




MOODY, FAMIGLIETTI & ANDRONICO

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Federal Tax Alert

A photograph of the U.S. Capitol building in Washington, D.C., viewed from across the reflecting pool. The building's white dome and neoclassical architecture are prominent against a cloudy sky. The reflecting pool in the foreground shows a clear reflection of the building and the sky.

Subject:

Bonus Depreciation – American Recovery and Reinvestment Tax Act of 2009

Details

The American Recovery and Reinvestment Tax Act of 2009, signed into law by President Obama on February 17, 2009, generally extends the 50-percent first-year bonus depreciation deduction on qualifying property through 2009. Qualifying property, which may be acquired or constructed, is generally defined in section 168(k) as property that meets all of the following requirements:

- The property has a recovery period of 20 years or less.
- The original use of the property must commence with the taxpayer.
- The property must be acquired by the taxpayer after December 31, 2007, and placed in service prior to January 1, 2010, and no written binding contract to acquire the property may have been in effect prior to January 1, 2008.
- Property that is constructed by the taxpayer has the same construction start and in-service date requirements as acquired property; however there is a safe harbor provision for self-constructed assets if less than ten percent of the total construction cost is incurred prior to January 1, 2008.

Bonus Depreciation and Cost Segregation

Extending bonus depreciation through 2009 presents immediate cost segregation opportunities. Engineering-based cost segregation analyses can be performed on newly-constructed facilities, as well as additions and tenant improvements to existing facilities, to identify construction-related assets that qualify as five-year, seven-year, or 15-year property rather than 27.5-year residential rental property or 39-year non-residential real property. In most types of buildings, the cost segregation benefits can be significant; an immediate deduction of 50 percent of an asset's basis coupled with a shorter life on the remaining basis can provide increased cash flow benefits in the first year as well as net present value benefits over the life of the asset.

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In addition, cost segregation analyses may be used to identify certain real property assets that qualify for bonus depreciation. These assets generally have a 15-year recovery period as permitted by prior legislation. Examples include:

- Qualified leasehold improvement property;
- Qualified restaurant property; and
- Qualified retail property.

Bonus Depreciation, Cost Segregation, and Refundable R&D/AMT Credits

In addition to accelerated depreciation benefits resulting from cost segregation, there is another taxpayer advantage resulting from the one-year extension of bonus depreciation. After reinstating bonus depreciation in February 2008 (Economic Stimulus Act of 2008), Congress enacted section 168(k)(4) in July 2008 in recognition of the fact that bonus depreciation did not provide the desired stimulus for certain types of taxpayers, e.g., those that had net operating losses or unused tax credits. Under section 168(k)(4), corporate taxpayers that would otherwise qualify for bonus depreciation can elect not to use bonus depreciation, and thereby convert some of their old (pre-2006) research and development and alternative minimum tax credits into refundable credits.

For more information on this provision, as originally enacted in 2008, please see our September 2008 Federal Tax Alert, “Refundable R&D and AMT Credits Under the Housing Assistance Tax Act of 2008” at <http://www.mfa-cpa.com/mfa-news-and-resources/tax-alerts/FederalTaxAlert-RDCredits-0908.pdf>. The one-year extension of bonus depreciation and the related refundable credit provision give companies an opportunity to use cost segregation studies to increase the amount of otherwise-available bonus depreciation, which they can forgo in order to increase their refundable credits.

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