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The Emergency Economic Stabilization Act of 2008

-by Neil E. Harl*

After a narrow rejection by the U.S. House of Representatives on September 29, approval by a comfortable margin by the U.S. Senate on October 2 and passage by the House on October 3 in a turn around from the September 29 vote, the Emergency Economic Stabilization Act of 2008 became law with the President’s signature on October 3, 2008.¹ The shift in the House occurred with sharply deteriorating stock markets globally which convinced a group of hold outs that passage was in the national interest. What had started out as a crisis in the U.S. housing sector several months earlier had escalated into a credit crisis with credit markets spiraling rapidly downward as liquidity evaporated and risky strategies long pursued world-wide became a threat to economies around the globe.²

In order to induce some House members to switch positions on the legislation, the bill was expanded in intense negotiations to include several additional provisions, some of which were tax-related. Thus, the initial estimate of a $700 billion cost became considerably more expensive with the final cost largely unknown. Depending upon how successful the Department of the Treasury is in selling the “bad” paper acquired in the bail-out and propping up banks and other financial institutions, which is related heavily to when investor confidence are restored, the net cost ultimately could be significantly under $700 billion. On the other hand, the cost could well exceed estimates if the steps taken do not restore confidence in the financial system.

Emergency economic stabilization

The legislation gives the United States Treasury $250 billion to expend immediately and requires the President to certify if an additional $100 billion is necessary. An additional $350 billion may be disbursed with Congressional approval. The Department of the Treasury is to report on the use of funds and the progress made in addressing the financial crisis. An oversight board and a special inspector general are to be created to watch over the moves of the Department of the Treasury.

Foreclosure mitigation efforts. The 2008 Act specifies that, to the extent that “. . . the Secretary [of the Treasury] acquires mortgages, mortgage-backed securities, and other assets secured by residential real estate . . . the Secretary shall implement a plan that seeks to maximize assistance for homeowners and use the authority of the Secretary to encourage the servicers of the underlying mortgages, considering net present value to the taxpayer, to take advantage [of programs], . . . to minimize foreclosures.” Note that the legislation only “encourages” servicing to take advantage of programs to minimize foreclosures. Act § 109(a).

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The Act extends the relief on agricultural law digest that has been held by financial institutions. That is the case if credit for biodiesel and renewable diesel for an additional year against regular tax and alternative minimum tax liabilities in 2008.

For qualified solar electric property expenditures is eliminated in 2008 through 2016. The $2,000 maximum annual credit limit the credit to include expenditures for small wind energy property (installed on or in connection with a dwelling unit) and expanded tax benefits for new qualified plug-in electric drive motor vehicles placed in service after December 31, 2008.

The legislation provides for a small wind energy property. The legislation extends the energy-efficient appliance credit through 2010. The provision applies to companies with more than $300 million of assets purchased by the Department of the Treasury.

The Act extends the relief on discharge of indebtedness of cancelled debt on a qualified principal residence. The forgiven amount is limited to acquisition indebtedness with the amount boosted for purposes of this provision to $2,000,000 on a joint return, $1,000,000 for a separate return. The discharge amount may be applied to reduce the income tax basis of the principal residence (but not below zero). The provision applies to discharges of indebtedness occurring on or after January 1, 2010.

The Act extends the energy-efficient appliance credit through 2010. The modification applies to appliances produced after December 31, 2007.

The Act extends the energy-efficient appliance credit through 2010. The provision applies to appliances purchased before 2015. The provision is subject to the “sunset” rules as included in the 2001 tax act (EGTRRA).

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property for new farm machinery and equipment used in a farming business as defined in I.R.C. § 263A(e)(4) (other than grain bins, cotton ginning assets, fences and land improvements). The original use for the property must commence with the taxpayer. Used machinery and equipment, grain bins, cotton ginning assets and farm fences remain as seven year property. Land improvements remain as 15-year property with single purpose agricultural and horticultural property remaining as 10-year property. The ADS life remains at 10-years for new machinery and equipment. Act § 505, Div. C, Title V, amending I.R.C. § 168(e)(3)(B).

Charitable giving. The bill also includes a two-year extension (through 2009) of the provision allowing taxpayers aged 70 ½ or older to transfer as much as $100,000 per year directly from an IRA to a charitable organization without triggering income tax on the contribution as income in respect of decedent. The amount transferred under the provision is not included in the donor’s adjusted gross income. That is important because higher AGI levels can lead to loss of part of the itemized deductions and personal exemption amounts. Act § 205, Div. C, Title II, amending I.R.C. § 408(d)(8).

State and local taxes. The 2008 law revives a provision allowing taxpayers who itemize their deductions to deduct their state and local sales taxes, rather than state and local income taxes, but not both. The amended provision is effective for 2008 and 2009. Taxpayers have a choice in how they calculate the deduction. They can claim the actual amount of sales tax paid, assuming that good records are kept, or taxpayers can deduct the amount shown on IRS tables – plus taxes paid on certain items such as an automobile. Act § 201, Div. C, Title II, amending I.R.C. § 164(b)(5).

Deduction for tuition and fees. The new legislation extended, through 2009, a provision allowing a deduction for higher-education tuition and fees which has been available up to a $4,000 maximum deduction, depending upon the level of income. This deduction can be claimed whether or not the taxpayer itemizes their deduction – it is an “above-the-line” deduction. Act § 202, Div. C, Title II, amending I.R.C. § 222(e).


Preparer standard. The standard for preparers for most undisclosed positions is reduced by the Act to substantial authority. The amendment conforms the standard to the taxpayer standard under I.R.C. § 6662. The preparer standard for disclosed positions as to whether the preparer has a “reasonable basis” except for listed transactions and reportable transactions with significant avoidance or evasion purposes was not amended – the tax preparer must have a reasonable belief that the position would more likely than not be sustained on the merits. The provision is effective retroactively to May 25, 2007 except for positions described in I.R.C. § 6694(a)(2)(C) for which the effective date is October 3, 2008. Act § 506, Div. C, Title V, Subtitle A, amending I.R.C. § 6694(a).

Temporary (one-year) increase in casualty losses from non-business property. The $100 floor for non-business casualty losses was raised for 2009 to $500 with the floor reverting to $100 after 2009. Act §§ 706(c), Div. C, Title VII, Subtitle B, amending I.R.C. § 165(b)(1).

Expenditures incurred by elementary and secondary school teachers. The deduction of up to $250 for designated expenditures in connection with calculation of adjusted gross income which are incurred by elementary and secondary teachers was extended through 2009. Act § 203, Div. C, Title II, amending I.R.C. § 62(a)(2)(D).


The enhanced charitable deduction. The legislation extended the enhanced charitable deduction for food inventory through 2009. The Act eliminates, temporarily, the percentage limitation for contributions made by certain farmers and ranchers after December 31, 2007 through December 31, 2008. The deduction is limited to twice the taxpayer’s basis in the food inventory (which is often zero for farmers and ranchers). The provision is effective for contributions after 2007. Act § 323, Div. C, Title III, amending I.R.C. § 170(e)(3)(C).

Environmentally contaminated sites. The 2008 Act extends the provision allowing the expensing of costs stemming from cleaning up environmentally contaminated sites, through 2009. The provision is effective for expenditures paid or incurred after December 31, 2007. Act § 318, Div. C, Title III, amending I.R.C. § 198(h).

ENDNOTES