

Federal Tax Weekly

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Economic Stimulus Act Of 2008 Now Law; \$107 Billion In Cash Rebates And \$45 Billion In Business Tax Relief

◆ *Economic Stimulus Act of 2008 (H.R. 5140)*

Treasury and the IRS are preparing to issue nearly 130 million rebates to taxpayers as part of the just-passed *Economic Stimulus Act of 2008 (H.R. 5140)*. The Senate passed the \$170 billion stimulus package, which also includes child payments, business incentives and foreclosure help, on February 7. The House approved it quickly the same evening and President Bush is set to sign *H.R. 5140* on February 13.

Rebate checks, according to Treasury and the IRS, will be ready by early to mid-May. It is anticipated that the government will rely heavily on direct deposit to distribute the bulk of the rebates by the end of August. Most individuals who receive a rebate will get \$600 (\$1,200 if they file jointly). Eligible taxpayers will also receive one-time payments of \$300 per qualifying child.

■ **CCH Take Away.** Lawmakers were under incredible pressure to pass a stimulus bill quickly and in the rush, some business incentives were neglected. The final bill surprisingly leaves out one of the most valuable business tax breaks in troubled economic times: extending the carryback period for net operating losses (NOLs). Nevertheless, bonus depreciation, which did pass, will cost the government \$44 billion in 2008. That's nearly half of what will be given away in rebate checks, the provision receiving most of the attention.

■ **Comment.** "I want to thank the members of Congress for passing a good piece of legislation, which I will sign into law next week. This bill reflects our principles. It is robust, it is pro-growth, it stimulates business investment and it puts money into the hands of American consumers," President Bush said immediately after Congress passed *H.R. 5140*.

Rebates

H.R. 5140 creates a new refundable credit against tax (the "recovery rebate credit"). It equals the greater of:

- (1) Net income tax liability, not to exceed \$600 (\$1,200 for joint filers), or
- (2) \$300 (\$600 for joint filers) if the individual has either at least \$3,000 of any combination of earned income, Social Security benefits and certain VA benefits (including survivors of disabled veterans), or net income tax liability of at least \$1 and gross income greater than the sum of the applicable basic standard deduction amount and one personal exemption (two if a joint return).

■ **Comment.** Technically, the rebates are credits against 2008 tax, which are payable in the form of an advance payment.

As originally passed by the House, the economic stimulus bill provided rebates only for individuals who pay federal income taxes. However, the final bill treats

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Social Security and VA benefits as qualifying income for purposes of the rebates. Generally, most individuals with earned income and federal income tax liability will receive one-time \$600 rebates and most married couples will receive one-time \$1,200 rebates. Lower-income and fixed-income taxpayers will generally receive \$300 payments (\$600 for married couples filing jointly). Rebates begin to phase-out when a single individual's adjusted gross income (AGI) reaches \$75,000 and phase-out completely at \$87,000; joint filers begin the phase-out of their basic \$1,200 rebate at \$150,000 and get nothing after the \$174,000 AGI mark.

■ **Comment.** "There were many, many calls to simply accept the original economic stimulus agreement and pass it without changes. But I had more than 20 million good reasons to stick to my guns on improving it. The 20 million seniors and 250,000 disabled veterans we added to this economic stimulus plan are part of the American family, and they will contribute these funds to the American economy," Sen. Max Baucus, D-Montana, chair of the Senate Finance Committee, said.

Treasury and the IRS are basing the rebates on individuals' 2007 tax returns. Taxpayers will not receive a rebate until they file their 2007 returns.

■ **Comment.** The deadline for filing on extension this year is October 15, 2008. Individuals on extension will not receive their rebates until they file. Individuals who did not expect to file a 2007 return may want to file one to secure a rebate. For example, some military person-

nel who were in a combat zone last year may not file a 2007 return. A Treasury spokesperson told CCH that the government will "conduct a great deal of outreach in the weeks and months to come to ensure that those who don't normally file, but have to file to get the payment, know what they need to do."

■ **Comment.** Taxpayers cannot claim the rebates as offsets to their 2007 tax liabilities. Similarly, taxpayers cannot treat the rebates as payments of estimated tax. In fact, in 2008, taxpayers cannot even claim the rebate; the IRS for the most part will compute the rebate and distribute them without taxpayer input or application. Only in 2009 can taxpayers claim the balance of any credit they believe they should have received but did not, based on a 2008 return, Social Security, or VA information.

■ **Comment.** Senators Charles Grassley, R-Iowa, and Charles Schumer, D-N.Y., have warned the refund anticipation loan (RAL) industry not to offer RALs for the rebates. "We are determined that members of your industries not take any steps to publicize or otherwise encourage working families, veterans, or seniors to take a loan or other credit arrangement based on the rebate checks approved by Congress," they said on February 11.

Distribution

The rebates will be paid to qualifying taxpayers separately from any 2007 tax refunds. Treasury and the IRS are expected to use a distribution system similar to the one utilized in 2001, which was based on the last two digits of a taxpayer's Social Security number. Rebate checks were

mailed over a three-month period starting in July 2001.

Child payments

Along with rebates, Congress included one-time child payments in the new law. Taxpayers who are eligible for rebates in any amount may also receive an additional \$300 per child if they have a qualifying child. There is no limit on the number of child payments but like the basic rebate, it is subject to the \$75,000/\$150,000 AGI phaseout.

■ **Comment.** A qualifying child must not have attained the age of 17 as of the close of the calendar year in which the taxpayer's tax year begins, must be the taxpayer's qualifying child for purposes of the dependency exemption, and must be a son, daughter, stepson, stepdaughter, or descendant of such child, or a brother, sister, stepbrother, stepsister, or a descendant of such relative.

Business incentives

H.R. 5140 includes two familiar business tax incentives: enhanced Code Sec. 179 expensing and bonus depreciation.

■ **Comment.** For a time, it seemed that Congress would make taxpayers elect to use only one of the incentives. The final bill does not include this prohibition.

Expensing. Small business expensing under Code Sec. 179 increases from \$128,000 to \$250,000 for 2008. The ceiling for 2008 jumps from \$510,000 to \$800,000. Existing rules for what types of property qualify for expensing, including computer software, are unchanged.

