

AMT Refundable Credit Liberalization & Abatement of AMT on pre-October 3, 2008 ISO Income

NOVEMBER 14, 2008

BE IN A POSITION OF STRENGTH

The following is information about the 2006 change (effective in 2007 and liberalized in 2008)...

The new law also liberalized the AMT refundable credit amount that was first enacted in 2006 to help taxpayers who were stung by the AMT as a result of exercising incentive stock options (ISOs). The changes are highly technical but their essence is that for tax years beginning after 2007: 1) eligible individuals may claim this credit more rapidly (i.e., over fewer years) than would have been the case without the change; and (2) the AMT refundable credit amount no longer phases out at higher levels of adjusted gross income (AGI). In addition, the new law wipes out any tax underpayments (plus interest & penalties) outstanding on Oct. 3, 2008, that are attributable to pre-2008 phantom ISO income under the AMT rules.

Here's the law:

H.R. 1424-100

SEC. 103. INCREASE OF AMT REFUNDABLE CREDIT AMOUNT FOR INDIVIDUALS WITH LONG-TERM UNUSED CREDITS FOR PRIOR YEAR MINIMUM TAX LIABILITY, ETC.

(a) IN GENERAL-Paragraph (2) of section 53(e) is amended to read as follows:

“(2) **AMT Refundable Credit Amount.**-For purposes of paragraph (1), the term ‘AMT refundable credit amount’ means, with respect to any taxable year, the amount (not in excess of the long-term unused minimum tax credit for such taxable year) equal to the greater of-

“(A) 50 percent of the long-term unused minimum tax credit for such taxable year, or

“(B) the amount (if any) of the AMT refundable credit amount determined under this paragraph for the taxpayer’s preceding taxable year (determined without regard to subsection (f)(2).”

Questions or comments?
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(b) TREATMENT OF CERTAIN UNDERPAYMENTS, INTEREST AND PENALTIES ATTRIBUTABLE TO THE TREATMENT OF INCENTIVE STOCK OPTIONS.-Section 53 is amended by adding at the end the following new subsection:

“(f) TREATMENT OF CERTAIN UNDERPAYMENTS, INTEREST AND PENALTIES ATTRIBUTABLE TO THE TREATMENT OF INCENTIVE STOCK OPTIONS.-

“(1) ABATEMENT.-Any underpayment of tax outstanding on the date of the enactment of this subsection which is attributable to the application of section 56(b)(3) for any taxable year ending before January 1, 2008, and any interest or penalty with respect to such underpayment which is outstanding on such date of enactment, is hereby abated.

The amount determined under subsection (b)(1) shall not include any tax abated under the preceding sentence.

“(2) INCREASE IN CREDIT FOR CERTAIN INTEREST AND PENALTIES ALREADY PAID.-The AMT refundable credit amount, and the minimum tax credit determined under subsection (b), for the taxpayer’s first 2 taxable years beginning after December 31, 2007, shall each be increased by 50 percent of the aggregate amount of the interest and penalties which were paid by the taxpayer before the date of the enactment of this subsection and which would (but for such payment) have been abated under paragraph (1)”.

(c) EFFECTIVE DATE.-

- (1) IN GENERAL.-Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2007.
- (2) ABATEMENT.-Section 53(f)(1), as added by subsection (b), shall take effect on the date of the enactment of this Act.

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