



Highlights:

- ✓ *Over \$100 Billion in Advance Payments (Rebates) for Qualifying Taxpayers*
- ✓ *\$300 Payments per Child*
- ✓ *Enhanced Small Business Expensing*
- ✓ *Bonus Depreciation at 50-percent*
- ✓ *More Help for Homeowners in Foreclosure*

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President Signs Economic Stimulus Act of 2008 With Rebates And Business Incentives

Recovery rebates (technically known as “advance credit payments”), reaching as high as \$600 for individuals and \$1,200 for married couples, will soon be deposited or mailed to an estimated 130 million Americans. The rebates are the centerpiece of a \$152 billion package in the *Economic Stimulus Act of 2008* (H.R. 5140) designed to jumpstart the U.S. economy. In addition to rebates, the new law includes \$44.8 billion in business incentives and help for homeowners facing foreclosure because of the mortgage meltdown.

After two weeks of intense negotiations, the Senate agreed to the *Economic Stimulus Act of 2008* on February 7, 2008, by a vote of 81 to 16. The House quickly approved the bill that evening by an overwhelming vote of 380 to 34. President Bush applauded the legislation, signing it on February 13 after it reached his desk. The moment the bill passed, the Treasury Department and the IRS immediately began preparations to issue the rebate checks.

Impact *Although the business incentives have been overshadowed in the news by the rebates, the business tax breaks are very valuable. Congress generously enhanced the Code Sec. 179 small business expensing limit to \$250,000 – its highest level ever. Along with expensing more equipment pur-*

chases, businesses may be able to take advantage of 50-percent bonus depreciation. Lawmakers are hoping that the two provisions, when combined together, create a powerful incentive for businesses to invest in new equipment, create jobs and stimulate economic growth.

REBATES

The new law allows a refundable credit against tax (the “recovery rebate credit”) to low and middle-income individuals for 2008 in an amount calculated as 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:
 - (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 personal exemption(s) (\$8,950 for singles, \$17,900 for joint filers).

Impact *The number one question on everyone’s mind is: when will the rebate checks arrive? Congress expressly directed the Treasury De-*

partment to issue rebate checks “as rapidly as possible” and instructed the Treasury Secretary to make periodic reports on the progress of issuing the rebate checks. According to Treasury Secretary, Henry Paulson, the IRS will begin sending rebate checks to qualifying taxpayers immediately after the crush of the 2008 filing season. “The IRS will manage the current tax filing season and simultaneously prepare to issue these additional payments starting in early May.” Paulson was confident that payments would largely be completed “this summer.” The Treasury Department anticipates using direct deposit as much as possible to speed delivery of the rebates.

For most low and middle-income taxpayers, the rebate in effect gives back whatever tax was paid for the 2007 tax year at the 10 percent bracket level up to \$6,000 of taxable income (\$12,000 for joint filers). For example, a single individual with \$4,000 taxable income and \$400 in net income tax liability for 2007 will receive a \$400 rebate; someone with \$40,000 taxable income and \$6,400 in net income tax liability will receive the maximum \$600 rebate. (See “Phase-out,” below, for exclusion for higher-income individuals.)

Comment In addition to the basic rebate, the new law provides an additional \$300 per qualifying child.

The 2008 recovery rebate credit will be payable in the form of advance rebate checks paid during 2008 based on 2007 tax returns or information from the Social Security Administration or Veterans Administration.

Impact The rebate amount, the taxpayer’s qualification and the status of any dependent children are all determined based on the 2007 tax year. Until the taxpayer’s 2007 tax return is filed and processed, therefore, no rebate check will be issued. Individuals who do not file

their 2007 return until the extended October 15, 2008, deadline, for example, will not receive their checks until year end. No checks will be sent after December 31, 2008.

Second chance. 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, as well as those who were not “eligible individuals” (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. The same is true for Social Security and VA payments. If a taxpayer would have received a smaller rebate check based on 2008 return information rather than on the 2007 return, however, the taxpayer is not required to give back the difference.

Comment As the result of intense lobbying by advocates for senior citizens, the new law treats Social Security and VA disability benefits as qualifying income for purposes of the \$300 minimum rebate. According to the House Ways and Means Committee, 20 million senior citizens and 250,000 disabled veterans will receive rebates. As with traditional earned income, however, to qualify for the \$300 minimum rebate exception, a Social Security or VA recipient must receive at least \$3,000 in benefits.