■ **Planning Tip.** The \$250,000 and \$800,000 amounts apply to tax years beginning in 2008. If a business is not a calendar year business, it can only take advantage of the higher amounts when its fiscal year starts.

Bonus depreciation. *H.R. 5140* also brings back another familiar business incentive, bonus depreciation, but at a high 50-percent level. Under *H.R. 5140*, qualifying property is property that is (1) eligible for the modified accelerated

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Reference Key

FED references are to *Standard Federal Tax Reporter*
 USTC references are to *U.S. Tax Cases*
 CCH Dec references are to *Tax Court Reports*
 TRC references are to *Tax Research Consultant*

IRS Releases 2008 Auto And Truck Maximum FMVs For Cents-Per-Mile And Fleet-Average Valuation

◆ *Rev. Proc. 2008-13*

The IRS has released the maximum fair market values (FMVs) for business automobiles, trucks and vans first placed in service in 2008 and for which the vehicle cents-per-mile rule and the fleet-average valuation rule may apply. The 2008 values for both valuation rules are slightly lower than the 2007 values.

■ **CCH Take Away.** An employer must treat an employee's use of an employer-provided automobile as a fringe benefit and value the automobile in accordance with one of several methods. The new dollar caps in Rev. Proc. 2008-13 do not govern the maximum value of all business automobiles for 2008. They apply only to employer-provided automobiles first purchased for business use in calendar year 2008, and for which (1) the vehicle cents-per-mile valuation rule of Reg. §1.61-21(e) may apply, and (2) the fleet-average valuation annual lease value (AVL) fringe benefit valuation rule under Reg. §1.61-21(d) may apply. Vehicles purchased in previous years must use the limits designated by the IRS for those

years. The amounts are adjusted for inflation each year.

■ **Comment.** The *Economic Stimulus Act of 2008* generously increased the Code Sec. 280F limitations on "luxury" auto depreciation by \$8,000 for its new 50-percent bonus depreciation, applicable to qualifying property placed in service in 2008.

Cents-per-mile valuation

One of the permitted methods of valuation an employer can use to value the personal use of an employer-provided automobile is the mileage allowance rate, which for 2008 is 50.5 cents per mile. The maximum FMV for use of the vehicle cents-per-mile valuation rule in 2008, as announced in Rev. Proc. 2008-13, were:

- \$15,400* for a passenger automobile, and
- \$16,700* for a truck or van, which includes automobiles built on a truck chassis, such as minivans and sport-utility vehicles (SUVs) built on a truck chassis.

■ **Caution.** CCH has learned from IRS sources that the IRS will be issuing an official correction to these valuation figures. The cents-per-mile valuation figure for 2008 for cars is \$15,000 and the truck

and van figure is \$15,900. CCH has confirmed through its independent calculations that those are the correct figures.

The \$15,000/\$15,900 FMVs are slightly lower than 2007 FMVs. In 2007, the maximum FMVs for automobiles were \$15,100 and \$16,00 for trucks and vans.

Fleet-average valuation

An employer who maintains a fleet of at least 20 automobiles can value the FMV of each automobile as equal to the average value of the entire fleet. The fleet-average value is the average of the FMV of all automobiles in the fleet. The maximum FMV for use of the fleet-average valuation rule in 2008 is:

- \$19,900 for a passenger automobile, and
- \$20,800 for a truck or van.

These values are also a slight decrease over last year's maximum FMVs. In 2007, the FMV for automobiles was \$20,100, and \$21,100 for trucks and vans.

The fleet-valuation rule cannot be used if the value of any automobile in the fleet exceeds these FMVs. Additionally, the fleet-valuation rule cannot be used if the number in the fleet declines to fewer than 20 for more than one-half of the days in any year.

References: FED ¶46,295; TRC COMPEN: 33,152.05, 33,152.10.

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cost recovery system (MACRS) with a depreciation period of 20 years or less; (2) water utility property; (3) computer software (off-the-shelf); or (4) qualified leasehold property.

■ **Comment.** The Senate version of *H.R. 5140* would have provided 50 percent bonus depreciation but 25 percent in the first year and 25 percent in the second year. *H.R. 5140* provides 50 percent bonus depreciation upfront.

The property generally must be purchased and placed in service during 2008.

Original use of the property must begin with the taxpayer and must occur after December 31, 2007 and before January 1, 2009. However, the placed in service date is extended one year, through December 31, 2009, for property with a recovery period of 10 years or longer, for transportation property (tangible personal property used to transport people or property), and for certain aircraft.

■ **Comment.** *H.R. 5140* also raises the Code Sec. 280F limitations on "luxury" auto depreciation by \$8,000 if bonus depreciation is claimed for a qualifying vehicle, creating a first year cap of \$11,060 (\$11,260 for vans and trucks).

Mortgage loans

H.R. 5140 also includes some provisions to ease the credit crunch in the housing sector. The new law raises the federal loan guarantee on so-called "jumbo mortgages." These super-size loans are not uncommon in areas where housing costs have skyrocketed in recent years. While technically a non-tax provision, raising the federal guarantee limits helps homeowners refinance or otherwise take advantage of mortgage workout situations in combination with the principal residence exclusion for debt forgiveness taxable income under the *Mortgage Forgiveness Debt Relief Act of 2007*, passed less than two months ago.

IRS Issues Rules For Making Election To Treat Musical Compositions As Capital Assets

◆ *T.D. 9379; NPRM REG-153589-06*

The IRS has issued temporary and proposed regs that lay down the procedure that composers must now follow to elect to treat a musical composition or copyright in a musical composition as a capital asset when it is sold. The baseline requirement for making this election is that the composition must have been created by the taxpayer's personal efforts or have a basis determined by reference to the composer's basis (for example, by gift).

■ **CCH Take Away.** As a consequence of the election, gain or loss from the sale or exchange is treated as capital gain or loss. The maximum tax on an individual's ordinary income is 35 percent, while the maximum capital gains tax is 15 percent. By reducing the financial pain of selling a musical work, Congress is encouraging composers to more freely sell their compositions. The need for an election for a choice that almost always gravitates to the lower rate was imposed to control misuse of

the tax benefit, to underscore the temporary nature of capital gain treatment (that since was made permanent) and to separate capital asset treatment for gain purposes from capital asset treatment for charitable contribution purposes.

