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Emergency Economic Stabilization Act of 2008: Business Changes

On October 3, 2008, Congress passed, and the President signed, the Emergency Economic Stabilization Act of 2008 (EESA), a "bailout bill" or "rescue plan" aimed at stabilizing the nation’s current economic problems. While attention has focused on the billions of dollars provided by EESA to help shore up America's financial institutions, EESA also contains significant tax changes for businesses not directly related to the bailout. Here is a brief summary of key provisions.

Extensions of other business tax credits

- *The Indian employment tax credit is extended through December 31, 2009.*
- *The railroad track maintenance credit is extended through 2009, and for tax years after 2007 it can be used to offset the AMT.*
- *The mine rescue training team credit is extended through December 31, 2009.*

Business tax credits

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 its base amount for that year--is extended through December 31, 2009.

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 Further, the alternative incremental research credit is repealed for tax years beginning after December 31, 2008.

New markets tax credit

Pre-EESA law provided 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.

Business deductions

Expenses

- The election to expense certain environmental remediation costs in the year paid is extended for expenditures paid or incurred in 2008 and 2009.
- Rules allowing a taxpayer to expense costs related to film and television productions are modified, and extended through 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. 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 rule limiting percentage depletion deductions to 100% of taxable income, for oil and gas produced from marginal properties, is extended to tax years beginning in 2009.
- The IRC Section 179E election to expense 50% of the cost of qualified advanced mine safety equipment is extended to property placed in service through 2009.

Depreciation

- The 15-year recovery period for qualified leasehold improvement property and qualified restaurant improvements is extended through 2009, and the definition of qualified restaurant improvements is expanded. The 15-year recovery period is also extended to qualified retail improvement property.
- 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 cost recovery period for motorsports entertainment complexes is extended through 2009.
- Accelerated recovery periods that apply to qualified Indian reservation property have been extended through 2009.

See disclaimer on final page

Charitable contributions

- The special charitable deduction rules available to corporations for qualified computer contributions is extended for contributions made during any tax year beginning on or before December 31, 2009.
- The enhanced deduction rules for charitable donations of qualifying food inventory are extended for contributions made on or before December 31, 2009. The percentage limitation that applies to non-corporate taxpayers (generally, contributions by non-corporate taxpayers may not exceed 10% of net income) is temporarily eliminated for qualified food contributions by certain farmers and ranchers, but only through the end of 2008.
- The enhanced deduction for corporate donations of qualified book inventory to public schools is extended for contributions made on or before December 31, 2009.
- A temporary pre-EESA rule provides that when an S corporation makes a charitable contribution of property, each shareholder reduces the basis in his or her S corporation stock by an amount equal to the shareholder's pro-rata share of the adjusted basis of the contributed property. This rule is extended to taxable years beginning before January 1, 2010.

Unemployment insurance tax rates

The 6.2% FUTA tax rate (previously scheduled to be reduced to 6%) is extended through 2009. 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.

Modification of other business tax incentives

- *Tax incentives that apply to the District of Columbia empowerment zone are extended to 2008 and 2009.*
- *For purposes of calculating the domestic production activities deduction, special rules allow Puerto Rico to be considered part of the United States. These rules are extended to apply to tax years beginning before January 1, 2010.*
- *Compensation from nonqualified deferred compensation plans maintained by nonqualified entities (generally foreign corporations) will generally be taxable when it is not subject to substantial risk of forfeiture. This provision is effective for compensation attributable to services after December 31, 2008.*

Other provisions included

- Energy production and conservation incentives including the modification and extension of existing energy-related credits
- Disaster relief provisions specific to the designated Midwestern disaster area, as well as general disaster relief provisions applicable to future federally declared disaster areas
- New broker rules for reporting customers' basis in securities transactions
- Existing mental health parity rules made permanent and coverage requirements tightened for group health plans
- Addition of a qualified bicycle commuting reimbursement benefit as a qualified transportation fringe benefit

Consult your financial or tax professional for more information on these and other provisions of the Emergency Economic Stabilization Act of 2008.

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