expense up to \$15 million of production expenses has been extended for one year through 2009.

Environmental Remediation Costs – The provision permitting the expensing of environmental remediation costs is extended for two years through December 31, 2009.

Broker Reporting of Customer's Basis in Securities Transactions - Congress believes that there is a significant amount of underreporting of capital gain income and thus enacted this change. Generally, this change requires brokerage houses to begin tracking and reporting their client's stock basis in stocks acquired after 2010.

FUTA Surtax- The 0.2% FUTA surtax has been extended through 2009. The rate remains 6.2% through the end of 2008.

Extension and Modification of Research Credit - The Sec. 41 Research Credit has been extended through December 31, 2009 (was 2007). No alternative incremental credit election shall apply to taxable years beginning after December 31, 2008. The percentage used in determining the credit under the simplified method has been increased from 12 percent to 14 percent, effective for taxable years beginning in 2009.

New Markets Credit – The New Markets credit has been extended through 2009.

Leasehold Improvements and Qualified Restaurant Property - Provides a two-year extension for the 15-year life and straight-line depreciation of qualified restaurant property. Applies before January 1, 2010 (was 2008). *Section 168(e)(3)(E)* Included in this provision is any qualified real improvement placed in service after December 31, 2008 and before January 1, 2010.

Income Averaging for Exxon Valdez Litigation Amounts - Effective on the enactment date, the Act allows commercial fishermen and other individuals whose livelihoods were negatively impacted by the '89 Exxon Valdez oil spill to average any settlement or judgment-related income that they receive in connection with pending litigation in the federal courts over three years for federal tax purposes. It also allows them to use these funds to make contributions to retirement accounts.

S Corp Contributions Result in Lower Shareholder Basis Adjustments – The Act extends the rule that the amount of a shareholder's basis reduction in S stock by reason of a charitable contribution made by the corporation is equal to his pro rata share of the adjusted basis of the contributed property through 2009.