■ **Caution.** While increasing the tax benefits to a composer of a sale, the tax provision did not change the treatment of a charitable donation. While most donors can generally deduct the fair market value of a donation, contributors of ordinary income property such as artistic works are usually limited to their basis in the property. A composer's charitable deduction for a musical work continues to be limited to his or her basis in the composition or copyright.

Capital assets

Code Sec. 1221(a) treats all property as a capital asset unless excluded. Code Sec. 1221(a)(1) excludes inventory and

other property held primarily for sale to customers in the ordinary course of a trade or business. Code Sec. 1221(a)(3) excludes from capital asset treatment copyrights; literary, musical or artistic compositions; letters or memoranda; and similar property created by the taxpayer's personal efforts.

The *Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA)* added Code Sec. 1221(b)(3) to the Tax Code, giving composers an election to treat a musical composition or copyright in a musical work as a capital asset, rather than as ordinary income property. The TIPRA provision would have expired December 31, 2010, but the *Tax Relief and Health Care Act of 2006* made the provision permanent.

Election requirements

The election is available for sales and exchanges in tax years beginning after May 17, 2006, the date of enactment of TIPRA. The just-issued temporary regs have the same effective date.

The election must be made separately for each musical composition or copyright sold or exchanged during the year. The election must be made before the due date of the return (including extensions) for the year of the sale. The election is made on Schedule D, Capital Gains and Losses, by treating the sale or exchange as the sale or exchange of a capital asset, in accordance with the form and its instructions.

Revocation

A taxpayer may revoke the election automatically within six months of the due date of the taxpayer's return, excluding extensions, provided the taxpayer timely filed the income tax return and files an amended income tax return within the six-month period that treats the sale or exchange as a sale or exchange of property that is not a capital asset.

Alternatively, the taxpayer may request the IRS's consent for the revocation by requesting a letter ruling under Rev. Proc. 2007-1 or other appropriate revenue procedure.

References: FED ¶47,016, 49,788;
TRC SALES: 15,108.

IRS Highlights Mandatory Form 990-N (e-Postcard) Requirements For Small Exempt Organizations

The IRS has posted on its website the instructions for a small tax-exempt organization to file electronic notification of its existence on Form 990-N (e-Postcard). The filing requirement applies to organizations whose annual gross receipts are normally \$25,000 or less.

■ **Comment.** This is a new requirement for organizations that do not have to file a Form 990 return. Form 990-N is due four months and 15 days after the close of the organization's tax year. The first Forms 990-N are due in 2008 for tax years ending on or after December 31, 2007. While there are no penalties for late filing, an organization that fails to file Form 990-N for three consecutive years automatically loses its tax exemption.

The IRS partnered with the Urban Institute for organizations to file at <http://epostcard.form990.org>. The IRS website will automatically take filers to this website. Organizations must file electronically; there is no paper form.

Organizations must provide the following information on Form 990-N: their employer identification number, the tax year, legal name and mailing address, any other name used by the organization, name and address of a principal officer, website address if used, confirmation that the annual gross receipts are normally \$25,000 or less, and (if applicable) a statement that the organization has terminated or is terminating.

Form 990-N (e-Postcard), FED ¶(to be reported); TRC EXEMPT: 12,252.

Election To Reduce Research Credit Is Valid If Noted On Return Even If Amount Not Yet Calculated

◆ *AM 2008-002*

The IRS Chief Counsel has concluded that a taxpayer can make a valid election under Code Sec. 280C(c)(3) to reduce its Code Sec. 41 research credit merely by making specific notations on its return, even if it does not provide the specific amount of the reduced credit with the return. On the other hand, a taxpayer will not be considered to have made a valid election by noting on its return or on an attached statement that it intends to reserve its election to take the reduced credit. Nor will protective elections be allowed.

■ **Comment.** The IRS does not like to give taxpayers the benefit of hindsight when they are making elections. The IRS was satisfied that taxpayers in the first situation would not be able to reverse themselves based on subsequent events, while it was clear that taxpayers in the second situation had left open the treatment of their research credit.

Research credit

Taxpayers can take a credit under Code Sec. 41 for increased research spending. Under Code Sec. 280C(c)(1), taxpayers cannot deduct basic or qualified research expenses

that are equal to the amount of the credit. Under Code Sec. 280C(c)(2), taxpayers similarly cannot capitalize expenses that are equal to the credit. The amount of the credit is reported on Form 6765, Credit for Increasing Research Activities.

Reduced credit

Under Code Sec. 280C(c)(3), a taxpayer can elect to take a reduced research credit under Code Sec. 41. If the election is made, the reduced credit, determined under Code Sec. 280C(c)(3)(B), equals the amount of the regular credit, minus the product of the regular credit times the maximum corporate tax rate.

■ **Comment.** Taking the reduced credit allows the taxpayer to deduct or capitalize amounts not otherwise allowed by Code Sections 280C(c)(1) and (2).

Election

The election to take the reduced credit must be made on the original tax return for the year. The return must be filed timely (including extensions). The election is irrevocable. Reg. §1.280C-4 requires that the taxpayer claim the reduced credit amount determined under Code Sec. 280C(c)(3)(B).

Valid election

The IRS concluded that a taxpayer has made a valid reduced credit election if it clearly indicates on a timely filed original return that it intends to claim the reduced credit. This intent may be indicated by noting "section 280C" next to the line on which the reduced credit would be claimed on a Form 6765 attached to the return, or by claiming a nominal credit (e.g. \$1) along with the "section 280C" notation on Form 6765.

The taxpayer may not take an inconsistent position on a later return. It must calculate the reduced credit and report the amount on an amended return or claim for refund.

Invalid election

A taxpayer has not made a valid reduced credit election where it attached a statement to Form 1120 that reserved the right to elect the reduced credit on a future amended return. The IRS distinguished this situation from two cases in which the Tax Court had accepted contingent elections (under other Code sections) because the contingencies were not controlled by the taxpayers. The taxpayer is clearly entitled to claim the reduced credit; there must be no contingency.

