



REAL ESTATE BULLETIN

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Get Stimulated: Business Incentives Provided by the 2008 Economic Stimulus Act

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In an effort to further stimulate the economy, the *2008 Economic Stimulus Act* provides certain incentives for a limited time frame to business owners who purchase qualifying property or acquire or construct real property during 2008. As these types of acquisitions are generally subject to limited depreciation deductions, the incentives summarized below result in significant write-offs on a much accelerated basis.

Bonus Depreciation

For qualified property acquired and placed in service during 2008, taxpayers can deduct 50 percent of the cost of the property. This 50 percent bonus depreciation privilege is due to expire December 31, 2008 unless Congress takes further action. Qualified property includes property with recovery periods (as prescribed by the IRS) of less than 20 years. Purchases of assets such as machinery and equipment, office furniture and equipment, computers, etc. qualify for the bonus depreciation provided they are new and are placed in service by December 31, 2008 (acquisitions of used property do not qualify).

Most real estate assets will fail to meet this test as recovery periods for real estate are greater than 20 years (39 years for commercial property and 27 1/2 years for residential property). However, the 50 percent bonus depreciation is applicable to qualified leasehold improvements made by tenants to the interior of non-residential real property. The real property where the improvements are made must have been in existence for at least three years and the property must be occupied exclusively by the tenant. Improvements made pursuant to leases between certain related parties do not qualify for the 50 percent bonus depreciation.

Bonus depreciation does not apply to property used less than 50 percent for business or property used predominately outside the United States.

Section 179 Expensing

Named after the relevant IRS code section, Section 179 is a provision that allows the immediate expensing of qualifying property. Qualifying property must be tangible personal property actively used in a trade or business where a depreciation deduction would be allowed (equipment, computers,



furniture, etc.). Unlike bonus depreciation, both new and used property can qualify for the Section 179 expensing.

The write-offs permitted under this provision have steadily increased over recent years. As a result of the *2008 Economic Stimulus Act*, the maximum amount that can be expensed in 2008 is now \$250,000 (previously \$128,000). The \$250,000 amount is reduced and/or phased-out if the taxpayer exceeds \$800,000 of expenditures, thereby eliminating this benefit for investments greater than \$1,050,000. (There are no similar phase-out rules for bonus depreciation.) Unless Congress extends this provision, the Section 179 limit will revert back to \$128,000 for 2009 and 2010 (with phase-out limits if expenditures exceed \$510,000) and \$25,000 in 2011 (with phase-out limits if expenditures exceed \$100,000). These amounts will be indexed for inflation.

Mid-Quarter Convention Rules

After the application of Section 179 and bonus depreciation (Section 179 and bonus depreciation can be applied simultaneously to the same qualifying property) any remaining basis in the property is subject to general depreciation rules. It should be noted that if more than 40 percent of the assets are acquired in the last three months of the taxpayer's fiscal year, then the first year's depreciation rules are somewhat less favorable. Tax planning can minimize the portion of the basis of assets subject to the mid-quarter convention rules.

Impact on New Passenger Autos and SUVs

New passenger automobiles are subject to the luxury auto depreciation rules. Previously, the first year 2008 depreciation deduction on a new vehicle would have been \$2,960. With the new bonus rules it is now \$8,000 more, for a total first-year depreciation deduction of \$10,960 (assuming the auto is used 100% for business).

New heavy SUVs (gross vehicle weight rating over 6,000 pounds) qualify for even greater deductions. Although Section 179 for SUVs is still limited to \$25,000 (Section 179 does not apply to regular passenger automobiles), the combination of the Section 179 and bonus depreciation

can potentially result in a 76 percent deduction of the cost of the SUV in the first year (assuming the auto is used 100 percent for business).

If business use of any auto is less than 100 percent, the deductions are prorated accordingly. If business use is less than 50 percent bonus depreciation is not permitted.

Cost Segregation Studies (CSS)

Although beyond the scope of this article, CSS use a unique combination of construction estimations and tax expertise to properly identify sub-components of real estate construction. The result of such studies is the allocation of certain costs to assets with shorter lives, thereby, subjecting them to the more favorable write-offs described above. Absent these studies, costs will default to longer lives than necessary (39 years or 27 ½ years), costing the taxpayer current tax dollars.

Summary

These provisions provide small and medium-sized businesses with tax incentives to expand. Implementing a cost segregation study can even further increase those benefits. Therefore, for those taxpayers who are contemplating constructing, expanding their business and/or acquiring qualifying property should consider doing so before the above incentives, which absent any changes from Congress, are due to expire or are greatly diminished.

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