

BONUS DEPRECIATION RETURNS

- * Write off at least 60% of a new aircraft purchase in 2009
- * Increased Section 179 Expensing benefits new and used aircraft purchase

President Obama signed into law the American Recovery and Reinvestment Tax Act of 2009 on February 17, 2009. This legislation brings back bonus depreciation and an increase to Section 179 Expensing for qualified business aircraft purchases.

New Aircraft

Effective for aircraft purchases placed in service on or after January 1, 2009, 50% bonus depreciation will be available in 2009. Bonus depreciation applies only to new, factory manufactured business aircraft. Certain demonstration aircraft not previously titled may also qualify. Improvements such as an avionics upgrade made to a used aircraft will also qualify for 50% bonus depreciation. Below is a sample of the tax depreciation deduction available on the purchase of a new business aircraft:

MODEL COST % DEDUCTIBLE 2009 DEPRECIATION

Model Aircraft	Initial Cost	% Deductible	2009 Deoreciation
Diamond DA40 XLS	\$358,000	88%	\$314,800
Cirrus SR22 GTS	\$530,100	79%	\$418,060
Cessna 400 Corvalis TT	\$620,000	76%	\$472,000
Piper Matrix	\$785,000	73%	\$571,000
Beech C90GT	\$3,100,000	60%	\$1,860,000
Socata TBM 850	\$3,100,000	60%	\$1,860,000
Pilatus PC-12NG	\$4,200,000	60%	\$2,520,000

New or Used Aircraft

Section 179 Expensing allows a small business taxpayer to deduct up to \$250,000 of a business aircraft purchase or capital improvements in the year of acquisition in lieu of recovering these costs over time through depreciation. This incentive is subject to a phase-out once capital expenditures exceed \$800,000. Taxable income limitation is applied both at the corporate and individual level in order to take advantage of this expensing provision.

SUBSTANTIATE THE BUSINESS

USE OF YOUR AIRCRAFT

Your tax advisors created a well thought out business plan, the aircraft was utilized for its intended purpose, and your business grows as a direct result of your business aircraft. However, during an income tax audit by the Internal Revenue Service, tax deductions related to the aircraft are disallowed. What happened?

Do a quick search of tax court cases and you will notice that many taxpayers had their aircraft deductions denied because of one simple reason – lack of adequate records and documentation for the expenses. Internal Revenue Code Section 274(d) provides that a deduction is not allowed under Code Section 162 or Code Section 212 for traveling expenses, entertainment, gifts, or listed property unless the taxpayer substantiates each element of an expenditure or use of property by “adequate records” or by “sufficient evidence corroborating the taxpayer’s own statement.” Listed property is defined as property used for transportation and aircraft is classified as listed property.

An adequate record that substantiates the business or investment use of listed property generally must be written on paper or recorded on a computer. A diary, expense report, trip sheet, or similar record must be prepared or maintained ‘at or near the time’ of the expenditure or use. For example, a log maintained on a weekly basis, which accounts for use during the week, shall be considered a record made at or near the time of such use.

In order to constitute “an adequate record” to substantiate the business use of a listed property, the record must contain sufficient information as to each element of every business or investment use. A typical pilot log book generally does not include sufficient information to support the business or investment use of each flight. A supplemental log should be kept that details the business purpose and the expenses related to each flight.

Aircraft ownership offers the attentive taxpayer tremendous income tax benefits. However, a lack of proper documentation of aircraft expenses can result in the loss of these valuable tax deductions.

Net Operating Loss may result in tax refunds from previous tax years

President Obama signed into law the American Recovery and Reinvestment Tax Act of 2009 on February 17, 2009. In addition to bonus depreciation and an increase to Section 179 Expensing for qualified business aircraft purchases, the Net Operating Loss carryback provision may also benefit new aircraft purchased in 2008 and 2009. In this economic environment, it is not uncommon for a taxpayer to have a substantial income in one year, but losses in another. When a taxpayer incurs a net operating loss (NOL), Section 172 of the Internal Revenue Code allows a taxpayer to carry back this loss to prior tax years or carry it forward to future years as a deduction. Under the new legislation, an eligible small business can now carry this loss back for up to five years if the loss is incurred for a tax year ending on December 31, 2008 or a fiscal tax year beginning in 2008. For 2009 tax year, net operating loss can be carried back two tax years to 2007.

The tax code defines an “eligible small business” as any trade or business (including one conducted in or through a corporation, partnership, or sole proprietorship) that has average annual gross receipts of less than \$15 million.

For example, an eligible small business incurs a \$1 million loss for the tax year 2008. This loss is carried back to the tax year 2003 as a deduction. This \$1 million deduction will reduce the original taxable income in 2003 and a tax refund will be issued. If your corporation has a June 30 fiscal year, a net operating loss for June 30, 2009 can be carried back five tax years to June 30, 2004. There are many variables in computing and filing a net operating loss claim. A thorough review of prior year income tax returns is necessary to confirm that a tax refund opportunity exists.