

## The Emergency Economic Stabilization Act of 2008

On Friday, October 3, the House approved the Senate version of H.R. 1424, the Emergency Economic Stabilization Act of 2008, and the President signed the bill into law the same day. Most notably, the Act contains the Troubled Assets Relief Program (“TARP”) which permits the United States Secretary of the Treasury to purchase up to seven hundred billion dollars of distressed assets from financial institutions. However, in addition to TARP, the Act also contains a wide range of tax incentives and breaks for individuals and businesses totaling more than \$150 billion. Key provisions are highlighted below.

### **Financial Markets Rescue Plan**

The Secretary of the Treasury was granted broad authority to purchase and guarantee troubled financial assets from virtually any bank, savings association, credit union, securities broker/dealer or insurance company in the U.S.

- ♦ Purchases under TARP may be made in auctions or direct purchases.
- ♦ TARP is aimed primarily at residential and commercial mortgages and mortgage related securities, but Treasury may also purchase virtually any kind of financial instrument if necessary to promote financial market stability.
- ♦ A guaranty program is also created. Participating financial institutions would pay premiums into the Troubled Assets Insurance Financing Fund in return for a guaranty of troubled assets.
- ♦ Treasury has broad authority to set the guidelines for both programs.
- ♦ Treasury has announced it intends to use up to \$250 billion to buy preferred stock in financial institutions to increase capital levels and free up credit, plus an additional \$100 billion to buy troubled assets. The authority may go as high as \$700 billion unless Congress disapproves.
- ♦ Consideration is to be given to small financial institutions.
- ♦ Federal bank and mortgage regulators must help minimize foreclosures including, where appropriate, modifying the terms of home mortgages within their control to allow homeowners and tenants to stay in their homes.
- ♦ Treasury must obtain warrants for an equity position in any publicly held financial institution that sells more than a threshold level of assets. Senior debt securities may be taken from non-public institutions.
- ♦ Institutions selling assets in either a direct sale or in an amount above a certain threshold must agree to comply with corporate governance standards and limits on compensation for top executive officers to be set by Treasury.



# EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

- ♦ The terms of all asset purchases including amounts and pricing are to be made public within two business days after the purchase.

## **Mark-to-Market Accounting**

The SEC is given authority to suspend FASB Statement No. 157 concerning mark-to-market accounting. Also, it must conduct a study of the impact of the standards and make recommendations for changes and alternatives.

## **Temporary Increase in FDIC Deposit Insurance**

The Act authorizes a temporary increase in deposit insurance from \$100,000.00 to \$250,000.00 per insured depositor until December 31, 2009. The FDIC implemented that change immediately.

## **Financial Bailout Related Tax Provisions**

- ♦ Certain banks, savings associations and depository institutions holding companies may treat as ordinary losses, losses resulting from the holding of Fannie Mae and Freddie Mac preferred stock.
- ♦ The temporary exclusion of cancellation of indebtedness income up to two million dollars relating to a personal residence was extended from the end of 2009 until the end of 2012.
- ♦ Executive compensation and parachute payments for companies participating in TARP will be subject to limitations.

## **Alternative Minimum Tax Patch**

- ♦ The Act includes a 2008 alternative minimum tax patch that increases the AMT exemption to \$69,950 for married individuals filing jointly, \$46,200 for single taxpayers, and \$34,975 for married individuals filing separately.
- ♦ The Act leaves unchanged the AMT phaseout rules which results in the increased exemptions being reduced by 25% of alternative minimum taxable income that exceeds \$150,000 for married filing jointly, \$112,500 for single taxpayers, and \$75,000 for married individuals filing separately.

## **Other Extenders**

- ♦ With respect to the Work Opportunity Tax Credit, the Act extended the hiring period for Hurricane Katrina employees from two years after August 28, 2005 to four years after that date.
- ♦ The Act extended the increased rehabilitation/historic tax credit for structures in the Gulf Opportunity Zone through 2009.



# EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

- ♦ The New Markets Tax Credit, an incentive program that encourages investment in low income communities, has been extended through 2009.
- ♦ The Act contains various other extensions of expired or expiring tax provisions including many dealing with alternative energy incentives.

## **Disaster Relief Provisions**

- ♦ The Act increases amounts that can be expensed under Section 179 for disasters occurring after 2007.
- ♦ In a disaster area after 2007, the Act allows 50% bonus depreciation for property placed in service by the end of the third calendar year following the applicable disaster date. The property must also meet other requirements under the Act to qualify for the bonus depreciation (i.e. active trade or business, original use, rehabilitation or replacement requirements).
- ♦ Capital expenditures incurred after 2007 that meet the requirements of qualified disaster expenses can be deducted in full in the year incurred.
- ♦ Net operating losses incurred after 2007 that meet the requirements of a qualified disaster loss can be carried back five years as opposed to the normal two year rule.
- ♦ The deduction for casualty losses meeting the requirements of a net disaster loss is not subject to limitation by the ten percent of adjusted gross income floor.

## **Miscellaneous Provisions**

- ♦ Individuals receiving deferred compensation from “tax indifferent parties” will be required to include that compensation in current income.
- ♦ The Act lessened the return preparer standard with regard to the imposition of penalties under Section 6694 so that it conforms with the standards required of taxpayers.
- ♦ The Act increases the reporting requirements of brokers on sales transactions of publicly traded securities, including requiring brokers to report the basis and whether gain is long term or short term.