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Business Tax Provisions of the Economic Stimulus Act of 2008

On February 13, 2008, the President signed H.R. 5140, The Economic Stimulus Act of 2008 (the "Stimulus Act"), which provides rebates for individual taxpayers and includes two provisions that affect business taxpayers. The business provisions are explained below.

Bonus Depreciation Allowance for Certain Property

The Stimulus Act allows an additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified property. The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the property is placed in service. The basis of the property and the depreciation allowances in the year the property is placed in service and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. The amount of the additional first-year depreciation deduction is not affected by a short taxable year. The taxpayer may elect out of additional first-year depreciation.

In order for property to qualify for the additional first-year depreciation deduction, it must meet all of the following requirements.

→ First, the property must be either (1) property to which MACRS applies with

an applicable recovery period of 20 years or less, (2) water utility property as defined in Section 168(e)(5) of the Internal Revenue Code of 1986, as amended ("the Code"), (3) computer software other than computer software covered by Section 197 of the Code, or (4) qualified leasehold improvement property as defined in Section 168(k)(3) of the Code.

- Second, the original use of the property must commence with the taxpayer after December 31, 2007. For these purposes, the term original use means the first use to which the property is put, whether or not such use is by the taxpayer.
- Third, the taxpayer must purchase the property within the "applicable time period" (described below).
- Fourth, the property must be placed in service after December 31, 2007, and before January 1, 2009. An extension of the placed in service date of one year (i.e., to January 1, 2010) is provided for certain property with a recovery period of 10 years or longer and certain transportation property. The existing provision under Section 168(k)(2)(E)(ii) of the Code remains in effect for purposes of determining the placed in service date of property that is sold and then leased back within three months of the date on which it was originally placed in service.

The applicable time period for acquired property is (1) after December 31, 2007, and before January 1, 2009, but only if no binding written contract for the acquisition is in effect before January 1, 2008, or (2) pursuant to a binding written contract which was entered into after December 31, 2007, and before January 1, 2009. With respect to property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production of the property after December 31, 2007, and before January 1, 2009. Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer.

For property eligible for the extended placed in service date, a special rule limits the amount of costs eligible for the additional first year depreciation. With

respect to such property, only the portion of the basis that is properly attributable to the costs incurred before January 1, 2009 is eligible for the additional first-year depreciation. Finally, property does not qualify for the additional first-year depreciation deduction when the user of such property (or a related party) would not have been eligible for the additional first-year depreciation deduction if the user (or a related party) were treated as the owner.

Temporary Increase in Limitations on Expensing Certain Depreciable Business Assets

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Taxpayers that satisfy limitations on annual investment may elect under Section 179 of the Code to deduct (or “expense”) the cost of qualifying property, rather than to recover such costs through depreciation deductions. In general, qualifying property is defined as depreciable tangible personal property purchased for use in the active conduct of a trade or business. For taxable

years beginning in 2008, the maximum amount that a taxpayer may expense is \$128,000 of the cost of qualifying property placed in service for the taxable year. The \$128,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds \$510,000. The amount eligible to be expensed for a taxable year may not exceed the taxable income for that taxable year that is derived from the active conduct of a trade or business. Any amount that is not allowed as a deduction because of this limitation may be carried forward to succeeding taxable years, subject to similar limitations.

The Stimulus Act increases the maximum amount that a taxpayer may expense in 2008 from \$128,000 to \$250,000, and provides that the \$250,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during 2008 exceeds \$800,000.

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