



2007 YEAR-END TAX LEGISLATION

Special Report

Highlights

- ✓ 20+ Million Shielded from AMT
- ✓ Help for Victims of Subprime Mortgage Crisis
- ✓ Extended Mortgage Insurance Deduction
- ✓ Enhanced Survivor's Home Sale Exclusion
- ✓ Technical Corrections to Nine Major Tax Laws
- ✓ Treasury/IRS Funding for FY 2008
- ✓ Penalties for S Corps and Partnerships
- ✓ Over 150 Code Provisions Affected

Inside

AMT Patch.....	2
Foreclosure Help	2
Energy Bill.....	4
Technical Corrections	5
Virginia Tech	5
Treasury/IRS Funding.....	5
More to Come.....	6

Congress Passes AMT Patch, Foreclosure Relief And More In Flurry Of Last-Minute Voting

Just weeks before the start of the 2008 filing season, Congress finally passed an AMT patch, which is expected to keep millions of middle-income taxpayers out of the reach of the AMT for the 2007 tax year. The *Tax Increase Prevention Act of 2007 (H.R. 3996)* passed Congress on December 19. Congress also provided major assistance to many homeowners facing foreclosure in the *Mortgage Forgiveness Debt Relief Act of 2007 (H.R. 3648)*, which passed on December 18. This bill provides debt forgiveness relief and more, adding several important non-mortgage related tax breaks to the Tax Code.

Additionally, Congress passed an energy legislation with several tax provisions, special tax breaks for victims of the Virginia Tech tragedy, and an omnibus FY 2008 budget bill that increases funding for the IRS. Congress also passed a substantial technical corrections bill, as well as one that resolves a dispute over the IRS Commissioner's term of office.

Congress, however, failed to pass a package of extenders. A farm bill, with farm-related tax incentives, also stalled at the last

minute as did tax relief for America's military personnel. Finally, a long-list of revenue raising provisions awaits when lawmakers return to Capitol Hill in January.

Comment President Bush quickly signed the Energy Bill and Virginia Tech Relief into law on December 19, followed by the Mortgage Relief Bill on December 20. The White House indicated that the president will sign the other bills when they reach his desk.

Impact *The lateness of the AMT patch — which is temporary and effective only for tax year 2007 — may slow return processing and refund payments for the 2008 filing season. The IRS has warned that it needs up to 10 weeks to re-program its computer systems for the AMT patch. Immediately after passage of the patch, Acting IRS Commissioner Linda Stiff said, "Our people will do everything they can to quickly update our systems for this major change."*

Possible Delays in 2008 Filing Season

Date Filing Season Starts	Delayed Tax Returns (millions)	Refunds Not Issued (billions)
January 28, 2008	6.7	\$17
February 4, 2008	15.5	\$39
February 18, 2008	37.7	\$87

Source: IRS Oversight Board

AMT PATCH

The *Tax Increase Prevention Act of 2007 (H.R. 3996)* extends the AMT patch for one year only, beginning January 1, 2007. The patch was the driving force behind the new legislation. Without the patch, Treasury and the IRS predicted that for the 2007 tax year as many as 25 million taxpayers would face on average a \$2,000 tax increase.

Higher AMT exemption amounts. The 2007 AMT exemption amounts are:

- \$44,350 for single taxpayers and heads of household;
- \$66,250 for married couples filing jointly; and
- \$33,125 for married filing separately.

Comment The 2007 exemption amounts are higher than the 2006 exemption amounts.

Nonrefundable personal credits. For the 2007 tax year, the new law allows taxpayers to use most nonrefundable personal credits to offset AMT liability. These include the dependent care, HOPE and Lifetime learning education credits and the District of Columbia first-time homebuyer's credit.

Comment The adoption, child and saver's credits were already allowed under prior law to the full extent of the individual's regular tax and AMT.

Comment One cause of the last-minute passage of the AMT patch was the House's adherence to pay-as-you-go (PAYGO) rules and the political squabbles that developed as a result. PAYGO requires that all tax breaks be offset. Unlike the House, the Senate did not adhere strictly to PAYGO, concerned that "offsets" would be perceived as "tax increases" by the public.

