

## Economic Stimulus Act of 2008

**H.R. 5140.** Passed by both the House and Senate on February 7, 2008, the *Economic Stimulus Act of 2008* provides rebates for individuals and incentives for business investment. The President is expected to sign the bill into law shortly.

### 2008 Recovery Rebates for Individuals (IRC §6428)

**Advance refunds.** The IRS is instructed to issue advance refunds to taxpayers as rapidly as possible. No advance refund will be made after December 31, 2008. No interest will be paid on any advance refund.

The advance refund is based upon the amount that would have been allowed as a credit under Section 6428 if that credit had applied for 2007. Any advance refund paid to the taxpayer will reduce the Section 6428 credit that is allowed for 2008, but not below zero.

**Example.** Bruce and Vicky file a joint 2007 return. Due to their level of income, they would have qualified for a Section 6428 credit of \$700 had the credit applied for 2007. The IRS mails to them an advance refund check of \$700 during the summer of 2008 after filing their 2007 return. For 2008, their income is less and they qualify for a \$1,200 Section 6428 credit. Their Section 6428 refundable tax credit for 2008 equals \$500 (\$1,200 minus \$700).

**Author's comment.** Presumably this means the IRS cannot determine the advance refund amount until the 2007 return is filed. News reports have quoted government officials as saying the first rebate checks won't be mailed until May of 2008. Treasury Secretary Henry Paulson also encouraged taxpayers to file their 2007 tax returns early. The rebates will total an estimated \$106 billion.

**Author's comment.** It also appears that since the credit cannot be reduced below zero, the taxpayer will be allowed to keep any excess advance refund based upon the 2007 return that exceeds the actual credit allowed for 2008.

**Example.** Bruce and Vicky file a joint 2007 return. They receive an advance refund check of \$1,200 during the summer of 2008 after filing their 2007 return. For 2008, their income is higher and they only qualify for a \$700 Section 6428 credit. Their Section 6428 refundable tax credit for 2008 equals zero (\$700 minus \$1,200, but not less than zero). Bruce and Vicky do not have to pay back any of the excess advance refund.

**Married filing joint.** Any advance refund paid to the taxpayer that is based upon a joint return will be treated as being paid one half to each spouse.

**Example.** Randy and Jane file MFJ for 2007 and receive an advance refund of \$1,200. They divorce and file separate returns for 2008. They each must reduce their Section 6428 refundable tax credit for 2008 by \$600.

**Section 6428 credit.** For 2008, individuals are allowed a refundable tax credit equal to the lesser of:

- Net income tax liability, or
- \$600 (\$1,200 MFJ).

**Special rules.** In the case of certain taxpayers:

- The credit will not be less than \$300 (\$600 MFJ), and
- The credit will be increased by \$300 multiplied by the number of children that qualify the taxpayer for the child tax credit under Section 24(c).

The following taxpayers qualify for these special rules:

- The taxpayer has qualifying income of at least \$3,000, or
- The taxpayer has a net income tax liability which is greater than zero, and gross income which is greater than the sum of the basic standard deduction plus the exemption amount (twice the exemption amount in the case of a joint return).

**Example.** Shelly's gross income for 2008 is \$9,100, which is greater than \$8,950 (the sum of her \$5,450 standard deduction plus her \$3,500 personal exemption). Her tax according to the tax tables prior to this credit is \$16. She qualifies for the \$300 refundable tax credit.

**Example.** Tom and Ruth file a joint return for 2008. Their net income tax liability exceeds \$1,200. In addition, they have two children that qualify for the child tax credit under Section 24(c). They qualify for a refundable tax credit of \$1,800 (\$1,200 + \$300 + \$300).

**AGI phase-out for high income taxpayers.** The refundable tax credit is reduced (but not below zero) by 5% of the amount of the taxpayer's AGI that exceeds \$75,000 (\$150,000 MFJ).

**Example.** Bruce and Vicky file MFJ and their AGI is \$160,000. Their AGI exceeds \$150,000 by \$10,000. 5% of \$10,000 = \$500. Their credit equals \$700 (\$1,200 minus \$500).

**Example.** Clint and Amy file MFJ and have one child who qualifies them for the child tax credit. Their AGI is \$170,000. Their AGI exceeds \$150,000 by \$20,000. 5% of \$20,000 = \$1,000. Their credit equals \$500 (\$1,200 plus \$300 minus \$1,000).

**Qualifying income.** The term qualifying income for purposes of this credit means:

- Earned income,
- Social security benefits, and
- Any compensation or pension received under chapter 11, chapter 13, or chapter 15 of title 38 of the United States Code (disabled veterans' and widows benefits).

**Example.** Doris and Milt both receive Social Security benefits each year in excess of \$3,000. They have no other source of income and are not required to file a tax return for 2007. They file MFJ for 2008 and claim a refundable tax credit of \$600.

**Author's comment.** It is unclear at this time whether Doris and Milt in the example above could file a 2007 return reporting their Social Security benefits and zero tax liability, so that the IRS would know to mail them an advance refund based upon the 2007 return.

**Earned income.** The term earned income has the same meaning as earned income used for purposes of the Earned Income Credit (EIC), except that:

- The election to treat combat pay as earned income for purposes of EIC, which expires after 2007, shall apply for 2008 for purposes of the Section 6428 credit, and
- Net earnings from self-employment which are not taken into account in computing taxable income shall not be included in the definition of earned income for purposes of the Section 6428 credit.

