



Analysis of the Bonus Depreciation Provision in the Economic Stimulus Act of 2008 (P.L. 110-185)

On February 13, 2008, President Bush signed into law the Economic Stimulus Act of 2008 (P.L. 110-185). This legislation includes a 50% bonus depreciation provision for “qualified” property purchased, manufactured, constructed or produced in 2008.

This memo outlines the specifics of this provision and addresses key issues affecting the equipment leasing and finance industry. Please refer to the Joint Committee on Taxation’s Technical Explanation of the Revenue Provisions of the Economic Stimulus Act of 2008 (JCX-16-08) and any subsequent regulations for further clarifications.

Bonus Depreciation

In addition to regular applicable depreciation deductions allowed to a taxpayer, eligible assets can be depreciated by an extra 50% for the 2008 tax year. Thus a taxpayer acquiring a \$100,000 piece of 5-year MACRS property in 2008 could take \$50,000 in bonus depreciation plus \$10,000 (20% of remaining basis after bonus depreciation is applied) in regular MACRS deductions for 2008. The taxpayer would then follow the applicable MACRS schedule for subsequent years. Additional first year deduction is allowed for both regular and AMT tax purposes.

To be eligible:

- Qualified property is either (1) property to which MACRS applies with a recovery period of 20 years or less (2) water utility property (3) certain computer software; or (4) qualified leasehold improvement property (defined in IRC section 168(k)(3))
- Original use of the property (i.e. equipment must be new) of property must commence with the taxpayer during 2008. See special rules for definitions of “original use” below.
- Taxpayer must purchase the qualified property during 2008, subject to certain binding written contract rules. Note: Property does not fail to qualify if a binding contract for a component of the equipment pre-dates 2008, but cannot have been paid for nor begun to be manufactured, constructed or produced until 2008.
- Property must be placed in service during 2008 (a one year extension is provided for certain property with a 10 year or longer recovery period and certain transportation property – see special placed-in-service rules below).

Original Use Means:

- The term “original use” means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer.

- In the case of a sale leaseback, original use is considered to commence with the lessor if sale leaseback occurs within 3 months of the date originally placed in service by the property user, but only if the equipment was eligible for bonus depreciation at the time of purchase by the user (i.e. cannot buy property in 2007 and sale leaseback the property in 2008 in order to change original use date).
- In the case of a financier-to-financier sale of lease chattel paper (wholesale, syndication), original use is considered to commence with final taxpayer if sale occurs within 3 months of date paper was originated, so long as property user has not changed.
- In the case of fractional ownership sales, original use is considered to begin with first user of each fractional interest and depreciable basis is limited to fractional owner's proportional share of the property.

Placed in service exceptions:

- In the case of a sale leaseback, the property is treated as originally placed in service by the taxpayer not earlier than the date the property is used under the leaseback, so long as the sale leaseback occurs within 3 months of the date the property was originally placed in service.
- If certain property has a recovery period of 10 years or longer (or is certain transportation property) and has an estimated production period exceeding one year and a cost exceeding \$1.0 million, it can be placed in service as late as 12/31/09 (as long as all other requirements apply).
Note: Bonus depreciation applies only to the portion of the cost actually incurred in 2008. Thus if only \$2 million of a \$30 million plane was paid out to a vendor in 2008, and remainder is paid out in 2009, only a \$1 million (50% of \$2 million) bonus depreciation will be allowed on the plane's cost.

ELFA wishes to thank members of the ELFA Federal Tax Committee for their contributions to this analysis.

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