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## The Bailout Bill: Tax Changes Affecting Businesses

The Emergency Economic Stabilization Act of 2008, referred to by some as the "bailout bill," or, as others prefer to call it, the "rescue plan," was recently enacted in an attempt to help stabilize the turmoil in the U.S. economy. While a great deal of the attention has been focused on the bailout provisions of the Act, there are also significant tax law changes affecting businesses and corporations. Here are some of the most noteworthy.

### Extension and modification of research and development credit

Anxiously awaited by many companies, the research tax credit--generally equal to 20% of the amount by which a taxpayer's qualified research expenses for a taxable year exceed a base amount for that year--is extended through December 31, 2009.

In addition, the alternative simplified research credit increases from 12% to 14%, effective for tax years ending December 31, 2008. Further, the alternative incremental research credit is repealed for tax years beginning after December 31, 2008.

### Extension of new markets tax credit

Current law provides a tax credit for taxpayers who make a qualified equity investment in a qualified community development entity (CDE). This provision was set to expire December 31, 2008. EESA extends it through 2009. For 2009, up to \$3.5 billion in qualified equity investments are permitted.

### Extension of other business tax credits

- The Indian employment tax credit is extended through December 31, 2009.
- The railroad track maintenance credit is extended to apply to expenditures paid or incurred before 2010. For tax years after 2007 and before 2010, it can be used to offset the AMT.
- The mine rescue training team credit is extended through December 31, 2009.

### Extension and modification of business deductions: expenses

- The election to deduct certain environmental remediation costs is extended for expenditures paid or incurred in 2008 and 2009.
- The election to expense costs related to film and television productions is extended to 2009.
- The placed-in-service and construction requirements for the IRC Section 179C election to expense 50% of the cost of eligible qualified refinery property is extended two years to property placed-in-service through 2013. In addition, this deduction is also available to refineries processing liquid fuel directly from shale or tar sands, for property placed in service after October 3, 2008.
- The suspension of the percentage depletion limitation for oil and gas produced from marginal properties is extended to tax years beginning in 2009.
- The election to expense 50% of the cost of advanced mine safety equipment is extended for property placed in service in 2009.

### Extension and modification of business deductions: depreciation

- The 15-year MACRS recovery period for qualified leasehold improvement property, restaurant improvements and buildings, and qualified retail improvement property is extended to apply to property placed in service in 2008 and 2009.
- Machinery or equipment (other than a grain bin, cotton ginning asset, fence, or land improvement) that is used in a farming business, where the original use of the machinery or equipment commences in 2009, is treated as 5-year property for purposes of claiming MACRS depreciation.

- The 7-year MACRS recovery period for motorsports entertainment complexes and related ancillary and support facilities is extended to property placed in service in 2008 and 2009.
- The MACRS recovery periods that apply to qualified Indian reservation property have been extended for two years through December 31, 2009.

#### **Extension and modification of incentives for charitable giving**

- The enhanced charitable deduction for corporate contributions of computer technology and/or equipment is extended for contributions made during any tax year beginning on or before December 31, 2009.
- The enhanced deduction for charitable donations of food inventory by noncorporate taxpayers that are engaged in a trade or business is extended for contributions made on or before December 31, 2009. The 10% limitation is temporarily eliminated for food contributions by certain farmers and ranchers.
- The enhanced deduction for corporate donations of book inventory to public schools is extended for contributions made on or before December 31, 2009.
- Current law provides that the amount of a shareholder's basis reduction in the stock of an S corporation by reason of a charitable contribution equals the shareholder's pro rata share of the property's adjusted basis. This provision is extended to apply to tax years beginning before January 1, 2010.

#### **Modification of other business tax incentives**

- The District of Columbia empowerment zone provisions are extended to apply in 2008 and 2009.
- Compensation from nonqualified deferred compensation plans maintained by offshore corporations will generally be taxable when it is not subject to substantial risk of forfeiture.

