

**NEW FROM LEXISNEXIS® A COMPREHENSIVE ANALYSIS OF
THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
("The Economic Stimulus Act")**

**Also Includes IRC Section Conversion Table and Complete Text of Tax
Provisions of Act**

Analysis written by noted legal author Gerald W. Paulukonis, Esq.

TEMPORARY INVESTMENT INCENTIVES FOR BUSINESSES

A. Special Allowance for Certain Property Acquired During 2009

The additional 50-percent first-year depreciation deduction allowed under [IRC Section 168\(k\)](#) is extended for one year, generally for property acquired through 2009 (through 2010 for certain longer-lived and transportation property). Corporations may increase their research credit or minimum tax credit limitation by the bonus depreciation amount with respect to certain property placed in service in 2009 (2010 in the case of certain longer-lived and transportation property).

[IRC § 168\(k\)\(2\)](#), amended by Act § 1201(a)(1).

[IRC § 168\(l\)\(5\)\(B\)](#), amended by Act § 1201(a)(2)(C).

[IRC § 168\(n\)\(2\)\(C\)](#), amended by Act § 1201(a)(2)(D).

[IRC § 1400N\(d\)\(3\)\(B\)](#), amended by Act § 1201(a)(2)(E).

[IRC § 168\(k\)\(4\)\(D\)](#), amended by Act § 1201(a)(3)(A).

[IRC § 6211\(b\)\(4\)\(A\)](#), amended by Act § 1201(a)(3)(B).

[IRC § 168\(k\)\(4\)\(D\)\(iii\)](#), amended by Act § 1201(b)(1)(A).

[IRC § 168\(k\)\(4\)\(H\)](#), added by Act § 1201(b)(1)(B).

[IRC § 6211\(b\)\(4\)\(A\)](#), amended by Act § 1201(b)(2).

Existing Law: An additional 50-percent first-year depreciation deduction is allowed generally for property acquired in 2008 [[IRC § 168\(k\)\(1\)\(A\)](#), [168\(k\)\(2\)\(A\)](#)]. The deduction is allowed for both regular tax and alternative minimum tax purposes [[IRC § 168\(k\)\(2\)\(G\)](#)]. It is not, however, allowed for purposes of computing earnings and profits [[IRC § 312\(k\)\(3\)\(A\)](#)]. The basis of the property and the depreciation allowances in the year of purchase and later years must be appropriately adjusted to reflect the additional first-year depreciation deduction [[IRC § 168\(k\)\(1\)\(B\)](#)].

Qualified property eligible for the 50-percent depreciation deduction must meet all of the following requirements. First, it must be (1) property to which MACRS applies with an applicable recovery period of 20 years or less, (2) computer software other than computer software covered by [IRC Section 197](#), (3) water utility property (as defined in [IRC Section 168\(e\)\(5\)](#)), or (4) qualified leasehold improvement property (as defined in [IRC Section 168\(k\)\(3\)](#)) [[IRC § 168\(k\)\(2\)\(A\)\(1\)](#)]. Second, the original use of the property must commence with

TOTAL SOLUTIONS

[Legal](#) [Academic](#) [Risk & Information](#) [Analytics](#) [Corporate & Professional](#) [Government](#)



**NEW FROM LEXISNEXIS® A COMPREHENSIVE ANALYSIS OF
THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
("The Economic Stimulus Act")**

the taxpayer after December 31, 2007 [[IRC § 168\(k\)\(2\)\(A\)\(ii\)](#)]. Third, the taxpayer must purchase the property within the applicable time period (generally before 2009) [[IRC § 168\(k\)\(2\)\(A\)\(iii\)](#)]. Fourth, the property must be placed in service after December 31, 2007, and before January 1, 2009 [[IRC § 168\(k\)\(2\)\(A\)\(iv\)](#)]. An extension of the placed in service date of one year (i.e., to January 1, 2010) is provided for certain property with a recovery period of ten years or longer and certain transportation property [[IRC § 168\(k\)\(2\)\(A\)\(iv\), \(B\)](#)]. The additional first-year depreciation deduction is not allowed for any property that is required to be depreciated under the alternative depreciation system of MACRS in [IRC Section 168\(g\)](#) [[IRC § 168\(k\)\(2\)\(D\)](#)].

A taxpayer may elect out of additional first-year depreciation for any class of property [[IRC § 168\(k\)\(2\)\(D\)\(iii\)](#)].

Corporations otherwise eligible for additional first-year depreciation may elect to claim additional research or minimum tax credits from past years in lieu of claiming that bonus depreciation [[IRC § 168\(k\)\(4\)](#)]. A corporation making the election forgoes the additional first-year depreciation deductions and instead increases the limitation under [IRC Section 38\(c\)](#) on the use of research credits or [IRC Section 53\(c\)](#) on the use of minimum tax credits [[IRC § 168\(k\)\(4\)\(A\)\(iii\), \(B\)](#)]. The increases in the allowable credits are treated as refundable [[IRC § 168\(k\)\(4\)\(F\)](#)].