References: FED ¶(to be reported); TRC BUSEXP: 54,176.

Tax Court Jurisdiction Includes Review Of CDP On Frivolous Return Penalties; Summary Judgment In Favor Of IRS Rejected

◆ *Callahan, 130 TC No. 3*

The Tax Court found that it has jurisdiction to review IRS collection due process (CDP) determinations upholding the imposition of Code Sec. 6702 frivolous return penalties. It concluded that the *Pension Protection Act of 2006 (PPA)* amendment of Code Sec. 6330(d)(1) expanded the Tax Court's jurisdiction to include review of CDP determinations regardless of the underlying tax liability involved. In exercising that jurisdiction, the court went on to rule that the taxpayer's position was not so clearly frivolous as to warrant summary judgment in the IRS's favor.

■ **CCH Take Away.** Testing the limits of the Tax Court's developing jurisdiction over CDP determinations has almost reached the 10-year mark following 1998 enabling legislation. The *PPA* revision examined in the most recent case is the latest statutory tweak that needed clarification. For frivolous positions, this clarification comes at a time when the stakes recently have gotten higher, too. The *Tax Relief and Health Care Act of 2006 (TRHCA)* amended Code Sec. 6702 to increase the frivolous return penalty from \$500 to \$5,000.

Background

Taxpayers, a married couple, jointly filed Form 1040 and Form 843, Claim for Refund and Request for Abatement, for the 2003 tax year. The taxpayers sought a refund of penalties and millions of dollars in damages attributable to alleged IRS violations of law. On the margin of their Form 1040, the taxpayers commented that certain payments they made to the IRS were "illegal garnishments." The IRS assessed Code Sec. 6702 frivolous return penalties against the taxpayers for filing a frivolous tax return. The IRS issued a final notice

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IRS Explains How It Investigates Complaints Against Tax-Exempt Organizations; Highlights Two Types Of Follow-up Audits

◆ *FS-2008-13, FS-2008-14*

The IRS, with the encouragement of Congress, has been allocating considerably more resources in recent years to cracking down on abuses by tax-exempt organizations. Part of IRS's strategy in this area is to get the word out that its agents are "out there, looking." To that end, the IRS has released two fact sheets, one on how its Exempt Organizations (EO) Division investigates complaints from the general public about abuses of tax-exempt status and the other on how deeply it will investigate once it opens up an examination of a particular organization.

Reviewing complaints

According to IRS, complaints about tax-exempt organizations are sent for analysis in the Exempt Organizations Division's classifications office in Dallas. Unless made anonymously, the agency sends an acknowledgement letter to non-IRS individuals making complaints. However, the source will not receive acknowledgement of whether the agency is beginning an examination or the results following any examination of the exempt organization. Code Sec. 6103 prohibits IRS officers, employees, and agents from sharing a return or return information with third parties.

The IRS will review the complaint to confirm the identity of the organization

and create a database file. An experienced revenue agent in the Exempt Organizations Division then reviews the complaint under a "reasonable belief" standard. If the facts provide a "reasonable belief" that the allegations may be true, the case will proceed for further review. The agent may decide that:

- **No further action is needed.** If this is so, the agent closes the file;
- **The complaint relates to future actions.** The agent makes a note in the file and schedules a future date to re-evaluate the file;
- **The complaint needs review from a committee of Exempt Organizations managers and agents.** If so, the committee will review the file at its monthly meeting and decide whether to proceed; based on the "reasonable belief" standard; or
- **The complaint warrants examination.** The agent will document the decision and then place the record into the files selected for examination. It is given to a field group for assignment to a revenue agent, who will then contact the organization and schedule an appointment for examination.

Examinations

The IRS also explained its examination process for tax-exempt organizations. The

agency outlined full-fledged examinations and compliance checks.

Full examinations. The IRS will complete a full examination of a tax-exempt organization by visiting the organization's place of business, requesting documents, and discussing proposed adjustments to the organization's returns, if any are required. For large complex organizations, often requiring coordination between different divisions of the IRS or other governmental agencies, the IRS will use the "EO Team Examination Program." Audits performed by individual agents are conducted under the "EO General Program."

Compliance checks. When the IRS simply wants to ensure that an organization is adhering to recordkeeping and information reporting requirements or that its activities are consistent with its claimed tax-exempt purpose, the agency will not engage in a full audit of the organization. Instead, it will telephone or visit the organization to check specific items on a return. If officers and representatives of an organization do not want to participate in a compliance check, according to the IRS, they may refuse to do so without penalty. However, the agency warns exempt organizations that it always has the option of opening a full examination if warranted.

References: FED ¶¶46,291, 46,292; TRC EXEMPT: 12,100.

Tax Court

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of intent to levy and the taxpayers requested a CDP hearing.

Tax Court jurisdiction

The Tax Court ruled that it had jurisdiction to review the IRS's CDP determination regarding the imposition of frivolous return penalties. The *PPA* expanded the Tax Court's jurisdiction under Code Sec. 6330(d)(1) to review CDP determinations regardless of the type of underlying tax liability involved. Prior to the *PPA*, the language of Code Sec. 6330 prohibited the Tax Court from reviewing a notice

of determination when the underlying liability consisted solely of Code Sec. 6702 penalties.

The taxpayers were also entitled to challenge the IRS's imposition of Code Sec. 6702 frivolous return penalties before the Tax Court because they did not receive a statutory notice of deficiency regarding the underlying liability as required under Code Sec. 6330(c)(2)(B).

- **Comment.** The taxpayers did not receive a notice of deficiency because statutory deficiency procedures under Code Sec. 6211 through 6216 do not apply to Code Sec. 6702 frivolous return penalties.

Return position

The Tax Court determined that although the positions taken by the taxpayers were "confusing and unorthodox," the IRS did not show as a matter of law that their arguments were substantially similar to positions held to be frivolous or reflected a desire to delay or impede the administration of federal income tax laws. The IRS's arguments did not substantially match any of the positions compiled in IRS's list of 40 frivolous positions set out in Notice 2007-30. The court found that the record had to be further developed before it could make a determination.

