

February 19, 2008
Updated May 5, 2008
- by Roger McEowen*

Overview

On February 13, the President signed into law H.R. 5140, the Economic Stimulus Act (Act) of 2008.¹ Perhaps the part of the Act that has received the most attention is provision authorizing a refundable credit against tax (known as the “recovery rebate credit”) to low and middle-income persons for 2008. However, there are several important business tax incentives contained in the Act. In any event, the Act creates numerous questions and presents administrative issues for IRS.

Income Tax Rebates

The legislation provides for a refundable tax credit for individuals against tax.² The credit is calculated as an amount that is the greater of: (1) the taxpayer’s net income tax liability³ (but not to exceed \$600 (\$1,200 for a joint return); or (2) \$300 (\$600 for joint returns). But, the credit is conditioned upon the taxpayer having at least \$3,000 of any combination of earned income,⁴ Social Security benefits and certain veteran’s benefits (including survivors of disabled veterans),⁵ or a 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 for a joint return).⁶ In addition, the legislation also provides an additional rebate of \$300 per qualifying child.⁷

Observation: For most eligible taxpayers, the rebate essentially rebates the tax paid for the

2007 tax year at the 10 percent bracket level up to \$6,000 of taxable income (\$12,000 for joint returns).

Calculating the rebate. The amount rebated in 2008 will be based on the taxpayer’s 2007 return information.⁸ But, taxpayers that don’t receive a full rebate in 2008 can claim the remaining difference in 2009 based on their 2008 tax return (but, if the taxpayer would have received a smaller rebate check based on the 2008 return, the taxpayer is not required to give back the difference).

Note: While the IRS will calculate the amount of a taxpayer’s rebate based on the 2007 tax return information, if IRS makes a mistake or discovers that the taxpayer’s return information was incorrect such that the amount of the rebate is affected, the IRS can recover any excess amount quickly. The Act allows IRS to treat mistakes as a clerical error. Thus, IRS can bypass deficiency procedures and proceed straight to collection.⁹

Only those taxpayers with adjusted gross income (AGI) of less than \$75,000 (for single filers) or \$150,000 (for married persons filing jointly) are eligible for a full rebate.¹⁰ The rebate phases out at five percent of the amount exceeding the taxpayer’s applicable AGI threshold. Thus, the \$600 rebate is phased out completely at \$87,000 (\$87,000 - \$75,000 = \$12,000; \$12,000 x .05 = \$600) of AGI, and the \$1,200 rebate is phased

out at \$174,000 of AGI ($\$174,000 - \$150,000 = \$24,000$; $\$24,000 \times .05 = \$1,200$).

Eligibility for the rebate. A primary question is what taxpayer's *don't* qualify for a rebate. Estates and trusts are not eligible for the rebate (although decedents for whom a final income tax return for 2007 is filed are eligible),¹¹ and persons who are eligible to be claimed as a dependent on another person's return are not eligible either (whether or not they are claimed as a dependent).¹² Also, only those taxpayers having Social Security numbers are eligible for rebates – married persons filing jointly must provide Social Security numbers for each spouse.

Note: Individual Taxpayer Identification Numbers (ITINS) are not acceptable for purposes of the rebate, even though IRS accepts them in lieu of a Social Security number when a return is filed.

To summarize, here is a list of those taxpayers that don't qualify for a rebate.

1. Taxpayers who do not file a 2007 return.¹³
2. Taxpayers with a 2007 net income tax liability of zero and whose qualifying income (wages, net self-employment income, nontaxable combat pay, Social Security benefits, certain Railroad retirement benefits and certain veterans' payments) is less than \$3,000.
3. Persons who can be claimed as a dependent on someone else's return.
4. Persons not having a valid Social Security number.¹⁴
5. Nonresident aliens.
6. Taxpayers who file a Form 1040NR, Form 1040NR-EZ, Form 1040PR or Form 1040SS.¹⁵

Note: For those who would be ineligible due to failure to file a 2007 return, but are made eligible because of \$3,000 or more of Social Security income and/or veterans' benefits, a 2007 return must be filed. An IRS Form 1040A will need to be filed to

show the qualifying Social Security, veterans, or railroad retirement income so that IRS can issue a rebate check.¹⁶ There is a sample return showing where to put the information that IRS needs on the return to calculate the rebate amount at the end of this article.

Additional amount for a "qualifying child."

The Act provides for an additional tax rebate in the amount of \$300 per qualifying child of the taxpayer.¹⁷ Any additional amount received for each qualifying child is added to the basic rebate credit amount for purposes of applying the phase-out rules.¹⁸ In other words, the combined basic and child rebates phase out at five percent of the amount exceeding the applicable AGI thresholds.

