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A CSS can help R.E. owners maximize benefits of Economic Stimulus Act of 2008

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The Economic Stimulus Act of 2008 was officially signed into law on February 13, by President George Bush. This stimulus package will offer tax dollars back in the hands of individual taxpayers and provide significant advantages for businesses. In addition the Act provides for the reemergence of 50% bonus depreciation which can provide significant value to real estate owners and tenants who are building new facilities or making improvements in 2008.

Bonus depreciation benefits those who are eligible by allowing them to deduct 50% of qualifying expenses in the first year. The bonus applies only to "original use" assets that have a depreciable life (recovery period) of 20 years or less and meet other criteria discussed later.

In order to maximize the benefit of bonus depreciation as it applies to a real estate asset or a tenant improvement taxpayers should have a cost segregation study (CSS) performed. A CSS is used to properly identify and allocate building and construction-related costs that qualify for a five, seven and 15 year recovery period. These engineering-based studies which provide significant benefit without bonus depreciation will provide even greater benefit now that the bonus is back in play, and they will do so in the very first year. On average a CSS will allocate 15 - 30% of a property's depreciable costs into these shorter recovery periods, not including FF&E.

Qualifying for Bonus

Eligibility for bonus depreciation under the new Act is the same as it was before.

1. The original use of the property must begin with the current taxpayer. This will primarily provide benefit for newly construction properties or improvements, but original use can apply to certain acquisitions.
2. Under the "binding contract" rule, if the property is constructed or purchased pursuant to a binding contract before January 1, 2008, it is not eligible for bonus depreciation.
3. The property must be placed in service in 2008.
4. There is a provision for extended production periods allowing properties placed in service by December 31, 2009 to receive some benefit. Under this extension costs that are incurred by December 31, 2008 may qualify for the bonus if the property has total construction cost greater that $1 million, a life expectancy of 10-years or more, is placed in service by December 31, 2009 and meets all other eligibility requirements.
5. The property must have a General Depreciation System (GDS) life of 20 years or less.
6. Property required to be depreciated under the Alternative Depreciation System (ADS) is specifically excluded from bonus depreciation.
7. There is no adjustment to Alternative Minimum Tax (AMT) depreciation, as you must use the bonus for both GDS and AMT.
8. Includes water utility property despite a life longer than 20 years.

9. Includes computer software other than software covered by Sect. 197 (purchased as part of a business).
10. Includes Qualified Leasehold Improvements (described below).

Qualified leasehold improvements

Under the new Act Qualified leasehold improvements (QLI) revert back to how they where treated between May 6, 2003 and December 31, 2004 when they where eligible for a 50% bonus. It is important to note that depreciable life if not a deciding factor here therefore costs allocated to a 39-year recovery period are also eligible for the bonus if they are in fact QLIs.

Generally, a QLI is any improvement to an interior portion of a building that is nonresidential real property, provided all of the following requirements are met.

1. The improvement is made under or pursuant to a lease by the lessee (or any sublessee) or the lessor of that part of the building. Note that a binding commitment between related persons is not treated as a lease.
2. That part of the building is to be occupied exclusively by the lessee (or any sublessee) of that part.
3. The improvement is placed in service more than 3 years after the date the building was first placed in service. Note that this is referring to when the building was first placed in service, not when the current owner purchased the building.

However, a QLI does not include any improvement for which the expenditure is attributable to any of the following.

1. The enlargement of the building.
2. Any elevator or escalator.
3. Any structural component benefiting a common area.
4. The internal structural framework of the building.

In closing, The Economic Stimulus Act of 2008 should soon give many Americans something to celebrate, especially real estate owners and tenants who entered into construction contracts after January 1st or plan to do so soon. Although the window of opportunity is limited due to specified in-service dates, the benefits can be huge. The best way to maximize bonus depreciation is to have a cost segregation study done by a professional firm of engineers and tax experts who are experienced in this area.

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