Example. Dave is retired and receives \$18,000 a year in Social Security benefits and he has no other income. Dave’s Social Security benefits are excludible from his gross income and his other income for the year is insufficient to cover his standard deduction and personal exemption. As a result, he pays no federal income

tax for 2007. Nevertheless, because the new law treats the \$18,000 in SSA benefits as “qualifying income,” he will receive a \$300 rebate.

IRS does the math. The IRS will calculate the proper amount of the rebate check based on the 2007 tax return information or other certification. However, if the IRS makes a mistake, or it discovers that the taxpayer’s initial return information was incorrect in a way that affects the credit, it can get the rebate back quickly. The new law allows the IRS to treat mistakes as a clerical error, which means that the IRS can bypass deficiency procedures and proceed right to collection.

Comment In the case of a refund with respect to a joint return, half of the refund is treated as having been made to each individual filing the return.

Individuals entitled to the credit whose income level does not require them to file a 2007 return may claim the rebate credit by filing a 2007 income tax return that will be filed for informational purposes only. The same procedure is required for those taxpayers with earned income who are not required to file a return (although most of these taxpayers would file a 2007 return to claim a refund for withheld taxes).

Impact Although determined based on the 2007 tax year, the rebate technically remains a credit against 2008 tax, made in the form of an advance payment. As such, a 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 rebate check. Nor can the taxpayer choose instead to count the rebate as part of an estimated tax installment for either 2007 or 2008.

Comment For taxpayers who can’t wait for their rebate checks, there appears to be no legal prohibition

against banks and loan companies offering a refund anticipation loan (RAL) that includes the amount of the anticipated rebate check when a 2007 return is filed. Senator Charles Schumer, D-NY, expressed concern over this problem at the confirmation hearing of IRS Commissioner nominee Douglas Shulman on January 29. To highlight the problem, Schumer observed, “in the case of the stimulus checks, consider a married couple with two children, expecting a \$1,600 check in May, and a RAL provider or loan vendor promises to give them \$1,400 in March instead. That’s an annualized interest rate of 87 percent.” Shulman said he didn’t yet know what “levers the IRS has on this” but pledged to do everything within his power to prevent tax refund scams from targeting stimulus rebates.

Comment “Net income tax liability” is the excess of the sum of regular tax and alternative minimum tax (AMT) due reduced by all nonrefundable tax credits (except the child credit). This amount is unreduced by any estimated tax or withholding payments.

Impact *Those with at least \$3,000 in wages or other earned income (including Social Security and VA disability benefits for this purpose) will receive the \$300 credit (\$600 for joint filers) even if they have no tax liability. There is no pro-rating of the \$300 (\$600) minimum credit, however, if the taxpayer had less than \$3,000 in qualifying income. Note that while the minimum credit for joint filers is double that of single taxpayers, the same \$3,000 qualifying earned income threshold applies.*

Caution *Rebates are subject to offsets for any federal debts owed by the taxpayer, including back*

Examples of Rebate Credit Computation:

Taxpayer	Qualifying Income	Rebate
Single	\$3,000 in Social Security benefits	\$300
Head of household	\$50,000 in adjusted gross income	\$600
Single/one child	\$50,000 in adjusted gross income	\$900
Married couple/two children	\$60,000 in adjusted gross income	\$1,800
Married couple/four children	\$70,000 in adjusted gross income	\$2,400

taxes, unpaid child support or federal student loans. However, they will not prevent eligibility in any federally-funded relief program.

Eligibility

Higher income taxpayers are excluded from the rebates (more below). Additionally, rebates are not available to nonresident aliens. Nor will they be paid to estates and trusts. Decedents for whom a final income tax for 2007 is filed, however, are entitled to a rebate. Dependents are not eligible for rebates.

Impact *An individual need only be eligible to be claimed as a dependent by another to be excluded from claiming a rebate credit for him or herself. For example, college age dependents, who have more than \$3,000 in earned income from a summer job, cannot make themselves eligible for the \$300 minimum credit by having their parents forego claiming them as dependents.*

Phase-out. Rebates begin to phase out at \$75,000 of adjusted gross income (AGI) for individuals and \$150,000 of AGI 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 of AGI, and the \$1,200 credit for joint filers phases out completely at \$174,000 of AGI.

