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What has the Emergency Stabilization Act of 2008 Really Done for Real Estate Financial Bailout or Tax Act?

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The Emergency Economic Stabilization Act of 2008 was recently signed by President Bush. While most of us are aware of the primary purpose of this legislation, many may not know about several new or updated tax laws Congress added on to the legislation. The certainty of the impact on the financial market is not yet known, but some of the tax provisions, discussed below, are very favorable to real estate.

Depreciation

• *Qualified Leasehold Improvements* - Under pre-act law, qualified leasehold improvements placed in service before January 1, 2008 could be depreciated over 15 years (instead of 39 years). The law extends the 15 year write-off for qualified leasehold improvements placed in service to December 31, 2009. In general, qualified leasehold improvement property is an interior improvement to a building that qualifies for bonus first-year depreciation.

• *Qualified Retail Improvement* - Qualified retail improvement property placed in service after December 31, 2008 and before January 10, 2010 can be depreciated over 15 year (instead of 39 years). Qualified retail improvement property is an improvement to an interior portion of a building that is nonresidential real property open to the general public used in the retail trade and the improvement is placed in service more than 3 years after the date the building was first placed in service. Such property improvements do not include enlargement of the building, any elevator or escalator, any structural component benefitting a common area, or the internal structural framework of the building. It should also be

noted that qualified retail improvement property is not eligible for bonus first-year depreciation.

• *Qualified Indian Reservation Property* - Under pre-act law, qualified Indian reservation property placed in service by January 1, 2008 could be depreciated over shorter periods. The law extends the shorter write-off period for qualified Indian reservation property placed in service to December 31, 2009. Qualified Indian reservation property is property used in the active conduct of a trade or business with an Indian reservation. The rental of real estate is considered an active trade or business under this provision.

Energy Incentives

• *Deduction for Energy Efficient Commercial Buildings* - The deduction for an energy efficient commercial building set to expire December 31, 2008 has been extended until December 31, 2013. This deduction allows businesses to deduct up to a \$1.80 per square foot of the construction cost that would otherwise have to be capitalized and depreciated over the life of the building. To qualify, the energy efficient commercial building property must be installed on or in a building located in the United States and certified as being installed as part of a plan that will meet a 50% energy use reduction test. If the 50% test is not met, a partial deduction may still be allowed.

Disaster Relief

• *Deduction of Qualified Disaster Expenses* - Businesses may now elect to deduct expenses incurred after December 31, 2007 as a result of a natural disaster that they were required to capitalize previously. Qualified disaster

expenses include debris removal, demolition of structures, abatement of hazardous substances, repair of business-related property, and other items which were the direct result of a natural disaster within a federally designated disaster area.

• *Carry Back of Qualified Disaster Losses from pre-2010* - For businesses that generate a net operating loss (NOL) after 2007, the law allows for a special five-year carry back period for NOLs to the extent of a qualified disaster loss.

• *Bonus Depreciation* - For property placed in service after December 31, 2007, with respect to disasters declared after that date, additional depreciation is allowed in the year the property is placed in service. The additional depreciation is equal to 50% of the adjusted basis of property that meets the definition of qualified disaster assistance property.

As the legislation contained numerous provisions, this is a limited overview of some of the new or extended tax laws enacted with the Emergency Economic Stabilization Act. We suggest you consult your tax advisors about the potential applicability to your business.

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