

Novogradac & Company LLP Analysis: Availability of the 50% depreciation provision to LIHTC property owners

Details on Proposed Economic Stimulus Act of 2008 (Chairman's Mark)

The U.S. House of Representatives recently passed a \$150 billion economic stimulus bill and that bill has now moved to the Senate Finance Committee for consideration. The bill, the Economic Stimulus Act of 2008 (the "Act"), contains a number of provisions; some of them would have a material impact on the affordable housing industry. In particular, the bill contains a special depreciation allowance for certain property acquired during 2008. While the ultimate fate of the bill is uncertain, there is bipartisan support for passing an economic stimulus package of some kind.

One section of the Act proposes to revise subsection (k) of §168 of the Internal Revenue Code to create a special allowance for certain property acquired during 2008. In general, the Act would allow for bonus depreciation equal to 50 percent of the adjusted basis of qualified property for property placed-in-service on or after January 1, 2008 and before January 1, 2009, as well as for costs incurred during 2008 for property placed-in-service before January 1, 2010. The bonus depreciation provisions are similar to provisions enacted after 9/11 and Hurricane Katrina to stimulate rebuilding efforts after those disasters.

The 50 percent bonus depreciation would be allowed in the taxable year in which the property is placed-in-service and would reduce the adjusted basis of the qualified property before computing the regular tax depreciation on the remaining basis for the placed-in-service year. "Qualified property" would be property falling into any of four categories:

- Depreciable property with a recovery period of 20 years or less,
- Computer software normally subject to an allowance for amortization,
- Water utility property, or
- Qualified leasehold improvement property.

Property with a recovery period of 20 years or less would include several categories of property. In the LIHTC arena, this would not include the cost of the buildings (usually depreciated over 27.5 years), but it would include capitalized site work that would ordinarily be depreciable over 15 years; capitalized personal property such as appliances, carpeting and blinds; office furniture used in property management offices and other capitalized personal property such as computers or telephone systems used in the management offices of the property. Property that is considered "tax-exempt use property" would not be eligible for the bonus depreciation.

To be eligible for the bonus depreciation, the first use of the property would need to commence on or after January 1, 2008 and prior to January 1, 2009. However, an exception applies to property with a recovery period of at least 10 years and less than 20 years (i.e., for those of us in the LIHTC community, this would apply

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to depreciable site work), and that property can be placed-in-service prior to January 1, 2010. For that property though, the 50 percent bonus depreciation can only be taken on the costs applicable to that property that were *incurred* prior to January 1, 2009. Even though the bonus depreciation would be calculated on the basis incurred prior to January 1, 2009, the actual bonus depreciation deduction itself would be claimed in the year that the completed property was placed-in-service.

To be eligible for the bonus depreciation, the taxpayer must acquire the property after December 31, 2007 and cannot have entered into a written binding contract to acquire the property prior to January 1, 2008 or after January 1, 2009.

A chart is reproduced below that shows what LIHTC property would typically be eligible for the bonus depreciation.

Sitework

Recovery Period of 20 years or less, but at least a recovery period of 10 years

	Contract Date Before 1/1/08	Contract Date 1/1/08-12/31/08	Contract Date After 1/1/09
Placed-in service 1/1/08-12/31/08	No	Yes	No
Placed-in service 1/1/09-12/31/09	No	Maybe*	No

*Bonus depreciation applies to work completed as of 12/31/08 but placed in service between 1/1/09-12/31/09

Personal Property

Recovery Period of less than 10 years

	Contract Date Before 1/1/08	Contract Date 1/1/08-12/31/08	Contract Date After 1/1/09
Placed-in service 1/1/08-12/31/08	No	Yes	No
Placed-in service 1/1/09-12/31/09	No	No	No

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Building (Real Property)

Recovery Period of 20 years or more

	Contract Date Before 1/1/08	Contract Date 1/1/08-12/31/08	Contract Date After 1/1/09
Placed-in service 1/1/08-12/31/08	No	No	No
Placed-in service 1/1/09-12/31/09	No	No	No