MORTGAGE FORGIVENESS DEBT RELIEF ACT OF 2007

One of the "must-pass" provisions needed to make the Treasury Department's recently-announced sub-prime mortgage relief plan work was an exclusion of mortgage debt forgiveness from a homeowner's income. Otherwise, beleaguered homeowners would also become saddled with unmanageable income tax debt. The centerpiece of the *Mortgage Forgiveness Debt Relief Act of 2007 (H.R. 3648)* is a three-year exception for debt forgiveness on qualified home loans.

In addition, a handful of other real estate-related benefits found their way into the new law. These include a significantly expanded time-period for a surviving spouse to use the higher home sale exclusion, a three-year extension

of the mortgage insurance premium deduction, the exclusion from income of certain state and local tax breaks given to firefighters and emergency medical technicians, clarification of student housing eligible for the low-income housing credit, and a more liberal qualification test for cooperative housing corporations.

Foreclosure Relief

When a lender forecloses on property, sells the home for less than the borrower's outstanding mortgage and forgives all or part of the unpaid mortgage debt, the Tax Code normally would consider the cancelled debt to be taxable income to the homeowner. The *Mortgage Forgiveness Debt Relief Act of 2007*, excludes from taxation discharges of up to \$2 million of indebtedness that is secured by a principal residence and is incurred in the acquisition, construction or substantial improvement of the principal residence. This special relief is available for three years beginning January 1, 2007, and ending December 31, 2009. Relief is expected to total more than \$600 million, which represents direct cost savings to homeowners.

Example. *Adam's principal residence is subject to a \$220,000 mortgage debt. Adam's creditor forecloses in 2008. Due to declining real estate values, the residence is sold for \$180,000 later that year. Adam has \$40,000 discharge of indebtedness income. Before the new law, the \$40,000 would have been includible in Adam's gross income.*

Impact *The new provision is retroactive to January 1, 2007, to help as many homeowners as possible. However, homeowners who have already reported indebtedness discharge income on their 2006 returns will face an almost impossible task trying to argue that the debt was not*

AMT Exemption Amounts

	2006	2007 (without AMT patch)	2007 (with AMT patch)
Single	\$42,500	\$33,750	\$44,350
Married filing jointly	\$62,550	\$45,000	\$66,250
Married filing separately	\$31,275	\$22,500	\$33,125
Head of Household	\$42,500	\$33,750	\$44,350

IRS Forms Affected By The AMT Patch

The IRS has indicated before the legislation passed that the following forms were impacted by the AMT patch. It quickly revised all of them, except Forms 6251, 1116, and 8863 by December 20.

Form 6251,	Alternative Minimum Tax
Form 1040,	Schedule R – Credit for Elderly or Disabled
Form 1040-A,	Schedule 2 – Child and Dependent Care Credit
Form 1116,	Foreign Tax Credit
Form 2441,	Child and Dependent Care Tax Credit
Form 5695,	Residential Energy Credits
Form 8396,	Mortgage Interest Credit
Form 8839,	Qualified Adoption Expenses
Form 8859,	District of Columbia First-Time Homebuyer Credit
Form 8863,	Education credits
Form 8880,	Credit for Qualified Retirement Savings Contributions

really forgiven until 2007 due to a continuing personal liability on the mortgage note. The general rule is that a debt is cancelled or forgiven when, considering all the facts and circumstances, an identifiable event occurs that makes it likely that the debt will never be paid.

Mortgage workouts. Mortgage renegotiations are included in the law's new exception in addition to covering foreclosure situations. When a lender determines that foreclosure is not in its best interest (since the typical foreclosure nets the lender only about 60 cents on the dollar), it may offer a mortgage workout under which the terms of the mortgage are changed to result in a lower monthly payment. One workout plan organized by the Bush Administration and a group of lenders would forego adjustable rate resets for up to five years. This and other mortgage workouts technically would result in forgiveness of indebtedness income that would be taxable to the homeowner if it were not for the new law.