References: CCH Dec. 57,321; TRC IRS: 51,056.25.

Tax Briefs

Internal Revenue Service

The IRS announced that a total of 312 projects for state and local governmental borrowers and for electrical cooperative borrowers will receive volume cap allocations of authority to issue tax credit bonds under the clean renewable energy bond (CREB) program.

*IR-2008-16, FED ¶46,296;
TRC BUSEXP: 54,558.15.*

The IRS has updated Tables 1 and 2 in Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, and Publication 901, U.S. Tax Treaties, to reflect the newly ratified tax treaty with Belgium and new protocols for the income tax treaties with Denmark, Finland and Germany.

*Announcement 2008-8, FED ¶46,294;
TRC INTL: 18,250.*

Pension Plans

For pension plan years beginning in February 2008, the IRS has released the corporate bond weighted average interest rate, the permissible range of interest rates used to calculate current plan liability and to determine the required contribution under Code Sec. 412(l) for plan years through 2007, and the current corporate bond yield curve and related segment rates for the purpose of establishing a plan's funding target under Code Sec. 430(h)(2).

*Notice 2008-24, FED ¶46,288;
TRC RETIRE: 30,556.*

Jurisdiction

A taxpayer's suit for refund of a trust fund recovery penalty assessed against him was untimely filed and dismissed for lack of subject matter jurisdiction. The taxpayer filed his complaint more than two years after the government sent him certified letters rejecting his refund claim and he was not entitled to equitable tolling.

*Hylar, DC Calif., 2008-1 USTC ¶50,163;
TRC LITIG: 9,058.*

Jurisdiction was lacking over individuals' complaint alleging misconduct by the IRS and seeking damages and a refund. The taxpayers did not allege that they filed a claim for refund or paid the full tax due prior to filing suit and they alleged no facts supporting their claim that IRS employees acted recklessly, intentionally or negligently in violating any provisions of the Code.

*Stephens, DC D.C., 2008-1 USTC ¶50,170;
TRC IRS: 45,114.*

Tax Crimes

An individual was properly convicted and sentenced for conspiracy to defraud the government and for willfully failing to file federal income tax returns. The individual worked for a company that filed multiple fraudulent returns and claimed a huge amount in refunds on behalf of its clients. In addition, the individual knew that he had to file tax returns and the jury could reject his unsupported testimony regarding his good-faith defense. Finally, the individual was not prejudiced by the jury instructions.

*Lansing, CA-11, 2008-1 USTC ¶50,167;
TRC IRS: 66,152.*

The winner of a reality television show failed to establish that he was improperly convicted and sentenced for filing false tax returns. He was not prevented from testifying but, rather, was encouraged to present evidence that demonstrated his belief that he had no legal duty to pay the taxes. Further, the sentence imposed at the higher end of the sentencing guidelines range was not unreasonable.

*Hatch, CA-1, 2008-1 USTC ¶50166;
TRC IRS: 30,104.*

Self-Employment Tax

An individual's earned income from his wholly-owned insurance agency constituted net earnings from self-employment, subject to self-employment tax. Although he was retired, all of the net income he reported from the agency was attributable to premium renewals generated from his prior efforts, not by anyone else associated with the agency.

*Edwards, TC, CCH Dec. 57,327(M),
FED ¶47,941(M); TRC INDIV: 63,102.*

FOIA

The IRS was precluded from reasserting the attorney-client and work-product privileges

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IRS Issues Revised Form To Report 2007 Mortgage Debt Forgiveness

The IRS has released a revised version of Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness, for homeowners claiming tax relief for mortgage debt forgiven in 2007. The *Mortgage Forgiveness Debt Relief Act of 2007*, enacted December 20, 2007, allows taxpayers to exclude from income the debt forgiven on their principal residence if the loan balance was less than \$2 million. The IRS has begun accepting paper versions of revised Form 982, and will accept electronically filed copies beginning March 3. Homeowners need only complete lines 1e, 2 and 10b of the form.

■ **Comment.** Homeowners receive a Form 1099-C Cancellation of Debt from their lender reporting the debt forgiven and the value of any property foreclosed upon. The IRS urged borrowers to check the information on this form.

IR-2008-17 FED ¶(to be reported); TRC SALES: 12,152.25.

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to withhold documents responsive to an individual's FOIA request because these privilege claims had been litigated in a prior district court proceeding. However, the government was not precluded from raising new privilege claims on third-party return information that were not asserted in the prior proceeding. Further, the IRS could not redact from its disclosures the name of an IRS agent involved in investigating the individual's tax liability.

Stonehill, DC D.C., 2008-1 USTC ¶50,164; TRC LITIG: 3,052.

Claims Against IRS

Taxpayers were not entitled to damages under Code Sec. 7431 for the IRS's alleged unlawful disclosures of return informations through the filing of tax liens because the disclosures were made in connection with tax-collection activity.

Rhodes, III, DC D.C., 2008-1 USTC ¶50,161; Wesselman, DC D.C., 2008-1 USTC ¶50,162; TRC IRS: 45,114.

An individual's claims for damages arising from alleged wrongful tax collection were dismissed because the individual failed to exhaust his administrative remedies before filing suit. His numerous filings with the IRS did not constitute a properly filed administrative claim.

Rae, DC D.C., 2008-1 USTC ¶50,169; TRC IRS: 45,114.

Liens and Levies

A corporation's action to quiet title contesting tax liens placed on properties it had acquired was allowed, but its claims for damages, injunctive and declaratory relief were dismissed. The corporation could not claim monetary damages from the government for improper collection activity because it lacked standing to bring such an action.

Acacia Corporate Management, LLC, DC Calif., 2008-1 USTC ¶50,159; TRC IRS: 51,158.15.

Deficiencies and Penalties

The Tax Court properly sustained the IRS's collection action against an individual who

failed to file a return and did not make a valid challenge to the appropriateness of the collection action or offer alternative means of collection, but no delay penalty was imposed.

Pate, CA-5, 2008-1 USTC ¶50,168; TRC IRS: 51,056.25.

