

2008 Depreciation Expensing, Section 179

C&G Systems is providing the following information to its customers to make them aware of significant changes in the Tax Code Section 179, for tax year 2008. The government's \$44.8 billion economic stimulus package has created an opportunity for business owners to significantly accelerate the depreciation on capital equipment put into service in 2008! **C&G Systems** urges you to consult with your tax advisor and take advantage of this tremendous opportunity.

BUSINESS INCENTIVES

The new law provides businesses with two tax incentives that add up to \$44.8 billion in tax relief accelerated all in one year, 2008. Those valuable incentives are: enhanced Code Sec. 179 expensing and bonus depreciation. Although there was significant support, Congress did not provide for extended net operating loss (NOL) carryback treatment in the final bill.

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.

Before the new law, a business could deduct ("expense") up to \$128,000 of the cost of depreciable tangible personal property used in the active conduct of a trade or business in 2008. If the cost of qualified property placed in service during the year is more than \$510,000, the ceiling for that business is reduced by the amount over the applicable limit.

Comment. The \$128,000 and \$510,000 amounts were inflation adjusted, up from \$125,000 and \$500,000 in 2007 (as raised by the *Small Business and Work Opportunity Act of 2007*, P.L. 110-28, from \$112,000 and \$450,000).

Impact. The phase out is dollar-for-dollar. Therefore, Code Sec. 179 expensing under the new law phases out completely if qualifying purchases exceed \$1,050,000 during the tax year. The business will be limited by the depreciation deduction rules for amounts that are phased-out.

Caution. Businesses **not** on a calendar year should note that the higher expensing limits apply to tax years beginning in 2008. Their higher expensing under the new law does not start until their new fiscal tax year starts. This follows the timing of Code Sec. 179's previous increases "for tax years beginning in" For example, a small business on a June 1 - May 31 year would be limited for purchases for the year ending May 31, 2008 to a \$128,000 deduction and a \$510,000 threshold. The new \$250,000/\$800,000 amounts would kick in starting June 1, 2008.

Impact. Enhanced expensing will enable capital-intensive companies to write off a greater amount of their investments in business property. This will enable profitable companies to increase their retained earnings or funds for investment for 2008.

Comment. 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.

Reminder. 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.

Comment. Businesses that lease equipment rather than purchase continue to be allowed a full writeoff of lease expenses each year, irrespective of the size of the business or dollar value of the leases entered into.

TEMPORARY BONUS DEPRECIATION

Congress has used bonus depreciation several times to encourage business investment. For example, bonus depreciation was available immediately after September 11, as well as for certain property used in the New York Liberty Zone or the Gulf Opportunity Zone. The new law provides qualifying taxpayers 50 percent first-year bonus depreciation of the adjusted basis of qualifying property.

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.

Comment. 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.

Impact. Bonus depreciation must be claimed for both regular tax and alternative minimum tax (AMT) liability unless the taxpayer makes an election out. Once made, an election out cannot be revoked without IRS consent.

Luxury autos

The new law also raises the Code Sec. 280F limitations on "luxury" auto depreciation. The first-year limit on depreciation for passenger automobiles placed in service in 2008 is projected to be \$2,960 for passenger vehicles and \$3,160 for vans and trucks. However, this limit is increased when bonus depreciation is claimed.

The new law raises the cap, this time to \$8,000 if bonus depreciation is claimed for a qualifying vehicle placed in service in 2008 (for a maximum first-year depreciation of no more than \$10,960 for autos and \$11,160 for vans or trucks). If the vehicle is not predominantly used for business in a subsequent year, then bonus depreciation must be recaptured.

Comment. The depreciation cap was enacted because Congress did not want the Code subsidizing the use of luxury vehicles by businesses. But the designation of vehicles as "luxury" is woefully out of date. For example, for 2007, a vehicle is subject to the limitation if its value is at least \$15,100 for passenger automobiles and \$16,100 for trucks and vans. The new law will allow just over \$11,000 as first-year depreciation on business use vehicles purchased in 2008.

Pursuant to the rules of professional conduct set forth in Circular 230, as promulgated by the United States Department of the Treasury, nothing contained in this communication was intended or written to be used by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer by the Internal Revenue Service, and it cannot be used by any taxpayer for such purpose. No one, without our express prior written permission, may use or refer to any tax advice in this communication in promoting, marketing, or recommending a partnership or other entity, investment plan or arrangement to any other party.