Indebtedness. The new law applies to qualified principal residence indebtedness which means acquisition indebtedness. This is indebtedness that

is generally incurred in the acquisition, construction or substantial improvement of the principal residence of the taxpayer and is secured by the residence. It also includes refinancing of such debt to the extent that refinancing does not exceed the amount of the original indebtedness. Unlike the current deduction for qualified residence interest that includes interest on \$1 million in acquisition indebtedness plus \$100,000 of home-equity debt, the new mortgage debt exclusion includes \$2 million in acquisition indebtedness but counts no home-equity debt not used for renovation.

Impact *Homeowners who took advantage of the run up in real estate prices to do "cash-out" refinancing, in which the funds were not put back into the home but, instead, were used to pay off credit card debt, tuition, medical expenses, or other expenditures, are not covered by the new law exclusion for the cash-out amount. That indebtedness income is fully taxable income unless other exceptions under Code Sec. 108, such as insolvency or bankruptcy, can be met.*

Principal residence. A taxpayer's principal residence for purposes of

the new law is the same as that under Code Sec. 121 for the home sale gain exclusion. A principal residence is generally the one in which the taxpayer lives most of the time. However, the determination of a taxpayer's principal residence is based on "all the facts and circumstances."

Impact *The new law's debt forgiveness income exclusion does not apply to vacation homes or other second residences which a taxpayer may have overextended family finances to purchase.*

Basis. The basis of the taxpayer's principal residence is reduced by the amount excluded from income under the new law. This will nevertheless result in complete tax forgiveness for most taxpayers since the \$250,000 gain excluded on the sale of a principal residence (\$500,000 for married couples filing jointly) generally covers most gain.

Impact *While the home sale exclusion may not cover all gain, the price for not recognizing immediate ordinary income for debt forgiveness in mortgage workouts is deferred home sale gain taxed at capital gains rates – not a bad trade.*

Caution *The new law denies the exclusion if the loan is discharged because of services performed for the lender. The exclusion also does not apply to taxpayers in Chapter 11 bankruptcy.*

Mortgage Insurance Deduction

The *Tax Relief and Health Care Act of 2006 (P.L. 109-432)* temporarily allowed taxpayers to take an itemized deduction for premiums paid or accrued on qualified mortgage insurance as deductible qualified residence interest. To be deductible, the premiums must be paid or accrued for qualified mortgage insurance ob-

tained in connection with acquisition indebtedness on a qualified residence. The deduction is phased out at 10 percent for each \$1,000 by which the taxpayer's AGI exceeds \$100,000. The *Mortgage Forgiveness Debt Relief Act of 2007* temporarily extends the deduction for qualified mortgage insurance premiums for three years, through December 31, 2010.

Comment The new law extends the mortgage insurance deduction to amounts paid or accrued after December 31, 2007, but only with respect to contracts entered into after December 31, 2006, or prior to January 1, 2011.

Comment Qualified mortgage insurance is mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, the Rural Housing Administration, or private mortgage insurance (as defined in Section 2 of the *Homeowners Protection Act of 1998*).

Caution *The new law does not allow a deduction for the unamortized balance of mortgage insurance premiums that have been capitalized if the mortgage debt is satisfied prior to the end of its term.*

Survivor's Home Sale Exclusion

In an important development for recently-widowed spouses, the new law extends the period of time during which a surviving spouse may use the joint-return filers' \$500,000 home sale gain exclusion before being treated as a single individual entitled only to a \$250,000 exclusion. Previously, a surviving spouse was entitled to the \$500,000 exclusion only to the extent he or she could file a joint return with the deceased spouse's estate, which

only occurs for the tax year in which the spouse dies.

Starting January 1, 2008, the sale of a residence that had been jointly owned and occupied by the surviving and deceased spouse is entitled to the \$500,000 gain exclusion provided the sale occurs no later than two years after the date of death of the individual's spouse.

Reminder The surviving spouse in the case of a jointly owned residence continues to be allowed a step up in basis in the residence for the deceased spouse's one-half share. The \$500,000 exclusion is in addition to that benefit.