Example: Sonya, a single parent, has five children under the age of 17. She has \$20,000 of AGI and is otherwise eligible for a rebate. Her basic rebate would be \$600, to which she can add \$1,500 in qualifying child rebates ($\$300 \times 5$) for a total rebate of \$2,100. Sonya's AGI is well under the applicable phase-out level of \$117,000 ($\$75,000 + \$2,100/.05$) = \$117,000.

For purposes of the child rebate, a qualifying child is defined in the same manner as the term is defined for purposes of the existing child tax credit. Thus, a qualifying child is one that: (1) has not attained age 17 as of the close of the calendar year in which the taxpayer's tax year begins; (2) is the taxpayer's qualifying child for purposes of the dependency exemption; and (3) is the taxpayer's son, daughter, stepson, stepdaughter or descendant of such child, or a brother, sister, step-brother, step-sister or a descendant of such relative.¹⁹

IRS notices. With respect to the rebates, most taxpayers will receive two notices from the IRS. The first general notice will explain in general the rebate program. The second notice will confirm the taxpayer's eligibility, the payment amount and the approximate time table for the payment.²⁰ Any taxpayer that moves after filing

their 2007 tax return (and before a rebate is received) should notify the IRS by filing Form 8822, Change of Address, and also notify the Post Office of the change of address.

Direct deposit to an IRA. In late April, IRS announced that rebates that are directly deposited to a taxpayer's IRA or similar tax-favored account may be withdrawn without penalty and will not be taxed as long as the withdrawal takes place before April 15, 2009 (or October 15, 2009, for returns on extension).²¹ The relief is available, however, only for amounts that are equal to or less than the amount of the rebate. Eligible types of accounts include traditional and Roth IRAs, health savings accounts, Archer medical savings accounts, and qualified tuition programs, such as I.R.C. §529 college savings plans. Taxpayers who elected a split tax rebate (e.g., the rebate will be directly deposited to more than one account) will receive their rebate by paper check.

Depreciation Incentives

Expense method depreciation. The Act, effective for tax years beginning in 2008, increases the I.R.C. §179 deduction to \$250,000, and increases the phase-out threshold to \$800,000.²² So, the I.R.C. §179 deduction is completely phased-out at \$1,050,000 of qualified asset purchases in 2008. For fiscal year taxpayers, the deduction applies to the fiscal year beginning in 2008. Eligible property can be either new or used property, but must *generally* be I.R.C. §1245 property. As for traded property, the provision applies *only* to any boot involved in the trade.

50 percent bonus depreciation. For 2008, the Act restores first-year bonus depreciation that was first included in the tax code from September 11, 2001, through 2004.²³ The provision is restored at the 50 percent level, and most assets used on a farm or ranch will qualify for the provision – even structures such as machine sheds that cannot be expensed. Specifically, eligible property must: (1) have a recovery period of 20 years or less; (2) have its original use commence with the taxpayer (that

is, the property must be new property); and (3) be acquired *and* placed in service in 2008.²⁴ For traded assets, both the boot *and* the adjusted basis of the relinquished asset will qualify.²⁵ An election out of using bonus depreciation is available, but the election must be made by property class – the 3, 5, 7, 10, 15 and 20-year recovery period classes.²⁶ Also, the election out of bonus depreciation must be made for all additions within an asset class placed in service during 2008.²⁷ Bonus depreciation must be claimed for both regular tax and AMT purposes.

Note: While both of the depreciation provisions are available for 2008 only, the effective dates of each of them needs to be considered carefully. There is no problem for calendar year taxpayers. But, for fiscal year taxpayers, the I.R.C. §179 deduction applies to the fiscal year beginning in 2008, while bonus depreciation applies from January 1 to December 31, 2008.

Luxury automobiles. Depreciation limitations apply to vehicles that are used as a means for transportation on public roads, weigh 6,000 pounds or less, are not used to transport persons for hire, and is a passenger vehicle with a value of at least \$15,100 (for 2007) or is a truck or van valued at \$16,100 or more (for 2007). Such vehicles are referred to as “luxury autos.” The Act raises the I.R.C. §280F depreciation limitations on these vehicles. The new cap is \$8,000 if bonus depreciation is claimed for a qualifying vehicle.²⁸ That means that just over \$11,000 is allowed as first-year depreciation on business-use vehicles in 2008.