Identification Requirements

Only taxpayers with Social Security numbers will be eligible for rebates. Married couples filing jointly must provide Social Security numbers for each spouse. Qualifying children also must have Social Security numbers. Individual Taxpayer Identification Numbers (ITINs) will not be acceptable substitutes, even though the IRS will accept an ITIN in lieu of a Social Security number when filing a return. The prohibition is intended to preclude undocumented aliens from receiving rebates. Nonresident aliens are also excluded from a rebate.

Comment Rebates will also be available to qualifying taxpayers who reside in U.S. territories or possessions with tax systems that mirror or do not mirror the Internal Revenue Code. Guam, the Northern Mariana Islands and the U.S. Virgin Islands have mirror Code tax systems. American Samoa and Puerto Rico do not, but the Treasury Department is authorized to forward an equivalent amount to those jurisdictions to implement their own rebate program similar to the new law’s rebates.

CHILD PAYMENTS

Individuals who qualify for the basic rebate credit amount (even if only \$1) are also eligible to receive a full additional rebate credit amount equal to \$300 per

qualifying child. Any additional amount received for each qualifying child is added to the basic rebate credit amount for purposes of applying the phase out rules.

Example. Adam and Debbie are married, filed jointly and have two children. Their combined AGI is \$80,000. They paid federal income tax in excess of \$1,200. Adam and Debbie will receive a \$1,200 rebate check plus \$300 payments for each qualifying child for a total of \$1,800. However, if Adam and Debbie have combined AGI of \$175,000 their rebate credit amount is only \$550.

Phase-out. As explained above, rebates begin to phase out at \$75,000 of adjusted gross income (AGI) for individuals and \$150,000 of AGI for married couples filing jointly. The combined basic and child rebates phase out at five percent of the amount exceeding these applicable AGI thresholds. For example, for a single parent with two children who is otherwise entitled to a \$1,200 credit the rebate phases out completely at \$99,000 AGI. On the other hand, for a married couple with two children filing a 2007 joint return the \$1,800 credit phases out completely at \$186,000 AGI.

Qualifying 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 satisfy several requirements. First, 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. Second, a qualifying child must be the taxpayer's qualifying child for purposes 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.

Impact *There is no cap on the number of child bonus payments. The amount of the child credit, however, is limited by the overall AGI limit also applied to the basic rebate credit.*

Impact *In the case of a divorced couple, entitlement to the \$300 child rebate follows the rules for entitlement of the regular child tax credit. The normal rule is that the custodial parent claims the credit, unless a court-filed agreement between the parties specifies otherwise.*

DISTRIBUTING THE REBATES

Taxpayers may remember receiving rebates in 2001. The rebates were advance payments on the new 10 percent tax bracket created by the *Economic Growth and Tax Relief Reconciliation Act of 2001* (P.L. 107-16). The IRS sent rebates to nearly 100 million taxpayers during the summer and autumn of 2001. This time, the government wants to utilize direct deposit on a larger scale than in 2001. Treasury officials have indicated that direct deposit will get refunds in taxpayers' hands more quickly than mailing paper checks. Direct deposit would also help the IRS, which is currently processing millions of 2007 returns, and issuing millions of refunds.

Comment In 2001, the IRS used a distribution system based on the last two digits of the taxpayer's Social Security number. For married couples filing jointly, the first number on the return determined the mailing date for the rebate.

Comment The Treasury Department has reported that the government can print a maximum of seven million checks per week in May climb-

ing to 11 million per week in June. The government can print a higher number of checks in June because it will have finished issuing most 2007 refunds. The new law specifies that no rebate checks may be issued after December 31, 2008.

Comment To administer distribution of the rebate checks, the new law gives the Treasury \$64 million, IRS Taxpayer Services \$51 million, IRS Operations Support \$151 million and the Social Security Administration \$31 million in additional funding. Regular reports to Congress are required to account for the use of these additional appropriations.

SPENDING THE REBATES

Another reason that the rebate is not allowed to offset 2007 tax liability is that the government wants recipients to spend it to pump up the economy. According to Ways and Means Chair, Charles Rangel, D-NY, "This stimulus package will send critical relief to millions of lower- and middle-income families whose economic situation dictates that they have no choice but to spend the rebate check and purchase goods and services to spur our economy." The bill specifically requires that income and asset eligibility tests for benefits to an individual under federal relief programs will not count any rebate check for the month they are received and two months thereafter.

