

PUBLICATION

Economic Stimulus Act – Bonus Depreciation and Expensing Limits

April 16, 2008

The Economic Stimulus Act of 2008 (the Act), effective February 13, 2008, is intended to help stave off recession concerns by providing various economic incentives. Two of those incentives for business are the additional first-year 50% bonus depreciation under Section 168 of the Internal Revenue Code and an increase in the annual expensing limit under Section 179.

As to the bonus depreciation, the IRS announced in IR-2008-58, April 11, 2008, that the Service will issue guidance covering the bonus depreciation allowed by the Act. The anticipated guidance will address the depreciation deduction for new, qualified property placed in service during 2008. Qualified property includes (1) tangible personal property with a recovery period not exceeding 20 years; (2) purchased computer software; (3) water utility property; and (4) qualified leasehold improvement property. The bonus depreciation is in addition to the normal depreciation allowance for 2008. Until the Service issues final guidance covering the bonus depreciation, IR-2008-58 states that taxpayers may rely on previous regulations relating to bonus depreciation, including Treasury Regulation § 1.168(k)-1, since the Act's bonus depreciation provision is patterned after prior bonus depreciation statutes (such as the New York Liberty Zone and Gulf Opportunity Zone legislation). That Treasury Regulation addresses various bonus depreciation criteria and issues arising under such prior legislation.

Businesses, however, may want to postpone plans to take advantage of the bonus depreciation allowed by the Act until a final decision is made regarding the Foreclosure Prevention Act of 2008 (H.R. 3221). If that current legislation becomes law (in the form as passed by the Senate on April 10, 2008), businesses would have a choice between taking the bonus depreciation offered under the Act or taking an extended 4 year net operating loss carry-back (instead of the normal 2 year carry-back) for losses suffered during 2008 and 2009.

As to the expensing limits under Section 179, the Service also announced in IR-2008-58 that forthcoming guidance will address the increase in such limits. The Act increased the expensing limit for businesses to \$250,000 in 2008, from a previous limit of \$128,000.

The Service in IR-2008-58 further stated its intentions to prepare guidance regarding various other provisions of the Act. In advance of any of the expected guidance, the Service invited comments from businesses and tax professionals relating to issues they would like addressed concerning the Act. Businesses and tax professionals may submit their comments via email to the IRS at

Notice.Comments@irs.counsel.treas.gov. All submissions should include "IR-2008-58" in the subject line.