

Federal Economic Stimulus Act of 2008 - Effect on Corporate Franchise Taxes

This memorandum explains how provisions of the federal Economic Stimulus Act of 2008 (hereinafter, the Act) relate to New York State corporation franchise taxes under Articles 9-A, 32, and 33 of the Tax Law. The Act's provisions that affect the corporation franchise taxes are the 50% special depreciation allowance under Internal Revenue Code (IRC) section 168(k) and the expensing rule under IRC section 179.

Fifty percent special depreciation allowance

The Act amends IRC section 168(k) to allow a taxpayer, when computing its federal taxable income, to depreciate 50% of the adjusted basis of certain qualified property in the year that the property was placed in service. To qualify for the 50% special depreciation allowance under the new federal law, the property must be placed in service after December 31, 2007, but generally before January 1, 2009.

Effect on New York State corporation taxes

The starting point for computing the entire net income (ENI) base for New York corporation franchise taxes under Articles 9-A, 32, and 33 of the Tax Law is federal taxable income. New York State Tax Law requires a taxpayer, when computing ENI, to make modifications to federal taxable income for property placed in service on or after June 1, 2003, that qualifies for the special depreciation allowance under IRC section 168(k). The modifications apply to qualified property other than (1) qualified resurgence zone property described in Tax Law section 208.9(q) (defined below), and (2) qualified New York Liberty Zone property described in IRC section 1400L(b)(2) (without regard to subparagraph (C)(i) of that paragraph).

Accordingly, when computing ENI, a taxpayer must add to federal taxable income the total amount of the depreciation deduction for qualified section 168(k) property that is allowable under IRC section 167. Then the taxpayer must subtract from federal taxable income the depreciation deduction for qualified property that would be allowed under IRC section 167 if the property did not qualify for the federal special depreciation allowance provisions under IRC section 168(k)(2) (that is, the amount of depreciation allowed under IRC section 167 as that section would have applied to the property had it been acquired on September 10, 2001).

Upon disposition of property to which the above addition and subtraction modifications apply, the amount of any gain or loss includible in ENI must be adjusted to reflect the addition or subtraction modifications.

Definitions. *Qualified resurgence zone property* means qualified property described in IRC section 168(k) for which substantially all of the use is in the resurgence zone in the active

conduct of a trade or business by the taxpayer in the zone, and the original use in the zone commences with the taxpayer on or after January 1, 2003.

The *resurgence zone* means the area of New York County bounded on the south by a line running from the intersection of the Hudson River with the Holland Tunnel, and running from there east to Canal Street, then running along the centerline of Canal Street to the intersection of the Bowery and Canal Street, running from there in a southeasterly direction diagonally across Manhattan Bridge Plaza, to the Manhattan Bridge and along the centerline of the Manhattan Bridge to the point where the centerline of the Manhattan Bridge would intersect with the easterly bank of the East River, and bounded on the north by a line running from the intersection of the Hudson River with the Holland Tunnel and running from there north along West Avenue to the intersection of Clarkson Street then running east along the centerline of Clarkson Street to the intersection of Washington Avenue, then running south along the centerline of Washington Avenue to the intersection of West Houston Street, then east along the centerline of West Houston Street, then at the intersection of the Avenue of the Americas continuing east along the centerline of East Houston Street to the easterly bank of the East River.

Qualified New York Liberty Zone property is that property as described by IRC section 1400L(b)(2).

The *New York Liberty Zone* was established by the federal Job Creation and Worker Assistance Act of 2002. That Act defines the New York Liberty Zone as the area located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway) in the Borough of Manhattan in the city of New York.

(Tax Law, Article 9-A, sections 208.9(a)(17), 208.9(b)(17), 208.9(o), 208.9(p), and 208.9(q); Article 32, sections 1453(b)(13), 1453(e)(17), 1453(r), 1453(s), and 1453(t); and Article 33, sections 1503(b)(1)(R), 1503(b)(2)(T), and 1503(14), 1503(15), and 1503(16))

Section 179 expensing deduction

The Act allows a qualifying business, in computing its federal taxable income, to expense up to \$250,000 of IRC section 179 property purchased by the taxpayer in a tax year beginning in 2008. Prior to the Act, the 2008 expensing limit for section 179 property would have been \$128,000. The \$250,000 amount provided under the new federal law is reduced if the cost of all section 179 property placed in service by the taxpayer during the tax year exceeds \$800,000.

Effect on New York State corporation taxes

The starting point for computing the ENI base for New York corporation franchise taxes under Articles 9-A, 32, and 33 of the Tax Law is federal taxable income. For tax years beginning on or after January 1, 2003, an addition modification must be made in the computation of ENI

under Article 9-A for the amount deducted by a taxpayer (except an eligible farmer as defined in Tax Law section 210.22) under IRC section 179 for a sport utility vehicle with a vehicle weight in excess of 6,000 pounds. A subtraction modification must be made for any amount required to be recaptured pursuant to IRC section 179(d) with respect to sport utility vehicles.

There are no other modifications to federal taxable income required for the expensing related to any other IRC section 179 properties. Accordingly, except with respect to sport utility vehicles under Article 9-A, New York conforms to the IRC section 179 expensing provision for corporate franchise tax purposes.

(Tax Law sections 208.9(a)(16) and 208.9(b)(16))

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