Reminder Federal law does not recognize same-sex couples who are married under state law. Those taxpayers will not benefit from this provision.

Volunteer Emergency Responders

The foreclosure relief bill also gives volunteer firefighters and emergency medical responders some tax relief. Individuals who receive a qualified state and local tax benefit, any reduction or rebate of a tax and qualified payments of up to \$360 each year provided on account of their volunteer services, can exclude them from income. This treatment applies to tax years beginning after December 31, 2007.

Other Real-Estate Related Benefits

H.R. 3648 also clarifies the low-income housing credit and the definition of a cooperative housing corporation.

Offsets

The cost of foreclosure relief and the other tax benefits in *H.R. 3648* are offset by several revenue raisers:

- An increase in the failure to file penalty for partnerships from \$50 to \$85 per

partner per month, up to 12 months (effective as of the date of enactment);

- A new failure to file penalty for S corporations of \$85 per S shareholder per month, up to 12 months; and
- Increases in corporate estimated tax payments for corporations with \$1 billion-plus assets, by 1.5 percent to 117.25 percent for payments due in July, August and September 2012.

ENERGY BILL

Comprehensive energy legislation passed Congress on December 18 and was signed into law one day later. While the final bill, the *Energy Independence and Security Act of 2007 (H.R. 6)* (Energy Act) does not include a tax title, it does include two offsets. The Energy Act extends the additional 0.2 percent FUTA surtax (for a total FUTA rate of 6.2 percent) through 2008 and gives certain major integrated oil companies seven-year, rather than five-year, amortization of geological and geophysical expenditures.

The bulk of the Energy Act addresses energy efficiency standards in automobiles by raising fuel economy standards and improving the efficiency of home appliances. The new law raises the Corporate Average Fuel Economy (CAFE) standards from the current average of about 25 miles per gallon for passenger cars, light trucks, and SUVs to 35 mpg by 2020.

Comment The FUTA surtax, which would have expired at the end of 2007, has been extended continuously since its enactment in 1976 as a "temporary" offset for higher unemployment benefit payouts in the early 1970s.

Although the separate tax title to the Energy Act did not survive the threat of a Republican filibuster in the Senate, the provisions included within the tax title could be resurrected in 2008. Among the most popular are:

- Extending the residential energy efficiency credits;
- Extending and enhancing the alternative motor vehicle credit; and
- Extending the research credit.

Impact *Purchasers of green vehicles in 2008 may find that the alternative motor vehicle credit is unavailable to them because of phase-out limits. Legislation has been proposed to remove the phase-outs from the credit.*

TECHNICAL CORRECTIONS

The *Tax Technical Corrections Act of 2007* was approved by both the House and the Senate on makes more than 25 changes to nine major tax laws since 1998. While most are truly technical revisions to correct obvious mistakes in draftsmanship, some changes do favor one interpretation over another or make important clarifications.

Some of the more notable technical corrections provisions address:

- Forbearance of Code Sec. 470 sale-in, lease-out (SILO) rules in certain legitimate real estate and venture capital partnerships;
- Definition of the alternative minimum tax (AMT) refundable credit to more effectively utilize long-term unused credits under the AMT;
- Clarification of the role of shareholder basis in connection with contributions of appreciated property by S corporations;
- Modification of the active business definition under Code Sec. 355 in coordination with the separate affiliated group rule;
- Clarification of the treatment of a loss on a position identified in certain offsetting situations; and
- Determination of the time for assessment of penalty relating to substantial and gross valuation misstatements attributable to incorrect appraisals.

Comment Despite significant support, Congress did not extend the temporary tax break for charitable contributions of IRA proceeds. The Technical Corrections bill clarifies that when determining the portion of a distribution that would otherwise be included in income, the otherwise included amount is determined as if all amounts were distributed from all of the individual's IRAs.

IRS COMMISSIONER

Legislation (Sen. 2436) approved by both the House and Senate on December 19, resolves an ambiguity regarding the IRS Commissioner's term of office. While the *IRS Restructuring and Reform Act of 1998* set a five-year term for IRS Commissioners, it was unclear when the term of office ran when a vacancy takes place within those five years.

