



## Aircraft Acquisitions: Eligibility for Bonus Depreciation in 2010, 2011

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President Obama signed the Small Business Jobs Act of 2010 (the "Act") into law on Sept. 27, 2010. The Act, which provides numerous tax breaks to small and large businesses, extends first-year bonus depreciation through Dec. 31, 2010 (as well as Dec. 31, 2011 for certain aircraft and long-production-period property). The Act's extension of bonus depreciation creates a valuable opportunity for companies planning to purchase new aircraft property in 2010 and, in some cases, 2011.

Bonus depreciation entitles taxpayers to additional depreciation deductions equal to 50 percent of the adjusted basis of "qualified property" in the year that the property is placed in service. "Qualified property" includes assets to which the modified accelerated cost recovery system (MACRS) rules apply and that have recovery periods of 20 years or less. Commercial and non-commercial aircraft, which have 5- and 7-year recovery periods, respectively, generally are subject to MACRS. To further satisfy the definition of "qualified property" and qualify for bonus depreciation, such aircraft generally must be new property in the hands of the taxpayer and must be placed in service before Jan. 1, 2011 (or Jan. 1, 2012 in the case of certain aircraft and long-production-period property). Fractional aircraft interests also qualify for bonus depreciation as long as an interest was previously owned by the fractional program itself. In other words, there may be no previous owner of the fractional interest in order to qualify for bonus depreciation.

Taxpayers benefit from the extension of bonus depreciation in that it greatly accelerates depreciation deductions and, therefore, deductible expenditures for 2010. Assume, for instance, that a taxpayer places new non-commercial aircraft in service on Nov. 1, 2010. The adjusted basis of the new aircraft is \$8 million. The taxpayer's first-year bonus depreciation deduction in 2010 would be \$4 million, with the remaining \$4 million depreciated over a 5-year period. Absent bonus depreciation, the taxpayer's first-year depreciation deduction for the aircraft would be limited to \$1.6 million.

The Act further extends the placed-in-service date for "transportation property," which is deemed to be long-production-period property and "certain aircraft" through Dec. 31, 2011 (provided that such property was contracted for after Dec. 31, 2007). The Internal Revenue Code (the "Code") defines "transportation property" to include tangible personal property that is used in the trade or business of transporting persons or property. "Certain aircraft," on the other hand, are aircraft that are not "transportation property," which costs more than \$200,000 and which has an estimated production period in excess of 4 months. To the extent that a taxpayer places an aircraft in service prior to Jan. 1, 2012, and such aircraft qualifies as transportation property or certain aircraft under the Code, the taxpayer will be eligible for bonus depreciation through 2011. The taxpayer's bonus depreciation for transportation property, however, will be limited to that portion of the aircraft's adjusted basis attributable to manufacture, construction or production that occurred prior to Jan. 1, 2011.

Aircraft purchases made after Dec. 31, 2010 (or Dec. 31, 2011 in the case of transportation property

or certain aircraft) will not qualify for bonus depreciation. Companies planning to purchase aircraft in the near future should consider accelerating such purchases to take advantage of favorable bonus depreciation extensions. It is important to note that first-year bonus depreciation deductions are available to taxpayers regardless of the date in which qualified property is placed in service in 2010 (or 2011 in the case of transportation property or certain aircraft). So long as a taxpayer places eligible aircraft in service at any time on or before Dec. 31, 2010 (or Dec. 31, 2011 in the case of transportation property or certain aircraft), the taxpayer will be eligible for first-year bonus depreciation.

*For more information about this topic, please contact the authors or any member of the Williams Mullen Tax Law or Aviation Teams.*

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