The research credit or minimum tax credit limitation is increased by an amount equal to 20 percent of the bonus depreciation amount for qualified property that would be claimed absent an election [[IRC § 168\(k\)\(4\)\(C\)\(i\)](#)]. Generally, eligible qualified property included in the calculation is bonus depreciation property that meets the following requirements: (1) the original use of the property must commence with the taxpayer after March 31, 2008; (2) the taxpayer must purchase the property either (a) after March 31, 2008, and before January 1, 2009, but only if no binding written contract for the acquisition is in effect before April 1, 2008, or (b) pursuant to a binding written contract which was entered into after March 31, 2008, and before January 1, 2009; and (3) the property must be placed in service after March 31, 2008, and before January 1, 2009 (January 1, 2010 for certain longer-lived and transportation property) [[IRC § 168\(k\)\(4\)\(D\)](#); see [IRC § 168\(k\)\(2\)](#)].

The bonus depreciation amount is limited to the lesser of: (1) \$30 million, or (2) six percent of the sum of research credit carryforwards from taxable years beginning before January 1, 2006 and minimum tax credits allocable to the adjusted minimum tax imposed for taxable years beginning before January 1, 2006 [[IRC § 168\(k\)\(4\)\(C\)\(iii\), \(E\)\(iii\), \(iv\)](#)]. All corporations treated as a single employer under [IRC Section 52\(a\)](#) (generally controlled corporations with more than 50 percent common ownership) are treated as one taxpayer for purposes of the limitation, as well as for making the election [[IRC § 168\(k\)\(4\)\(c\)\(iv\)](#)].

TOTAL SOLUTIONS

[Legal](#) [Academic](#) [Risk & Information](#) [Analytics](#) [Corporate & Professional](#) [Government](#)



**NEW FROM LEXISNEXIS® A COMPREHENSIVE ANALYSIS OF
THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
("The Economic Stimulus Act")**

New Law: New law extends the additional 50-percent first-year depreciation deduction for one year, generally for property acquired through 2009 (through 2010 for certain longer-lived and transportation property) [[IRC § 168\(k\)](#)].

New law also permits corporations to increase the research credit or minimum tax credit limitation by the bonus depreciation amount with respect to certain property placed in service in 2009 (2010 in the case of certain longer-lived and transportation property) [[IRC § 168\(k\)\(4\)\(H\)](#)]. The provision applies with respect to "extension property," which is defined as property that is eligible qualified property solely because it meets the requirements under the extension of the special allowance for certain property acquired during 2009 [[IRC § 168\(k\)\(4\)\(H\)\(iii\)](#)]. Under new law, a taxpayer that has made an election to increase the research credit or minimum tax credit limitation for eligible qualified property for its first taxable year ending after March 31, 2008, may choose not to make this election for extension property [[IRC § 168\(k\)\(4\)\(H\)\(i\)](#)]. Further, a taxpayer that has not made an election for eligible qualified property for its first taxable year ending after March 31, 2008, may make the election for extension property for its first taxable year ending after December 31, 2008, and for each subsequent year [[IRC § 168\(k\)\(4\)\(H\)\(ii\)](#)]. In the case of a taxpayer electing to increase the research or minimum tax credit both for eligible qualified property and extension property, a separate bonus depreciation amount, maximum amount, and maximum increase amount is computed and applied to each group of property. In computing the maximum amount, the maximum increase amount for extension property is reduced by bonus depreciation amounts for preceding taxable years only with respect to extension property [see [IRC § 168\(k\)\(4\)\(A\), \(C\), \(H\)](#)].

Effective Date: The extension of the additional first-year depreciation deduction is generally effective for property placed in service after December 31, 2008 [Act § 1201(c)(1)]. The extension of the election to accelerate AMT and research credits in lieu of bonus depreciation is effective for taxable years ending after December 31, 2008 [[IRC § 168\(k\)\(4\)\(H\)\(ii\)\(I\)](#)].

The complete analysis of the tax provisions of the American Recovery and Reinvestment Act is available on the [LexisNexis® Store](#).

LexisNexis® Tax Center offers a single access point where you can find the most current and comprehensive analytical and topical tax law sources available on the legal market.

Discover the features and benefits of *LexisNexis Tax Advisor-Federal Topical* or *LexisNexis Tax Advisor-Federal Code* on **LexisNexis® Tax Center**.

TOTAL SOLUTIONS

[Legal](#) [Academic](#) [Risk & Information](#) [Analytics](#) [Corporate & Professional](#) [Government](#)