#### **Changes to energy conservation incentives**

- The placed in service date for the renewable electricity production credit is extended through December 31, 2009, in the case of wind and refined coal, and through December 31, 2010, in the case of other sources. The credit is also extended to facilities that generate electricity from marine renewables. Some definitions have been updated, and the rules for the refined coal credit have been modified.
- The 30% investment tax credit for solar energy property and qualified fuel cell property, and the 10% investment tax credit for microturbines are extended through 2016. A new 10% tax credit applies to combined heat and power systems and geothermal heat pumps. A new 30% tax credit applies to small wind energy property. Public utility property also becomes eligible for the credit. The \$500 per half kilowatt of capacity cap for qualified fuel cells is increased to \$1,500 per half kilowatt of capacity. These credits can be used to offset the alternative minimum tax (AMT) as well as the regular tax.
- The credit available to contractors for the construction or manufacture of new energy-efficient homes is extended through December 31, 2009.
- The credit allowed for the manufacture of energy-efficient dishwashers, clothes washers, and refrigerators is extended through 2010. Additionally, the standards that the manufactured appliances must meet for application of the credit have been modified.
- The advanced coal project investment credit is increased to 30%, and the IRS is authorized to allocate an additional \$1.25 billion in credits to qualified projects that separate and sequester at least 65% of total carbon dioxide emissions.
- The coal gasification project credit is increased to 30%, and the IRS is authorized to allocate an additional \$250 million in credits to qualified projects that separate and sequester at least 75% of total carbon dioxide emissions.
- A tax credit of \$10 per metric ton is provided for carbon dioxide that is captured and transported from an industrial source for use in enhanced oil recovery. The credit is \$20 per metric ton in the case of carbon dioxide captured and transported from an industrial source for permanent storage in a geologic formation.
- The deduction for costs associated with energy-efficient commercial building property is extended for five years.
- A 50% additional depreciation allowance can be claimed on the adjusted basis of qualified reuse and recycling property acquired and placed in service after August 31, 2008.
- A 10-year recovery period and 150% declining balance method is provided for any qualified smart electric meter and any qualified smart electric grid system.

#### **Heartland, Hurricane Ike, and other disaster relief**

- A special five-year carryback period for net operating losses (NOLs) is created for qualified disaster losses.
- A business can elect to expense qualified disaster expenses after 2007, rather than capitalizing them.
- An additional 50% depreciation allowance can be claimed for real and personal business property that is purchased to rehabilitate or replace similar property that is destroyed or condemned as a result of a presidentially-declared disaster. The provision applies to property placed in service after December 31, 2007, with respect to disasters declared after that date and occurring before January 1, 2010.

- The maximum IRC Section 179 expense allowance and investment limitation amount are both increased (by \$100,000 and \$600,000, respectively) for qualified IRC Section 179 disaster assistance property placed in service after 2007, with respect to disasters declared after 2007 and occurring before January 1, 2010.
- The hiring period for eligibility for the Work Opportunity Tax Credit applicable to Hurricane Katrina employees is extended through August 25, 2009.
- The increased percentages of 13% and 26% for claiming the rehabilitation credit on qualified rehabilitated buildings and certified historic structures in the Gulf Opportunity (GO) Zone is extended through December 31, 2009.
- The tax-exempt bond rules and the increase in the low-income housing cap currently available in the Gulf Opportunity (GO) Zone are extended to areas hit by Hurricane Ike in 2008.
- Many of the tax benefits extended to the victims of Hurricanes Katrina, Wilma, and Rita are modified and available for victims of the severe storms, tornados, and flooding that hit the "Midwestern Disaster Area" between May 20, 2008 and August 1, 2008. The "Midwestern Disaster Area" includes areas in Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, and Wisconsin.

### **The bad news for businesses**

The Act also contains some bad tax news for businesses:

- The limits on the IRC Section 199 domestic production activities deduction for oil-related production is decreased to 3% for tax years beginning after 2009 (currently, the deduction is 6% for various industries).
- The 6.2% FUTA tax rate (which includes a temporary 0.2% surcharge) is extended through 2009 (previously scheduled to be reduced to 6%). This payroll tax is paid for by the employer, not through employee deductions. The FUTA tax is assessed only on the first \$7,000 of wages or salary paid to an employee for a year.

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