If the vehicle qualifies for bonus depreciation in 2008 (i.e. the vehicle is a business-use new car), the I.R.C. §280F limitation begins to apply at \$18,267. Of course, used vehicles do not qualify for bonus depreciation, and the I.R.C. §280F limitation begins impacting depreciation for these cars at \$14,800 (down from \$15,300 in 2007).²⁹

Summary

Clearly, the Congress is not the best policymaking body for addressing the short-term challenges of the economy. To the extent the Act focuses on tax rebates, it is largely symbolic (i.e., political) and will do little to prevent a recession or encourage economic growth. In addition, the administrative burden placed on the IRS to administer the rebates is not insignificant. A much simpler approach would have been to lower individual tax rates in the middle to higher ranges. Recent history has taught us that tax rate reductions are more stimulative than rebates (and tax revenue *increases* due to the increased economic activity). However, the tax breaks in the Act that are associated with the purchase and use of business assets will likely have a stimulative effect. The only problem is that the incentives are for 2008 only. An alternative bill introduced in the House (H.R. 5109) would have provided a much greater economic stimulus. That bill would have allowed full expensing of business assets in the year of purchase, a reduction in the top corporate income tax rate from 35 percent to 25 percent, and a permanent reduction in the top capital gains tax rate (and a simplified capital gain rate structure).

Another significant question is whether a state will follow what the Congress has done in the Act. About half of the states automatically follow the federal definition of taxable income. Some of those states could opt to “decouple” from the federal definition.

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¹ The Senate approved the measure on February 7 by a 81-16 vote. As for the Presidential candidates, neither Senator Clinton (D-NY) or Obama (D-IL) voted on the bill. Sen. McCain (R-AZ) voted for the measure. Earlier the same day, the House approved the bill by a margin of 380-34. Twenty-eight of the thirty-four House votes against the bill were cast by Republicans. On the Senate side, all sixteen of the votes against the bill were cast by Republicans.

² *Act, Sec. 101(a)*. However, the rebate is not allowed to offset 2007 tax liability. In addition, income and asset tests for benefits to an individual under federal relief programs or federally assisted programs (such as Social Security, Food Stamps and Medicaid) will not count any rebate check for the month they are received and the two months immediately following the month of receipt. *Act, Sec. 101(d)*.

³ *Act, Sec. 101(b)*. “Net income tax liability” is defined as the excess of the sum of regular tax and alternative minimum tax due reduced by all nonrefundable credits (except the child credit). This amount is unreduced by any estimated tax or withholding payments. Thus, for example, if a taxpayer’s tax liability was reduced well below \$600 (\$1,200 for a joint return) by virtue of the child tax credit, the rebate is calculated on the tax liability *before* factoring in the child tax credit.

⁴ But, the term “earned income” does not include net earnings from self-employment which are not taken into account in computing taxable income. *Act, Sec. 101(e)(4)*.

⁵ *Act, Sec. 101(e)*. But, Supplemental Security Income is not “qualifying income” for purposes of the rebate eligibility calculation. Also, dividends, interest, capital gain income, non-veterans’ and non-Social Security pension income (e.g., income from IRA accounts) is not included when determining qualifying income.

⁶ The legislation treats Social Security and VA disability benefits as qualifying income for purposes of the \$300 minimum rebate. *Act, Sec. 101(e)*.

⁷ *Act, Sec. 101(b)(1)(B)*. Rebates are subject to offsets for any federal debts owed by the taxpayer, including back taxes, unpaid child support, and delinquent student loans. Rebates cannot, however, be applied to the amount owed for 2007.

⁸ If necessary, a taxpayer can file a Form 1040x to correct any incorrect information on the original Form 1040.

⁹ IRS has indicated that rebate checks will begin to be issued in May of 2008 for those who timely file their returns. Filing an extension will delay issuance of a rebate check. In addition, IRS has indicated that checks will only be mailed out through December 31, 2008. So, if a return is filed after the extension deadline, the taxpayer may not qualify for a rebate check in 2008. IRS estimates that over 130 million taxpayers will receive rebate checks. IRS Fact Sheet 2008-15, February 2008. Rebates will be direct deposited for taxpayers selecting that option when filing their 2007 tax returns. Taxpayers who have already filed with direct deposit need not do anything else to receive the rebate.

¹⁰ *Act, Sec. 101(d)*.

¹¹ Many elderly taxpayers who died in 2007 likely received more than \$3,000 in Social Security benefits and would qualify for a rebate.

¹² *Act, Sec. 101(e)(3)*.