Tax-Exempt Status

A corporation primarily providing debt management programs (DMPs) for a fee did not qualify for tax-exempt status under Code Sec. 501(c)(3) because it: (1) was not organized exclusively for exempt purposes; (2) was not operated exclusively for exempt purposes; and (3) failed to operate for a substantial nonexempt purpose. The sale of the

DMPs was the primary reason for the corporation's existence and its charitable and educational purposes were minimal at best.

Solution Plus, Inc., TC, CCH Dec. 57,324(M), FED ¶47,938(M); TRC EXEMPT: 10,050.

A federal district court properly determined that an organization that provided vision care for its members did not qualify for tax-exempt status as a social welfare organization under Code Sec. 501(c)(4). The organization was primarily engaged in offering services to paying members, not promoting the common good and general welfare of the community.

Vision Service Plan, Inc., CA-9, 2008-1 USTC ¶50,160; TRC EXEMPT: 9,304.

Seven States' Paper Returns Processed By Different IRS Service Centers

For tax year 2007, the IRS has announced that taxpayers in seven states will be sending their returns to a different service center than last year. Taxpayers who received tax booklets from the IRS in the mail, will find the correct service center addresses on labels inside the booklets.

Different centers. Taxpayers should send:

- Returns from Kentucky to the IRS Service Center in Austin, Texas.
- Returns from Pennsylvania and West Virginia to the IRS Service Center in Kansas City, Missouri.
- Returns from Iowa, Kansas, Oklahoma, and Wisconsin to the IRS Service Center in Fresno, California.

IR-2008-15, FED ¶46,293; TRC FILEIND: 15,254.

IRS Reminds Taxpayers To File Past-Due Returns

In a new fact sheet, the IRS has warned taxpayers of the consequences of not filing federal tax returns. The fact sheet helps taxpayers better understand the importance of filing past-due returns.

Consequences. Not filing a federal tax return can be costly. Some items to consider include:

- A refund cannot be obtained without filing a return.
- The Earned Income Tax Credit cannot be claimed if a return is not filed.
- There is no statute of limitations for assessing and collecting tax if no federal return is filed.
- If a taxpayer owes taxes, a delay in filing may result in a "failure to file" penalty and interest charges.

FS-2008-12, FED ¶46,290; TRC FILEIND: 18, 050.

Practitioners' Corner

Client Letter: *Economic Stimulus Act of 2008*

The just-passed Economic Stimulus Act of 2008 is designed to jump-start the U.S. economy by getting more than \$100 billion in one-time rebates into taxpayers' hands, along with child payments, and also providing some important business incentives. Practitioners can use this letter to explain the rebates, child payments and business incentives to their clients and invite clients to contact them for more information.

Re: 2008 *Economic Stimulus Act*—Tax Rebates, Accelerated Depreciation, and More

Dear Client:

Almost every day, there's another news report about the slowing economy. After years of strong growth, the economy is slowing in many sectors and in many areas of the country. To help jump-start the economy, Congress recently passed the *Economic Stimulus Act of 2008*. It's designed to inject \$152 billion into the U.S. economy. More than 100 million Americans will receive rebate checks this year, along with child payments for qualifying children. Businesses can take advantage of two tax breaks: enhanced Code Sec. 179 expensing and bonus depreciation. Finally, Congress also extended some help to the troubled housing sector.

Rebates. Let's take a look at the rebates first. Originally, Congress intended to limit the rebates to individuals and married couples who paid federal taxes in 2007. However, this left out a lot of people. Ultimately, Congress extended the rebates to seniors, disabled veterans and widows of veterans.

The rebates are technically a refundable credit against tax. If you filed a 2007 income tax return, the IRS figures the rebate for you and will send it by mail or direct deposit without you having to take any further action. If you didn't file a 2007 return but still qualify for a rebate because

of your earned income level, combat pay, or receipt of Social Security benefits, the IRS has promised to announce how you will get on the rebate list.

The rebates themselves are calculated as the greater of (1) net income tax liability, not to exceed \$600 (\$1,200 for married

receive minimum rebates of \$300. If you have any questions about how the rebates are calculated, give our office a call and we'll explain it in detail. While the IRS does the math, we advise that you double check the size of the check when it arrives or is deposited.

"To help jumpstart the economy, Congress recently passed the Economic Stimulus Act of 2008. It's designed to inject \$150 billion into the U.S economy."

couples filing jointly), or (2) \$300 (\$600 for joint filers) if the individual has either (a) at least \$3,000 of any combination of earned income, Social Security benefits and certain veterans' benefits (including survivors of disabled veterans), or (b) net income tax liability of at least \$1 and gross income greater than the sum of the applicable basic standard deduction amount and one personal exemption (two if a joint return).

What does this mean? For most individuals with earned income of less than \$75,000 and who pay federal income tax, it means they will receive a \$600 rebate. Most married couples filing jointly with earned income of less than \$150,000 and who pay federal income tax will receive \$1,200. However, the rebates start to phase out when a single person's income exceeds \$75,000 (\$150,000 for married couples filing jointly). Rebates phase out at five percent of the amount exceeding the applicable AGI threshold. The \$600 credit for individuals, therefore, phases out completely at \$87,000 AGI, and the \$1,200 credit for married couples filing jointly phases out completely at \$174,000 AGI. Lower income individuals and people living on Social Security or VA benefits will

Filers on extension. Because the rebates are based on your 2007 return, if you file your return after April 15, 2008, your rebate will be delayed. For example, individuals on extension this year who do not file their 2007 return until the extended October 15, 2008 deadline will not receive their checks until year-end. No checks will be sent after December 31, 2008.

After 2008, those who missed out on the rebate or received only a partial rebate get a second shot at qualifying with 2008 data when they file their 2008 return in 2009. This group includes those who did not receive a full \$600/\$1,200 check either because their 2007 income was either too low or too high, or they did not receive a full \$300 child credit because their income was too high or a child was born or adopted in 2008. They get another chance to claim the difference based on their 2008 tax return filed in 2009. If a taxpayer would have received a smaller rebate check if based on 2008 return information rather than his or her 2007 return, however, the taxpayer is not required to give back the difference.

