HICKEY & ASSOCIATES

FEDERAL ECONOMIC STIMULUS ACT OF 2008

SUMMARY OF BUSINESS INCENTIVES

The FEDERAL ECONOMIC STIMULUS ACT OF 2008 provides businesses with two tax incentives accelerated all in one year, 2008. The two incentives are:

1. Enhanced Code Sec. 179 expensing and;
2. Bonus depreciation.

* Congress did not provide for extended net operating loss (NOL) carryback treatment.

ENHANCED EXPENSING

The new law almost doubles the amount of deductible Code Sec. 179 expensing for 2008 to $250,000 and increases the threshold for reducing the deduction to $800,000. It applies to property purchased and placed in service in tax years beginning in 2008. Unlike the amounts under current law, the amounts in the stimulus package are not indexed for inflation.

While Code Sec. 179 expensing is commonly referred to as "small business" expensing, technically, being a small business is not one of the requirements. However, purchases of all equipment otherwise qualifying are subject to the phase-out cap, which rules out most large corporations that purchase much more equipment each year in the normal course of business. On the other side of the spectrum is the small business with losses. The deduction is disallowed if the taxpayer does not have taxable income for the year the property is placed in service. However, the disallowed deduction may be carried forward to a non-loss year.

Qualifying Property

The new law makes no changes to the general rules for the types of property that are eligible for expensing. Generally, the property must be tangible personal property, which is actively used in the taxpayer's business and for which a depreciation deduction would be allowed. The property must be used more than 50 percent for business and must be newly purchased property. The existing exception for computer software applies to the enhanced expensing amounts under the new law. If a taxpayer claims the expensing election and subsequently sells the property or stops using it more than 50 percent in its business, the taxpayer may have to recapture part of the tax benefit that was previously claimed. The recapture amount equals the difference between the amount expensed and the amount that the taxpayer would have been able to recapture under the normal rules. Businesses that lease equipment rather than purchase continue to be allowed a full write-off of lease expenses each year, irrespective of the size of the business or dollar value of the leases entered into.

TEMPORARY BONUS DEPRECIATION

The new law provides qualifying taxpayers 50 percent first-year bonus depreciation of the adjusted basis of qualifying property (similar to bonus depreciation initiated after 9/11 and under the Gulf Opportunity Zone.

Property

To be eligible to claim bonus depreciation, property must be (1) eligible for the modified accelerated cost recovery system (MACRS) with a depreciation period of 20 years or less; (2) water utility property; (3) computer software (off-the-shelf); or (4) qualified leasehold property. The property generally must be purchased and placed in service during 2008.

Thus, the original use of the property must begin with the taxpayer and must occur after December 31, 2007, and before January 1, 2009. The placed in service date is extended one year, through December 31, 2009, for property with a recovery period of 10 years or longer, for transportation property (tangible personal property used to transport people or property), and for certain aircraft.

There cannot be a binding written contract before January 1, 2008, to acquire the property. Property qualifies only if it is acquired under a binding written contract entered into during 2008. In addition, the taxpayer must begin the manufacture, construction or production of qualifying property for the taxpayer's own use during 2008.

Luxury autos

The new law also raises the Code Sec. 280F limitations on "luxury" auto depreciation. Ordinarily, the first-year limit on depreciation for passenger automobiles cannot exceed $3,060 (inflation adjusted). However, this limit was increased when bonus depreciation was previously available to $4,600.

The new law raises the cap once again, this time to $8,000 if bonus depreciation is claimed for a qualifying vehicle (for a maximum first-year depreciation of no more than $11,060; $11,260 for vans or trucks). If the vehicle is not predominantly used for business in a subsequent year, then bonus depreciation must be recaptured.

Sources Consulted:

White House Press Release: President Bush Signs H.R. 5140, the Economic Stimulus Act of 2008 February 13, 2008

CCH Tax Briefing: Economic Stimulus Package President Signs Economic Stimulus Act of 2008 With Rebates and Business Incentives February 13, 2008