The new law clarifies that an appointee serves the remainder of the vacating commissioner's five-year term rather than starting a new five-year term. However, irrespective of any appointment or nomination delays, each five-year term is measured from November 13, 1997. Consequently, the commissioner appointed to fill the vacancy left by former Commissioner Mark Everson will fill the five-year term of office running from November 13, 2007 through November 12, 2012.

VIRGINIA TECH MEMORIAL FUND PAYMENTS

The *Prevent Taxation of Payments to Virginia Tech Victims and Families Act (H.R. 4118)*, signed by President Bush on December 19, excludes from gross income payments from a special memorial fund for victims of the April 2007 Virginia Tech tragedy. The new law increases the penalty for failing to file a partnership return by \$1 beginning in

2008 to pay for the tax break. Together with the increase of this penalty by the *Mortgage Debt Relief Act of 2007*, the penalty is now set at \$86 per partner per month.

TREASURY/IRS FUNDING

Congress passed an omnibus FY 2008 appropriations bill, the *Consolidated Appropriations Act, 2008 (H.R. 2764)* on December 19. The omnibus bill includes funding for Treasury and the IRS in FY 2008.

Treasury's FY 2008 budget is \$12 billion, of which \$10.9 billion is allocated for the IRS, a \$300 million increase over the FY 2007 IRS budget. The IRS budget includes \$4.8 billion for enforcement activities, \$2.2 billion for taxpayer services, \$3.7 billion for operations support of enforcement, taxpayer service, and other functions, and \$267 million for business systems modernization. The budget includes \$177 billion for the Taxpayer Advocate Service and \$7.4 million for the IRS to increase its in-house collection capacity.

Comment The bill does not include any of the administration proposals designed to improve compliance, such as expanded information reporting and increased penalties.

Comment The omnibus bill does not rescind the IRS' authority to outsource some tax collection work. As of September 30, 2007, the IRS has turned over 77,000 cases to private collection agencies.

FARM BILL DELAYED

The Senate approved a comprehensive farm bill, the *Farm, Nutrition, and Bioenergy Bill of 2007 (H.R. 2419)* on December 14. The House, however, did not move on the Senate version of the farm bill before its holiday recess. The House and Senate will have to reconcile their bills in conference in 2008. They reportedly are close to an agreement.

H.R. 2419 includes many farm-specific tax incentives. Among the highlights are:

- Giving participants in the conservation reserve program (CRP) the option to choose between a regular cash payment and a tax credit equal to the cash payment;
- Excluding CRP tax credits from income and self-employment tax ;
- Permanently extending the Pension Protection Act's conservation easement tax incentives;
- Reducing the recovery period from seven to five years for certain farm machinery and equipment;
- Creating a new 30 percent personal credit for residential wind property (capped at \$400 per year) ;
- Creating or extending some producer credits for biodiesel and other alternative fuels; and
- Creating a new energy efficient motors tax credit as part of the general business credit.

Economic substance. The farm bill, as amended by the House for PAY-GO offsets, would codify the economic substance doctrine, which the courts and the IRS have used to shut down tax shelters and other abusive transactions, to offset some of its tax incentives.

Under the bill, economic substance would be satisfied only if: (1) The transaction changes in a meaningful way (apart from federal income tax consequences) the taxpayer's economic position; and (2) The taxpayer has a substantial non-federal tax purpose for entering into such transaction. This offset is one of the more contentious provisions to be resolved in conference committee negotiations next year.

457 plans. Another proposed offset would allow governmental 457 plans to add a Roth contribution program to the plan. Prior legislation allowed 401(k)s to add a Roth provision.

MILITARY TAX BREAKS DELAYED

Lawmakers came close to, but did not, approve a package of tax incentives for

U.S. military personnel. The *Defenders of Freedom Tax Relief Act (H.R. 3997)* was passed by the Senate on December 19, but in a version slightly amended from the House-passed bill, therefore requiring a conference committee meeting in 2008 to resolve the differences.