Although determined based on the 2007 tax year, the rebate technically remains a credit against 2008 tax, payable in the form of an advance payment. Consequently, a

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Washington Report

by the CCH Washington News Bureau



Congress approves stimulus package

President Bush is expected to sign an economic stimulus package (*H.R. 5140*) this week. *H.R. 5140* passed both the House and the Senate on February 7. Treasury and the IRS will issue rebates and child payments to qualifying taxpayers starting in May. The new law also gives taxpayers enhanced Code Sec. 179 expensing and bonus depreciation. Additionally, Congress included some provisions to help ease the credit crunch in the housing sector. *For more details see the lead article in this issue.*

Paulson quizzed on FY 2009 budget proposals

Treasury Secretary, Henry Paulson, Jr., completed his third day of testimony about the Bush Administration's FY 2009 federal budget proposals on February 7 when he appeared before the House Ways and Means Committee. On February 5, Paulson testified before the Senate Finance Committee and on February 6, he appeared before the Senate Budget Committee. Paulson firmly defended the Administration's proposal to make permanent the 2001 and 2003 tax cuts, the Administration's failure to address substantive and long-term alternative minimum tax (AMT) reform, as well as the Administration's failure to include funding for the wars in Iraq and Afghanistan as part of the budget.

Budget proposals to permanently extend the 2001 and 2003 tax cuts, while at the same time failing to provide any long-term AMT reform, "doesn't make sense," Ways and Means Committee Chairman, Charles Rangel, D-N.Y., told Paulson. Rep. Richard Neal, D-Mass., criticized the Administration's failure to provide any concrete proposals addressing AMT reform and to opt, instead, to include another patch in 2008, while promoting the permanent extension of tax cuts. Neal questioned Paulson about

borrowing money to pay for the AMT when the deficit is estimated to hit \$410 billion in 2008. The cost of permanently extending the 2001 and 2003 tax cuts is estimated to be \$2.2 trillion over 10 years, Neal said.

Jim McCrery, R-La., ranking member, Ways and Means, applauded Paulson for the Administration's "progressive" healthcare reform, referring to the administration's proposal for a standard deduction for health insurance, including a \$15,000 standard deduction for families and \$7,500 standard deduction for singles. Paulson stated that, under the President's proposal, an estimated 8 million more Americans would have insurance.

AICPA urges IRS to withdraw *Rudkin* regs

The American Institute of Certified Public Accountants (AICPA) has asked the IRS to withdraw controversial regs on the deductibility of investment advisory fees by nongrantor trusts and estates. The AICPA requested that the IRS issue a new set of regs to better reflect the Supreme Court's recent decision about the deductibility of investment advisory fees (*Knight v. CIR (Rudkin Testamentary Trust)*, *SCt.*, *January 16, 2008*).

The Supreme Court explained in *Rudkin* that Code Sec. 67(e) "invites a hypothetical inquiry into the treatment of the property were it held outside a trust." The question of whether a trust-related expense is fully deductible turns on a prediction about what would happen if a fact were changed, specifically, if the property were held by an individual rather than by a trust, the Court found.

One of the most controversial provisions in the proposed regs is the requirement of unbundling trustee fees. "No court has ever required unbundling, and no pronouncement from the IRS or Treasury has ever mentioned unbundling until the publication of the proposed

regs last summer," the AICPA noted. "Moreover, the requirement to unbundle should take effect at the beginning of a tax year rather than midway through the year. We note that trustees have already been charging fees for the 2008 year without unbundling, and such a fundamental change in process takes time to implement." The AICPA urged the IRS to adopt a transition period if it decides to proceed with unbundling in the final regs.

The AICPA also asked the IRS to issue interim guidance for the 2008 filing season. "Such guidance should assure trustees that IRS will continue the position that is presently stated in the proposed regulations that unbundling their trustee fees will not be required until after the proposed regulations are finalized."

Practitioners suggest "test run" of new Form 990 Schedule H

Several practitioners recently recommended that tax-exempt hospitals do a practice run before they have to file new Form 990, Return of Organization Exempt From Income Tax, Schedule H. While the revised Form 990 will generally take effect in 2008 (for the 2009 filing season), Schedule H will not apply until 2009 (for the 2010 filing season). The practitioners spoke during a February 7 webcast sponsored by the American Health Lawyers Association.

The revised form has sections on community benefit, billing and collections, management companies and joint ventures, and facility information. While the IRS's goal was to reduce the reporting burden on exempt organizations, it conceded that most of the information requested in Schedule H was not required in the current Form 990 and that the additional burden could be substantial for many hospitals, particularly in the first year of reporting.

Practitioners' Corner

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taxpayer filing a 2007 return in 2008 cannot claim the rebate as an offset to his or her 2007 tax liability reported on that return in lieu of waiting to receive a check. Neither can the taxpayer choose instead to count the rebate as part of an estimated tax installment for either 2007 or 2008.

Distribution. The Treasury Department and the IRS will issue the rebate checks. The rebates come at a very busy time for the IRS, which is processing tens of millions of 2007 returns and issuing tens of millions of refund checks. However, both the Treasury Department and the IRS have indicated that they can handle the additional work.

Although the Treasury Department and the IRS have not yet released any specifics, they will likely start to issue the rebate checks in May. The government is also likely to utilize direct deposit as much as possible rather than issuing paper checks. Overall, the government will have to issue or deposit more than 100 million checks, so the rebate process will take some time.

You may remember when the government issued rebate checks seven years ago. The first rebate checks were mailed in July 2001. The entire process took about four months. The rebate checks were mailed to taxpayers based on the last two digits of their Social Security numbers (SSNs). Individuals whose SSNs ended in "00" were the first to receive checks and individuals whose SSNs ended in "99" were the last. The Treasury Department and the IRS are likely to use the same distribution process this year. When we learn how the government intends to issue the checks, we'll let you know. Also, if you owe any federal debts or unpaid child support, the government will apply your rebate to that debt.

