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The Emergency Economic Stabilization Act of 2008: Details of the “Bailout” That May Affect You

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Emily Murphy

Just months before leaving office, former President Bush signed the Emergency Economic Stabilization Act of 2008. The Act, more commonly referred to as the 700 Billion Dollar Bailout, was enacted in response to the global financial crisis of 2008 authorizing the United States Secretary of the Treasury to spend up to \$700 billion to purchase dis-

tressed assets. While a great deal of attention has been focused on the true bailout provisions of the Act, as well as its broad economic implications, relatively little attention has been given to the tax law changes affecting individual taxpayers, as well as many businesses—both large and small. Some of the most noteworthy tax changes are summarized below.

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Giving Job References for Former Employees

Whether an employer-employee relationship ends on good terms or with acrimony, a common final act—the employee's request for a reference for a new job—is increasingly leading to litigation.

From the former employer's standpoint, it can be a case of damned if you do and damned if you don't. A candid, negative response to the request can invite a suit by the former employee. A glowing recommendation that omits some serious shortcomings in the employee's performance, or that declines to say anything about the employee except perhaps dates of employment, could result in litigation brought by the new employer, who would have preferred to be warned

about a subpar employee. The prevalence of such disputes only figures to increase in the current economic downturn.

The growing dilemma is such that some employers are telling their employees from the outset that they will get no job reference—good, bad, or indifferent—when they leave. Under such a policy, inquiring prospective employers would get only the employment equivalent of “name, rank, and serial number.” Other employers are willing to give a reference, but only after they have in their files documents in which an employee consents to having prospective em-

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Job References

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ployers find out all there is to know, and waiving their right to sue over anything that is said in the reference.

The good news for businesses is that their exposure to liability to disgruntled former employees who requested references is constrained in most states by statute. These laws generally provide immunity to the givers of references, so long as their actions were not motivated by malice. Of course, former employees, perhaps hurting while in between jobs and inclined to blame former employers for their predicament, are quick to argue that a negative response to a reference request was malicious.

In one such case, a nurse sued her former supervisor for defamation when the supervisor responded to a request for a job reference by stating on a form, without elaboration, that the nurse had "unacceptable work practice habits." A court ruled that the statement came within a statutory privilege or immunity for former employers' communications to prospective employers concerning former employees, because it was information provided about a former employee's work performance at the request of both the former employee and a placement agency.

Although the nurse made the general argument that the immunity was lost because the statement about her was made with malice, she was unable to back up that contention with factual evidence of ill will or spitefulness directed toward her. She argued, to no avail, that if the former employer considered her work habits to be acceptable enough not to fire her, then it was reasonable to infer that the later negative inference must have been motivated by malice.

Details of the Bailout

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charitable deductions even if such deductions would exceed such shareholders' adjusted basis in the S corp through 2009.

New Markets Tax Credit The new law extends the New Markets Tax Credit through 2009. This tax credit encourages taxpayers to invest in or make loans to small businesses in economically distressed areas.

Banks The Act allows favorable ordinary loss treatment for losses when eligible financial institutions sell certain Fannie Mae or Freddie Mac preferred shares.

Firm News

Our law firm has always employed a full time runner/law clerk. Often it is only a summer job, but for some students it has been a job they worked at during the school year. Pictured on the right at a recent Celtics game, with the NBA trophy, are six of our former runners, (Jonathan Richard, Billy Rudolph, Michael Friedmann, Jon Friedmann, Bobby Rudolph and David Mael). Jon Friedmann's career path, from runner to name partner in our firm, is a great success story. He held this esteemed position while he was a law student at Suffolk University. Some of the partners still ask Jon to go and get their lunch, but now he refuses.



Jon was recently successful in a lawsuit in front of the Bankruptcy Court. In a case in which an alleged creditor had made a claim against our client for monies owed, Jon moved for a directed finding after the close of the creditor's case. The Court allowed Jon's motion, and the claim was dismissed even before our client presented his side of the case. After the creditor appealed, the Bankruptcy Appellate Panel for the First Circuit upheld the lower court's decision. Zachary Tuck assisted Jon at the Bankruptcy Court.