Combat Pay

Both House and Senate versions of the military bill would make permanent the temporary election to treat combat pay as earned income for purposes of the earned income credit.

Veterans Mortgage Revenue Bonds

Both versions would make permanent states' abilities to issue veteran mortgage revenue bonds and delete the Code Sec. 143(l) requirement that the veteran serve on active duty before January 1, 1977 for states outside of Alaska, Oregon and Wisconsin.

Survivor and Disability Payments

Lawmakers would also allow survivors of deceased employees to receive death benefits from an employer's qualified plan, even though the employee died while serving in an armed forces reserve program.

Differential Pay

Both versions of the bill would qualify "differential wage payments" received by an employee in active duty military service as wages for purposes of retirement plan contributions. A "differential wage payment credit" for eligible small business employers would also be available, equal to 20 percent of all eligible differential wage payments.

Other Relief

Other non-controversial military-related tax incentives likely to be passed in 2008 include:

- Allowing recipients of military death benefit gratuities to roll over the amounts received, tax-free, to a Roth

IRA or Coverdell Education Savings account;

- Excluding gain on the sale of a principal residence by certain employees of the intelligence community, beginning after 2010;
- Allowing active duty reservists to permanently make penalty-free withdrawals from retirement plans;
- Permitting individuals called to active duty to receive distributions from a flexible spending account; and
- Excluding housing allowances paid to military personnel living in qualified residential rental projects for low income taxpayers when certifying the exempt facility bonds used to pay for their construction.

Offsets. The House version of the bill would offset the cost of most of the tax breaks by raising penalties for failing to file returns. The Senate version of the bill would keep the current \$100-per-day excise tax on group health plans that do not treat mental health benefits on a par with other medical benefits. Lawmakers may also revise the rules on expatriation to prevent high net-worth individuals from renouncing their U.S. citizenship or terminating their U.S. residence to avoid U.S. taxes.

MORE TO COME

Congress has recessed for the holiday season with a host of other tax-related bills pending in addition to the farm and military bills.

Tax Gap. One proposal to close the tax gap would require brokers to report the cost of stock and securities to the IRS when customers sell their holdings. Another proposal would require reporting on gross annual merchant payment card reimbursements.

2001 Tax Cuts. The massive *Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)* reduced individual income tax rates, created a new 10 percent rate, provided marriage penalty relief, and temporarily repealed the federal estate tax. These incentives will sunset

at the end of 2010 unless Congress extends them.

Tax Shelters. Legislation has been proposed to curb offshore accounts and urge so-called tax-haven countries to cooperate with U.S. requests for greater transparency.

Return Preparers. The new law does not change the return preparer reporting standard under Code Sec. 6694(a) as many practitioners had hoped. The more-likely-than-not standard enacted by the *Small Business and Work Opportunity Tax Act of 2007* still applies.

Tax Patents. The House has voted to ban the patenting of tax strategies as part of a comprehensive patent reform bill. However, the Senate has not acted yet. The bill would protect taxpayers and tax practitioners from

incurring fees when they use routine tax strategies.

Corporate Tax Rate. The U.S. has the second-highest corporate tax rate in the industrialized world and there is some talk on Capitol Hill of lowering it to roughly 30 percent.

Extenders. Lawmakers have introduced legislation with respect to various tax provisions that expire in 2007. Some lawmakers call for temporary extension of certain provisions such as the deduction for state and local sales taxes, qualified tuition and related expenses and expenses of elementary and secondary school teachers.

More Bills. Other pending tax bills include proposals to repeal the Code Sec. 199 production activities deduction, create new deductions or credits for individual health in-

Left Undone for 2008

- Farm-related tax incentives
- Military tax breaks
- Energy tax incentives
- Tax gap action
- Tax shelters
- Return preparers
- Tax patents
- Lower corporate tax rate

surance and new personal savings accounts for children at birth; allow tax-free withdrawals from IRAs for adoption expenses; crack down on refund anticipation loans; and require the regulation of unenrolled return preparers and increased oversight of payroll agents.

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