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Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010

December 30, 2010 - Front Section

With the Bush tax cuts looming to expire at December 31st, 2010, congress and President Obama had faced mounting pressure to preserve the tax cuts enacted during the Bush era. On December 17th, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, which extended much of the Bush-era tax rates and provisions.

Of particular relevance to the commercial real estate market is the extension of bonus depreciation and the ability to depreciate qualified leasehold property, restaurant buildings, and retail improvements over fifteen years. Previously, the Small Business Jobs Act of 2010 extended bonus depreciation through 2010. The new legislation extends bonus depreciation through December, 2012, with a new wrinkle or two added.

Provisions for bonus depreciation include the following: the property must be new; the deduction for the bonus depreciation may create an NOL; taxpayers may claim bonus depreciation on all qualifying property; and taxpayers may claim Section 179 depreciation, bonus depreciation and tax depreciation on the same asset.

The legislation, in whole, contains provisions meant to provide a short term stimulus to the economy. One such provision is the ability to claim 100% bonus depreciation on qualifying assets placed in service after September 8, 2010, and before January 1, 2012. Property placed in service in 2012 will be subject to the 50% bonus depreciation rules in place prior to September 8, 2010.

Another provision of the legislation allows for bonus depreciation to be taken on qualified leasehold property.

In order for an improvement to be qualified leasehold improvement property, the improvement must be made according to a lease; the lessee must occupy the part of the building being improved; and the building must be more than 3 years old.

It remains to be seen if providing the stability businesses need to plan for future expansion and hiring will yield the desired result of jump-starting the economy.

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New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540