¹³ Low-income workers who have earned income above \$3,000 but do not have a regular filing requirement must file a 2007 tax return to receive the minimum stimulus payment. Also, those who are not required to file a 2007 return but whose total qualifying income including Social Security, certain Railroad Retirement and certain Veterans benefits would equal or exceed \$3,000 should file a return reporting these benefits on Line 14a of Form 1040A or Line 20a of Form 1040 to establish their eligibility. While those lines just mention Social Security, they should be used even if the taxpayer's only benefits were Railroad Retirement or veterans' benefits. If a 2007 return has already been filed that shows less than \$3,000 in qualifying income, but did not list Social Security, Railroad Retirement or certain veterans' benefits should file a Form 1040X that lists those non-taxable benefits in order to qualify for a rebate. IRS has emphasized that people with no filing requirement who turn in a tax return to qualify for a rebate will not get a tax bill - people in this category will not owe money because of the rebate.

¹⁴ Any person without a valid Social Security number, including persons who file using an Individual Taxpayer Identification Number (ITIN), an Adoption Taxpayer Identification Number (ATIN) or any other identification number issued by the IRS is ineligible for a rebate.

¹⁵ These returns are normally filed by Nonresident Aliens, residents of Puerto Rico and residents of the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI). Residents of U.S. possessions will be receiving their rebates directly from the possessions.

¹⁶ IRS, in Rev. Proc. 2008-21, is allowing these taxpayers to add \$1 to their 2007 adjusted gross income in order to qualify for e-filing. Without the ability to add the \$1, such taxpayers would have to file a paper return.

¹⁷ *Act, Sec. 101(b)(1)(B)*.

¹⁸ In other words, the child tax credit amount is added in *before* any adjustment is made for the phase-out.

¹⁹ See I.R.C. §24(c). The child must also have a valid Social Security number.

²⁰ Taxpayers should save the second notice for assistance in preparing their 2008 tax return.

²¹ I.R. 2008-68 (Apr. 30, 2008).

²² *Act, Sec. 102*.

²³ *Act, Sec. 103*. See also I.R.C. §168(k).

²⁴ The placed in service date is extended through 2009 for property with a recovery period of 10 years or longer, for transportation property and certain aircraft. Also, there cannot be a binding written contract in existence before January 1, 2008, to acquire the property. But, property qualifies if it is acquired under a binding contract entered into in 2008. In addition, for property the taxpayer uses personally, the taxpayer must begin the manufacture, construction or production in 2008.

²⁵ Treas. Reg. §1.168-1(f)(5)(iii).

²⁶ Once made, the election out of bonus depreciation cannot be revoked without IRS consent.

²⁷ I.R.C. §1.168(k)(2)(C)(iii).

²⁸ *Act, Sec. 103(c)(4)*. If the vehicle is not predominately used for business in a subsequent year, the bonus depreciation must be recaptured.

²⁹ Rev. Proc. 2008-22, 2008-12 I.R.B. 1.

Write the words "Stimulus Payment" across the top of the form you file.

Label
(See page 15.)

Use the IRS label.
Otherwise, please print or type.

L A B E L H E R E	Your first name and initial <i>John E.</i>	Last name <i>Michaels</i>	OMB No. 1545-0074
	If a joint return, spouse's first name and initial <i>Susan R.</i>	Last name <i>Michaels</i>	Your social security number <i>011 : 00 : 2222</i>
	Home address (number and street). If you have a P.O. box, see page 15. <i>1040 Main Street</i>	Apt. no.	Spouse's social security number <i>011 : 00 : 1111</i>
	City, town or post office, state, and ZIP code. If you have a foreign address, see page 15. <i>Hometown, TX 77099</i>		▲ You must enter your SSN(s) above. ▲

Presidential Election Campaign Check here if you, or your spouse if filing jointly, want \$3 to go to this fund (see page 15) **You** **Spouse**

Filing status Check only one box.

1 Single
 2 Married filing jointly (even if only one had income)
 3 Married filing separately. Enter spouse's SSN above and full name here. ▶
 4 Head of household (with qualifying person). (See page 16.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶
 5 Qualifying widow(er) with dependent child (see page 17)

Exemptions

6a **Yourself.** If someone can claim you as a dependent, **do not check** box 6a.

b **Spouse**

c Dependents:

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input checked="" type="checkbox"/> if qualifying child for child tax credit (see page 18)
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>

If more than six dependents, see page 18.

Boxes checked on 6a and 6b
 No. of children on 6c who:
 • lived with you
 • did not live with you due to divorce or separation (see page 19)
 Dependents on 6c not entered above

If you were self-employed or a partner, include the amount you would enter on Schedule SE, line 3. Add numbers on lines above ▶

d Total number of exemptions claimed.

Income

Attach Form(s) W-2 here. Also attach Form(s) 1099-R if tax was withheld.