Impact *Contrary to government plans, however, many financial advisors are recommending that recipients pay down debt or save the money for the future. Many taxpayers themselves feel the same way. A nationwide survey of 2,020 U.S. adults conducted by Harris Interactive and commissioned by CCH found that 54 percent of individuals working full-time or self-employed would*

use a rebate to pay down debt, 29 percent would save it, and only 17 percent would spend it.

Congress agreed after some debate to extend rebates to Social Security recipients because statistics show that seniors spend the greatest percentage of their income. People over 65 spend 92 percent of their income. Households with one person over 75 years of age spend on average 98 percent of their income.

BUSINESS INCENTIVES

The new law provides businesses with two tax incentives that add up to \$44.8 billion in tax relief accelerated all in one

year, 2008. Those valuable incentives are: enhanced Code Sec. 179 expensing and bonus depreciation. Although there was significant support, Congress did not provide for extended net operating loss (NOL) carryback treatment in the final bill.

ENHANCED EXPENSING

The new law almost doubles the amount of deductible Code Sec. 179 expensing for 2008 to \$250,000 and increases the threshold for reducing the deduction to \$800,000. It applies to property purchased and placed in service in tax years beginning in 2008. Unlike the amounts under current law, the amounts in the stimulus package are not indexed for inflation.

Before the new law, a business could deduct (“expense”) up to \$128,000 of the cost of depreciable tangible personal property used in the active conduct of a trade or business 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.

Comment The \$128,000 and \$510,000 amounts were inflation adjusted, up from \$125,000 and \$500,000 in 2007 (as raised by the *Small Business and Work Opportunity Act of 2007, P.L. 110-28*, from \$112,000 and \$450,000).

Impact *The phase out is dollar-for-dollar. Therefore, Code Sec. 179 expensing under the new law phases out completely if qualifying purchases exceed \$1,050,000 during the tax year. The business will be limited by the depreciation deduction rules for amounts that are phased-out.*

Caution *Businesses not on a calendar year should note that the higher expensing limits apply to tax years beginning in 2008. Their higher expensing under the new law does not start until their new fiscal tax year starts. This follows the timing of Code Sec 179’s previous increases “for tax years beginning in” For example, a small business on a June 1 – May 31 year would be limited for purchases for the year ending May 31, 2008 to a \$128,000 deduction and a \$510,000 threshold. The new \$250,000/\$800,000 amounts would kick in starting June 1, 2008.*

Impact *Enhanced expensing will enable capital-intensive companies to write off a greater amount of their investments in*

Examples From the Joint Committee on Taxation JCX-16-08 (February 8, 2008)

Example #1: Single taxpayer has \$14,000 in Social Security income, no children and no net tax liability prior to the application of refundable credits.

Result: A rebate of \$300. The taxpayer meets the \$3,000 qualifying income test for purposes of the minimum \$300 credit.

Example #2: Joint filers have \$2,000 in earned income, one qualifying child and \$1,100 in net tax liability (resulting from other unearned income) before applying refundable credits and the child credit that brought actual tax liability down to \$100.

Result: A rebate of \$1,400. The qualifying earned income test is not met but the net tax liability test is, allowing the taxpayers a basic rebate credit of \$1,100. They also are entitled to a full \$300 rebate credit for their child.

Example #3: Joint filers have \$40,000 in earned income, two qualifying children and a net tax liability of \$1,573 before reducing it by the refundable credits and child credits (which resulted in an actual tax liability of -\$427).

Result: A rebate of \$1,800. The taxpayers meet the earned income test and the net tax liability test. The basic credit is \$1,200 (the greater of \$600 or net tax liability not to exceed \$1,200) and the child rebate is \$600 (\$300 per child).

Example #4: Joint filers have \$175,000 in earned income, two qualifying children, and a net tax liability of \$31,189.

Result: A rebate of \$550. The taxpayers meet the earned income test and the net tax liability test. Without the phaseout provision, the taxpayers who receive an \$1,800 rebate consisting of the maximum \$1,200 basic rebate and a \$600 child rebate (\$300 for each child). The phaseout, however, requires a reduction of \$1,250 (5 percent of (\$175,000 - \$150,000)). The remaining rebate is \$550.

business property. This will enable profitable companies to increase their retained earnings or funds for investment for 2008.

