Tax Changes in the Emergency Economic Stabilization Act of 2008

By Patti S. Spencer, Esq.
Published in the *Lancaster Intelligencer Journal* November 10, 2008

Spencer Law Firm
320 Race Avenue
Lancaster, PA 17603
Phone 717.394.1131
Fax 717.509.2018
patti@spencerlafirm.com
www.spencerlawfirm.com

On October 3, President Bush signed into law the Emergency Economic Stabilization Act of 2008, more commonly known as the "Bailout Bill." The financial bailout provisions have had the headlines for days as everyone tries to sort out what on earth the legislation actually does. But the bill also includes a raft of other tax changes (most added by special interests) that affect individuals, corporations, and businesses. Here are some examples:

1. **Alternative Minimum Tax (AMT)**. The legislation includes the 2008 AMT Extenders Act. The AMT exemption for individuals is raised for 2008;$46,200 for singles, $69,950 for married couples, and $34,975 for married couples filing separately. This is a one-year "patch." The Act also liberalizes the AMT refundable credit for individuals with long-term unused minimum tax credits. We hope that the need to reform the AMT tax will be a high priority for the new administration.

2. **Extended Tax Breaks.** More than 30 tax breaks that either expired at the end of 2007 or will expire soon have been extended by the Act. For individuals, extenders went into effect for the election to deduct state and local general sales tax, the $250 above-the-line deduction for teachers out-of-pocket classroom-related expenses (extended through 2010), and the ability of taxpayers age 70 ½ or older to make nontaxable IRA transfers to eligible charities.

The Pension Protection act of 2006 had amended the IRA distribution rules to allow a tax-free distribution from an IRA owned by a person over age 70-1/2 of up to $100,000 directly to charities. This "charitable rollover" was available in 2006 and 2007. The Act makes it available for 2008 and 2009.

The Housing Assistance Tax Act of 2008 provided a real property tax deduction for non-itemizers. The real property tax deduction is added to the standard deduction up to $500 ($1,000 for a joint return). The Act extends this additional deduction to 2009.

For businesses the following are examples of provisions that were extended: the research credit, the 15-year writeoff for qualified leasehold improvements and qualified restaurant property, enhanced deductions for certain charitable contributions, and the expanding option for qualified environmental remediation expenses.

3. **New Tax Relief Measures**. There are relaxed write-off rules for film and TV productions, quick 5-year depreciation for many types of farm property, modified rules for the penalty on understatement of a taxpayer's liability by a tax return preparer, mental health parity rules, and liberalized rules for the refundable child tax credit.

4. **Energy Incentives.** Extensions were enacted for the alternative energy credit, the residential energy efficient property credit, the energy efficient buildings deduction, the credit for energy efficient improvements to new homes, and a new credit for plug-in electric vehicles. Many other tax incentives for alternative energy creation are either extended or created.

5. **Disaster Relief**. The Act provides a raft of tax relief measures for disaster victims in ten Midwestern states (Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, and Wisconsin) and also creates new national disaster relief for all federally declared disasters occurring after 2007 and before 2010. These provisions include expanded loss deduction rules for individuals, fast writeoffs for business cleanup expenses, and a 5-year carryback for NOLs attributable to qualified disaster expenses.

6. **Revenue Raisers**. The revenue raisers in the Act include broker reporting of customers' basis in securities transactions, an extension of the 0.2% FUTA surcharge, a limited domestic production activities deduction for the oil and gas industry, and new rules for certain nonqualified deferred compensation.

Congress believes (and they are probably correct) that there is significant under-reporting of capital gain income as a result of taxpayers misreporting cost basis. Brokers now will have to track and report the basis for “covered securities” which are securities acquired through a transaction in the account in which the security is held or transferred to the account from another account where they were covered securities. Securities acquired by gift or inheritance are not covered securities. The method will be first-in first-out (FIFO) unless the customer notifies the broker of a different identification of the stock to be sold.

7. **Wooden Arrows.** Oh, yes - a very important provision: the Act exempts from excise tax certain wooden arrows designed for use by children. Current law places a 39 cent excise tax on the manufacturer, producer or importer of “any shaft consisting of all natural wood with no laminations or artificial means to enhance the spine of the shaft used in the manufacture of an arrow that measures 5/16 of an inch or less and is unsuited for use with a bow with a peak draw weight of 30 pounds or more.” Oregon Senators Ron Wyden and Gordon Smith were the initial sponsors of the provision. According to Bloomberg News, the provision would be worth $200,000 to Rose City Archery in Myrtle Point, Oregon.