If you did not get a W-2, see page 21.
Enclose, but do not attach, any payment.

Social security, tier 1 railroad retirement, and veterans disability and death benefits

7 Wages, salaries, tips, etc. Attach Form(s) W-2.		7
8a Taxable interest. Attach Schedule 1 if required.		8a
b Tax-exempt interest. Do not include on line 8a.	8b	
9a Ordinary dividends. Attach Schedule 1 if required.		9a
b Qualified dividends (see page 22).	9b	
10 Capital gain distributions (see page 22).		10
11a IRA distributions.	11a	11b Taxable amount (see page 22).
		11b
12a Pensions and annuities.	12a	12b Taxable amount (see page 23).
		12b
13 Unemployment compensation and Alaska Permanent Fund dividends.		13
14a Social security benefits.	14a ▶	14b Taxable amount (see page 25).
		14b
15 Add lines 7 through 14b (far right column). This is your total income .		15
16 Educator expenses (see page 25).	16	
17 IRA deduction (see page 27).	17	
18 Student loan interest deduction (see page 29).	18	
19 Tuition and fees deduction. Attach Form 8917.	19	
20 Add lines 16 through 19. These are your total adjustments .		20
21 Subtract line 20 from line 15. This is your adjusted gross income .		21

Tax, credits, and payments	22	Enter the amount from line 21 (adjusted gross income).	22		
	23a	Check <input type="checkbox"/> You were born before January 2, 1943, <input type="checkbox"/> Blind } Total boxes	23a	<input type="checkbox"/>	
		if: <input type="checkbox"/> Spouse was born before January 2, 1943, <input type="checkbox"/> Blind } checked ▶			
	b	If you are married filing separately and your spouse itemizes deductions, see page 30 and check here ▶	23b	<input type="checkbox"/>	
	24	Enter your standard deduction (see left margin).	24		
	25	Subtract line 24 from line 22. If line 24 is more than line 22, enter -0-.	25		
	26	If line 22 is \$117,300 or less, multiply \$3,400 by the total number of exemptions claimed on line 6d. If line 22 is over \$117,300, see the worksheet on page 32.	26		
	27	Subtract line 26 from line 25. If line 26 is more than line 25, enter -0-. This is your taxable income .	27		
	28	Tax , including any alternative minimum tax (see page 30).	28		
	29	Credit for child and dependent care expenses. Attach Schedule 2.	29		
30	Credit for the elderly or the disabled. Attach Schedule 3.	30			
31	Education credits. Attach Form 8863.	31			
32	Child tax credit (see page 35). Attach Form 8901 if required.	32			
33	Retirement savings contributions credit. Attach Form 8880.	33			
34	Add lines 29 through 33. These are your total credits .	34			
35	Subtract line 34 from line 28. If line 34 is more than line 28, enter -0-.	35			
36	Advance earned income credit payments from Form(s) W-2, box 9.	36			
37	Add lines 35 and 36. This is your total tax .	37			
38	Federal income tax withheld from Forms W-2 and 1099.	38			
39	2007 estimated tax payments and amount applied from 2006 return.	39			
40a	Earned income credit (EIC) .	40a			
b	Nontaxable combat pay election. 40b				
41	Additional child tax credit. Attach Form 8812.	41			
42	Add lines 38, 39, 40a, and 41. These are your total payments .	42			

Refund	43	If line 42 is more than line 37, subtract line 37 from line 42. This is the amount you overpaid .	43	
	44a	Amount of line 43 you want refunded to you . If Form 8888 is attached, check here ▶	44a	<input type="checkbox"/>
	b	Routing number <input type="text"/>	c Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings	
	d	Account number <input type="text"/>		

	45	Amount of line 43 you want applied to your 2008 estimated tax .	45	
Amount you owe	46	Amount you owe . Subtract line 42 from line 37. For details on how to pay, see page 53.	46	
	47	Estimated tax penalty (see page 53).	47	

Third party designee Do you want to allow another person to discuss this return with the IRS (see page 54)? **Yes**. Complete the following. **No**

Designee's name ▶	Phone no. ▶ ()	Personal identification number (PIN) ▶ <input type="text"/>
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Sign here Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and accurately list all amounts and sources of income I received during the tax year. Declaration of preparer (other than the taxpayer) is based on all information of which the preparer has any knowledge.

Your signature	Date	Your occupation	Daytime phone number ()
Spouse's signature. If a joint return, both must sign.	Date	Spouse's occupation	

Paid preparer's use only

Preparer's signature ▶	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
Firm's name (or yours if self-employed), address, and ZIP code ▶	EIN		
	Phone no. ()		