Comment While Code Sec. 179 expensing is commonly referred to as “small business” expensing, technically, being a small business is not one of the requirements. However, purchases of all equipment otherwise qualifying are subject to the phase-out cap, which rules out most large corporations that purchase much more equipment each year in the normal course of business. On the other side of the spectrum is the small business with losses. The deduction is disallowed if the taxpayer does not have taxable income for the year the property is placed in service. However, the disallowed deduction may be carried forward to a non-loss year.

Qualifying Property

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.

Reminder If a taxpayer claims the expensing election and subsequently sells the property or stops using it more than 50 percent in its business, the taxpayer may have to recapture part of the tax benefit that was previously claimed. The recapture amount equals the difference between the amount expensed and the amount

that the taxpayer would have been able to recapture under the normal rules.

Comment Businesses that lease equipment rather than purchase continue to be allowed a full write-off of lease expenses each year, irrespective of the size of the business or dollar value of the leases entered into.

TEMPORARY BONUS DEPRECIATION

Congress has used bonus depreciation several times to encourage business investment. For example, bonus depreciation was available immediately after September 11, as well as for certain property used in the New York Liberty Zone or the Gulf Opportunity Zone. The new law provides qualifying taxpayers 50 percent first-year bonus depreciation of the adjusted basis of qualifying property.

Property

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. Thus, the original use of the property must begin with the taxpayer and must occur after December 31, 2007, and before January 1, 2009.

Comment 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.

There cannot be a binding written contract before January 1, 2008, to acquire the property. Property qualifies only if it is acquired under a binding written contract entered into during 2008. In addition, the taxpayer must begin the manufacture, construction or production of qualifying property for the taxpayer’s own use during 2008.

Impact *Bonus depreciation must be claimed for both regular tax and alternative minimum tax (AMT) liability unless the taxpayer makes an election out. Once made, an election out cannot be revoked without IRS consent.*

Luxury autos

The new law also raises the Code Sec. 280F limitations on “luxury” auto depreciation. Ordinarily, the first-year limit on depreciation for passenger automobiles cannot exceed \$3,060 (inflation adjusted). However, this limit was increased when bonus depreciation was previously available to \$4,600.

The new law raises the cap once again, this time to \$8,000 if bonus depreciation is claimed for a qualifying vehicle (for a maximum first-year depreciation of no more than \$11,060; \$11,260 for vans or trucks). If the vehicle is not predominantly used for business in a subsequent year, then bonus depreciation must be recaptured.

Comment The depreciation cap was enacted because Congress did not want the Code subsidizing the use of luxury vehicles by businesses. But the designation of vehicles as “luxury” is woefully out of date. For example, for 2007, a vehicle is subject to the limitation if its value is at least \$15,100 for passenger automobiles and \$16,100 for trucks and vans. The new law will allow just over \$11,000 as first-year depreciation on business use vehicles purchased in 2008.

FORECLOSURE HELP

Congress continues to enact legislation to assist taxpayers during the sub-prime mortgage crisis. In December, it passed the *Mortgage Forgiveness Debt Relief Act of 2007* (P.L. 110-142), which permits taxpayers to exclude from gross income in 2007 forgiveness of qualified indebtedness used to acquire a principal residence. The *Economic Stimulus Act of 2008* continues this assistance by providing relief to the depressed real estate sector, as well as more flexibility and a more accessible mortgage market to homeowners who need to refinance to stay afloat, by increasing the maximum mortgage amounts that various government agencies may give to potential homebuyers.

Comment Especially targeted in the new law is the need to increase the availability of larger loans, including so-called “jumbo mortgages” (loans greater than \$417,000).

The 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) to 175 percent of the pre-legislation limitations. While this applies for mortgages originating between July 1, 2007, and December 31, 2008, it also applies to mortgages approved for origination during this period, but used to purchase homes at a later date.

Comment The law also recommends that Fannie Mae and Freddie Mac securitize their loans to provide more liquidity to U.S. housing markets.

The law also increases amounts allowed for mortgages issued by the Federal Housing Administration (FHA) before December 31, 2008. It increases the maximum principal amounts for mortgages the FHA is allowed to issue up to 175 percent of the pre-legislation dollar limitation for residences of all sizes. If the Department of Housing and Development determines that market conditions are favorable, it may raise this maximum amount by up to \$100,000 for mortgages originating during the effective period of the statute.

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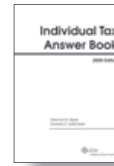
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