Child payments. Besides the rebates, taxpayers with children may be eligible for \$300 payments per child. For purposes of the new law, the child tax credit definition of qualifying child applies. The child credit is allowed with respect to each qualifying child of a taxpayer. A qualifying child must not have attained the age of 17 as of the close of the calendar year in which the taxpayer's tax year begins. The qualifying child must be the taxpayer's qualifying child for pur-

poses of the dependency exemption. Finally, the child must be a son, daughter, stepson, stepdaughter, or descendant of such child, or a brother, sister, stepbrother, stepsister or a descendant of such relative.

Just like the rebates, the child payments phase out for higher income taxpayers. However, there is no cap on the number of child payments that qualifying taxpayers may receive. For example, a married couple with four qualifying children will receive four \$300 payments.

Business incentives. Although not as extensive as originally proposed, the business incentives are nonetheless very valuable with careful planning. The new law nearly doubles the amount of deductible Code Sec. 179 expensing for 2008 and also provides for bonus depreciation. The new law does not allow taxpayers to carry back net operating losses beyond the current limits. Many businesses lobbied hard for this treatment but Congress left it out. However, there is talk on Capitol Hill of a second stimulus bill, so there may be more business tax incentives later this year.

Small business expensing. Before the new law, a business could expense up to \$128,000 of the cost of qualifying property in 2008. If the cost of qualified property placed in service during the year is more than \$510,000, the ceiling for that business is reduced by the amount over the applicable limit. Under the new law, a business can expense up to \$250,000 of the cost of qualifying property and the old \$510,000 ceiling jumps to \$800,000. These are some very generous changes. If you're thinking about making a purchase for your business, give us a call. We can help you maximize your tax savings under the new law.

The new law makes no changes to the general rules for the types of property that are eligible for expensing. Generally, the property must be tangible personal property, which is actively used in the taxpayer's business and for which a depreciation deduction would be allowed. The property must be used more than 50 percent for business and must be newly purchased property. The existing exception for computer software applies to the enhanced expensing amounts under the new law.

Bonus depreciation. The other incentive is bonus depreciation. The new law provides

qualifying taxpayers 50 percent first-year bonus depreciation of the adjusted basis of qualifying property. This provision is substantial, providing American businesses with an estimated \$44 billion in additional deductions in 2008. Even compared against the rebate checks' \$106 billion price tag, the new bonus depreciation is huge.

To be eligible to claim bonus depreciation, property must be (1) eligible for the modified accelerated cost recovery system (MACRS) with a depreciation period of 20 years or less; (2) water utility property; (3) computer software (off-the-shelf); or (4) qualified leasehold property. The property generally must be purchased and placed in service during 2008. Original use of the property must begin with the taxpayer and must occur after December 31, 2007 and before January 1, 2009. There are exceptions for certain transportation property.

Congress also increased the Code Sec. 280F limitations on "luxury" auto depreciation to accommodate a modified version of the 50 percent bonus depreciation available to other "MACRS" property. Ordinarily, the first-year limit on depreciation for passenger automobiles cannot exceed \$3,060. However, this limit was increased when bonus depreciation was previously available by \$4,600. The new law raises the cap once again, this time by \$8,000 if bonus depreciation is claimed for a qualifying vehicle. Thus, for passenger autos, the cap on 50 percent bonus depreciation is set at \$11,060; for trucks and vans, \$11,260.

Foreclosure help. The fallout from the subprime mortgage crisis continues to unfold in America's financial and housing markets. In many areas, foreclosure rates have hit all-time highs.

The new law raises the maximum amounts of principal for mortgages issued by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). These large mortgages are often called "jumbo mortgages." The government hopes that by backing these larger mortgages, lenders will lower interest rates.

As always, if you have any questions about the new law, don't hesitate to contact us. We are ready to help you maximize your tax savings.

Sincerely,

Compliance Calendar

■ February 15

Individuals who claimed exemption from income tax withholding on Form W-4 in 2007 must file a new Form W-4.

Monthly depositors must deposit Social Security, Medicare, and withheld income tax for January.

Employers deposit Social Security, Medicare, and withheld income tax for February 9, 10, 11, and 12.

■ February 16

Employers begin withholding income tax from the pay of any employee who claimed

exemption from withholding in 2007, but did not provide a new Form W-4 to continue the exemption in 2008.

■ February 21

Employers deposit Social Security, Medicare, and withheld income tax for February 13, 14, and 15.

■ February 22

Employers deposit Social Security, Medicare, and withheld income tax for February 16, 17, 18, and 19.

From the Helpline

The following questions have been answered recently by our "CCH Federal Tax Service" Helpline (1-800-449-8114).

Q Do individuals filing under married filing separately status get a rebate under the stimulus package? If so, how much?

A All qualifying individuals other than those who file jointly in 2007 are entitled to the maximum \$600 rebate. Joint filers will receive a maximum \$1,200 rebate payable jointly. Married individuals filing separately therefore each receive up to the maximum \$600, depending on their separate income. Nonresident aliens or those who can be claimed as dependents are not qualifying individuals. See *CCH Tax Briefing on the Tax Research Network*.

Q Since the rebates are being called "advance credits," do they need to be returned when filing in 2009 for 2008?

A No, rebate amounts based on a bona fide 2007 return need not be returned in 2009 simply because the taxpayer no longer qualifies using 2008 return data. If an individual does not receive a full rebate based on a 2007 return, however, he or she may take the remaining credit when filing for 2008 if entitled to a full credit based on 2008 data. As an advance credit associated with the 2008 tax year, however, an individual may not offset 2007 tax liability by the amount of the credit in lieu of accepting the rebate check. See *CCH Tax Briefing on the Tax Research Network*.

Q Is the \$300 child portion of the rebate available for a child born in 2008?

A The \$300 special child credit is available, but must be taken on a 2008 return filed in 2009. The same rule applies to children adopted in 2008. A rebate check will not be issued for the child even if the IRS is notified. The credit, however, will be subject to phase out AGI levels based on 2008 income rather than 2007 return data. See *CCH Tax Briefing on the Tax Research Network*.

TRC Text Reference Table

The cross references at the end of the articles in *CCH Federal Tax Weekly (FTW)* are text references to *CCH Tax Research Consultant (TRC)*. The following is a table of TRC text references to developments reported in FTW since the last release of *New Developments*.

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