

SLATER MOFFAT ASSOCIATES, LLP

MEMORANDUM

TO: Real Estate Professionals
FROM: John Slater
SUBJECT: 50% Bonus Depreciation and Expanded Section 179 Deduction
DATE: February 19, 2008

By now everyone is aware of congressional efforts to thwart a recession by sending many taxpayers rebate checks. However, businesses are benefiting from the new legislation too; particularly if the business plans to, or in the hopes of Congress, will invest in new business property. The two incentives applicable to businesses are: (1) increased §179 expensing amounts for small businesses; and (2) a 50% first-year depreciation deduction.

For tax years beginning in 2008 only, the law increases the maximum amount of capital investment that a taxpayer may expense, rather than depreciate, from \$128,000 to \$250,000. In addition, the threshold for reducing the §179 deduction increases from \$510,000 to \$800,000. What this means is that from the start of 2008, the amounts businesses must be aware of are \$250,000 and \$800,000. In 2009, these amounts will revert back to pre-stimulus amounts indexed for inflation.

The law also provides an additional first-year depreciation deduction equal to 50% of the adjusted basis of qualified property, for both regular tax and alternative minimum tax purposes for the tax year in which the property is placed in service. This provision is almost a verbatim reincarnation of the bonus depreciation provision that first appeared in the law after the September 11, 2001 attacks.

In order for property to qualify for the additional first-year depreciation it must meet all of requirements 1 through 4 below:

- The property must be property: (a) to which general MACRS rules applies with an applicable recovery period of 20 years or less; (b) water utility property; (c) computer software (other than software covered by §197); or (d) qualified leasehold improvement property.
- The original use of the property must begin with the taxpayer after 2007.
- The taxpayer must acquire the property in 2008, or must acquire it under a binding written contract entered into in 2008. For property manufactured, constructed, or produced by the taxpayer for its own use, the taxpayer must begin manufacture, construction, or production in 2008.
- The property must be placed in service before January 1, 2009. An extended placed-in-service date, January 1, 2010, applies for property that has a recovery period of 10 years or longer or is tangible personal property used in the transportation business, but only if the property has an estimated production period exceeding one year and a cost exceeding \$1 million. But for this property, only the portion of the basis attributable to the costs incurred before January 1, 2009, are eligible for the additional first-year depreciation.

The property and depreciation allowances in the year the property is placed in service and later years must be adjusted to reflect the additional first-year depreciation deduction. A taxpayer can elect out of additional first-year depreciation for any class of property for any tax year.

In conjunction with the additional depreciation, the law raises the first-year limitation on the amount of depreciation deductions allowed with respect to certain passenger automobiles (under §280F) by \$8,000 for automobiles that qualify.