

How businesses are affected by tax changes in the Emergency Economic Stabilization Act of 2008

Dear Reader:

As I'm sure you're aware, on Oct. 3, 2008, the President signed into law the Emergency Economic Stabilization Act of 2008 (P.L. 110-343). Although virtually all of the press coverage of this law has concentrated on its hotly debated \$700 billion financial industry bailout plan, the legislation also contains scores of mostly beneficial tax changes for business.

Most of the new law's tax changes for business fall into one of these categories: tax changes that apply to a wide range of businesses; special tax breaks for disaster areas; and tax changes for specialized industries (there are numerous tax breaks relating to alternative energy production, but they are highly specialized and so not covered in this letter).

Tax breaks that apply to a wide range of businesses. The major news for business is that the research tax credit has been extended through 2009. The new law also makes a number of important changes in the way the research credit is calculated, effective for tax years beginning after 2008.

Other, widely applicable tax breaks for business include the following:

- The FUTA (Federal Unemployment Tax Act) tax rate had been scheduled to drop to 6% after 2008, but under the new law it will remain at 6.2% through 2009 and will drop to 6% for 2010 and later.
- For property placed in service after Aug. 31, 2008, the new law permits 50% first year bonus depreciation for qualified reuse and recycling property. In general, this is machinery and equipment (not including buildings or real estate), along with associated property, including software necessary to operate the equipment, which is used exclusively to collect, distribute, or recycle qualified reuse and recyclable materials. This break is *not* limited to businesses in the recycling industry.
- A two year extension through 2009 of enhanced charitable contribution deduction rules for gifts of certain types of food inventory, and corporate gifts of book inventory or computer equipment to schools.
- A two year extension through 2009 for the tax break that allows expensing of qualified environmental remediation expenses, namely cleanup of hazardous substances (including petroleum products) at qualified contaminated sites.
- The deduction for energy efficient commercial building property has been extended so that it applies through 2013.
- For purchases after 2008 and before 2015, taxpayers will be able to claim a tax credit for electric drive motor vehicles.
- After 2008, companies will be able to give employees who commute by bicycle a \$20 per month tax-free reimbursement for reasonable bicycle related expenses.

Tax breaks for businesses in disaster areas. The new law creates a new set of tax relief provisions for businesses hit by events such as storms, hurricanes, and floods anywhere in the U.S. that are declared to be federal disasters after 2007 and before 2010. These are of great importance to businesses because many federal disasters have already been declared in numerous states in 2008 and many others are likely to occur before the tax breaks sunset.

Here's a summary of the new relief provisions:

Qualified disaster expenses, such as cleanup (removal of debris, demolition of structures) and repairs, may be expensed.

A 5-year net operating loss (NOL) carryback applies instead of the usual 2-year carryback.

For qualified Section 179 disaster assistance property placed in service after 2007, with respect to disasters declared after 2007, the maximum expense amount that can otherwise be deducted under Section 179 is increased by \$100,000 and the beginning-of-phase-out amount otherwise in effect for the tax year is increased by \$600,000.

A 50% first-year bonus depreciation allowance applies to most types of machinery and equipment bought to rehabilitate or replace damaged property. A number of conditions must be met, and certain types of property are excluded.

The new law also includes a number of specialized provisions for victims of a Midwest disaster area (counties in ten Midwest states declared to be a major disaster after May 19, 2008, and before Aug. 1, 2008).

Tax breaks for specialized industries. Tax breaks in the new law mainly benefiting specific industries include the following:

Financial institutions—may treat post-2007 losses on Fannie Mae and Freddie Mac preferred stock as ordinary losses instead of capital losses; for tax years ending after Oct. 2, 2008, the \$1 million deduction cap on compensation paid to certain top officers is reduced to \$500,000 if the company participates in the federal government's "troubled assets relief program" (TARP); and the "golden parachute" deduction restrictions apply to severance payments to certain top executives of companies participating in TARP. Finally, for securities acquired after 2010 (later dates apply to some specialized securities), brokers will have to report the customer's adjusted basis in the security sold, and whether any gain or loss is short- or long-term.

Farming—there's a 5-year quick depreciation writeoff for most farm machinery and equipment placed in service after 2008 and before 2010.

Real estate, retailers, and restaurants—the 15-year depreciation writeoff for qualifying leasehold improvements and qualifying restaurant property has been extended through 2009. What's more, for property placed in service after 2008 and before 2010, (a) buildings as well as building improvements may qualify for the quick writeoff for restaurant property; and (b) the 15-year depreciation writeoff also applies to qualifying retail improvement property.

Construction companies—the \$2,000 tax credit for building energy efficient homes (\$1 million for manufactured homes) has been extended to apply to homes acquired through 2009. Note that construction companies also may benefit indirectly from the extended and enhanced tax breaks for real estate, restaurants, and retailers.

Film and TV—the option to expense up to \$15 million of qualifying film and TV productions (\$20 million if produced in certain low-income areas) is extended so that it applies for productions beginning before 2010; also, the qualified domestic production activities deduction has been liberalized in several ways for this industry, effective for tax years beginning after 2007.

Motorsports racing—the short 7-year writeoff for land improvements and support facilities at motorsports entertainment complexes has been extended to apply for property placed in service before 2010.

Oil and gas—there are three significant changes: (1) the otherwise available domestic production activities deduction for companies that have oil-related

income will be reduced after 2009 (a complex reduction formula will apply); (2) the rule providing that percentage depletion from marginal oil and gas wells isn't limited to 100% of income from these properties is extended for tax years beginning in 2009; and (3) the rules relating to foreign tax credits for the oil and gas industry have been revised for tax years beginning after 2008.

Mining—the tax credit for mine rescue training and the election to expense 50% of the cost of certain mine safety equipment both have been extended so that they apply through 2009.

Please keep in mind that I've described only the highlights of how the new law affects businesses. If you would like more details, please call me at your convenience.