**Example.** Jerry is a minister who receives a parsonage allowance that is not subject to income tax, but is subject to self-employment tax. For EIC purposes, the parsonage allowance is considered self-employment earned income which may qualify Jerry for the EIC. However, for purposes of the Section 6428 credit, the parsonage allowance is not considered earned income.

**Net income tax liability.** The term net income tax liability means the regular tax liability, plus any additional tax under AMT, minus any nonrefundable personal and other credits (but not reduced for the child tax credit).

**Section 6428 credit is not allowed for the following:**

- Any nonresident alien individual,
- Any individual who can be claimed as a dependent by another taxpayer such as a parent, and
- An estate or trust.

**Social Security number.** No credit under Section 6428 is allowed if the tax return does not include the Social Security number of the taxpayer, the taxpayer's spouse, or the qualifying children of the taxpayer. A TIN issued by the IRS is not allowed as a substitute for purposes of the credit.

**Federal and state assistance programs.** Any credit or refund under Section 6428 shall not be taken into account as income or resources for purposes of determining the eligibility of the individual for any benefits or assistance under any federal program or state or local program financed in whole or in part with federal funds.

**Possession of the United States.** See section 101(c) of the Economic Stimulus Act of 2008 for special rules that apply to US possessions.

### **Section 179 Expense Limit Temporary Increase**

For 2008 only, the Section 179 deduction is increased to the following amounts:

- Expense limit .....\$250,000
- SUV expense limit .....\$25,000
- Deduction phase-out begins when investment in  
Section 179 property exceeds .....\$800,000

Unless Congress extends the limits again, the 2009 Section 179 expense limit will go back to \$125,000, adjusted for inflation, and the investment limit will go back to \$500,000, adjusted for inflation.

### **Special Depreciation Allowance for Property Acquired During 2008**

The special depreciation allowance under Section 168(k) is back for 2008 only. A taxpayer is allowed to claim a special first-year depreciation allowance of 50% for new property acquired and placed in service during 2008. The 30% special depreciation allowance does not apply for 2008. The 50% special depreciation allowance is in addition to regular depreciation and any Section 179 deduction claimed. The ordering rules still apply.

**Example.** Ken purchases and places in service heavy construction equipment (5-year property) during 2008 for a total cost of \$400,000. Ken wants to claim the maximum depreciation allowed for 2008. Assume half-year MACRS depreciation is allowed. The combination of the Section 179 deduction, the 50% special depreciation allowance, and regular MACRS is figured as follows:

|   |           |
|---|-----------|
| Maximum Section 179 deduction for 2008 only .....   | \$250,000 |
| \$400,000 minus \$250,000.....                      | \$150,000 |
| \$150,000 × 50% special depreciation allowance..... | \$75,000  |
| \$75,000 remaining basis × 20% regular MACRS .....  | \$15,000  |

Total depreciation allowed equals \$340,000 (\$250,000 + \$75,000 + \$15,000). The remaining basis is recovered in the following years using regular MACRS.

**Qualified property.** Property that qualifies for the 50% special depreciation allowance includes the following:

- MACRS property with a recovery period of 20 years or less.
- Water utility property.
- Computer software that is not a Section 197 intangible asset.
- Qualified leasehold improvement property.

**Original use.** The original use of the property must begin with the taxpayer. This means the purchase of used property does not qualify.

**Acquisition and placed in service dates.** The property must be acquired and placed in service after December 31, 2007 and before January 1, 2009. There cannot be any written binding contract for the acquisition of the property in effect before January 1, 2008. If the taxpayer manufactures, constructs, or produces the property for the taxpayer's own use, the manufacturing, construction, or production must begin after December 31, 2007 and before January 1, 2009.

**Exception for transportation and long life property.** Certain transportation property and property with a recovery period of 10 years or more may qualify for the 50% special depreciation allowance if the property is placed in service prior to January 1, 2010. See Section 168(k)(2), subparagraph (B) or (C) for details.

**Section 280F auto depreciation limits.** *TheTaxBook*<sup>TM</sup>, page 10-1, under *Vehicle Depreciation Limitations – Section 280F*, the first year depreciation limitations for qualified vehicles placed in service during 2008 is increased by \$8,000.

**Author's comment.** The chart on page 10-1 indicates 2004 as the last year the special depreciation allowance could be claimed for business vehicles. For 2004, the Section 280F limits were increased by \$7,650 for purposes of the special depreciation allowance. Prior to 2004, the Section 280F limits were increased by \$4,600 for purposes of the 30% special depreciation allowance.

**Alternative minimum tax.** The 50% special depreciation allowance is deductible for both regular tax and AMT. If the 50% special depreciation allowance is used, there is no AMT adjustment required for any depreciation figured on the remaining basis of the property.

**Elect out.** Taxpayers can elect not to claim the 50% special depreciation allowance.

**New York Liberty Zone property and Gulf Opportunity Zone property.** The special rules that apply to New York Liberty Zone property and Gulf Opportunity Zone property continue to apply as if this new law were not enacted, except that the term “specified Gulf Opportunity Zone extension property” shall not include any property to which the 50% special depreciation allowance under Section 168(k) applies.

**Cellulosic biomass ethanol plant property.** See Section 168(l) for special rules that apply to qualified cellulosic biomass ethanol plant property.

### **Fannie Mae and Freddie Mac Loan Limits Increased**

The new law also increases the size of mortgage loans that government-chartered mortgage-finance companies Fannie Mae and Freddie Mac can buy.

### **Provisions That Did Not Make It**

The final version of the bill sent to the President for signature did not include provisions that were found in earlier versions of the bill, such as extending unemployment benefits, boosting funding for home-heating assistance, and provisions for renewable energy credits.