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B&B REVIEW

Mississippi State and Local Tax Report February 2006

What's Inside . . .

Page 1

Introduction

50% Bonus Depreciation for One Year Related to Rebuilding

Expanding Code Section 179 Expensing for Investments

Allowing a Five Year Net Operating Loss Carryback for Investments

Additional Clean Up/Demolition Expensing

Environmental Remediation Expensing

Timber Expensing / Carryback

Page 2

Public Utility Casualty Losses

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MISSISSIPPI STATE TAX COMMISSION ISSUES GUIDANCE ON THE FEDERAL GULF OPPORTUNITY ZONE ACT TAX PROVISIONS

Introduction

Because the language of federal law and Mississippi state law do not always mesh, the Mississippi State Tax Commission has issued guidelines on in-state application of certain provisions of the federal Gulf Opportunity Zone Act ("GO Zone Act").

50% Bonus Depreciation for One Year Related to Rebuilding

Mississippi statutes do not provide authority to follow the federal provisions for bonus depreciation as found in the GO Zone Act. Instead, Mississippi law provides a reasonable allowance for the exhaustion, wear and tear of property. Mississippi Regulation 504, amended in 2002, clarifies that bonus deprecation is not an allowable deduction.

Expanding Code Section 179 Expensing for Investments

Section 179 of the Internal Revenue Code allows an expensing deduction of $100,000 for 2003 through 2007. The GO Zone Act increases the limitation on such expensing by the lesser of $100,000 or the cost of "qualified Section 179 GO Zone property." It also increases the $400,000 investment limitation by the lesser of $600,000 or the cost of "qualified Section 179 GO Zone property" placed in service during the tax year. Mississippi Regulation 504 provides the language for compliance with federal provisions in determining the amount allowable as a deduction under Section 179 of the Internal Revenue Code.

Allowing a Five Year Net Operating Loss Carryback for Investments

Mississippi does not allow a five year net operating loss carryback for investments. Mississippi statutes already specifically provide a net operating loss carryback period of 2 years and a carry-forward period of 20 years.

Additional Clean Up/Demolition Expensing

Mississippi follows the Internal Revenue Code for expensing additional, post-Katrina clean up and demolition. Taxpayers are allowed to expense 50% of clean-up costs that otherwise would be required to be capitalized. To qualify, such costs for the removal of debris from, or the demolition of structures on, real property in the Katrina GO Zone must be paid or incurred after August 27, 2005, and before January 1, 2008. In addition, the property must be held by the taxpayer for use in a trade or business or for the production of income or property described in Section 1221(a)(1) of the Internal Revenue Code.

Environmental Remediation Expensing

The GO Zone Act extends for two years expensing provision Section 198 of the Internal Revenue Code. Through December 31, 2007, taxpayers may expense some environmental remediation costs incurred in connection with qualified contaminated sites located in the GO Zone. Mississippi also provides a Remediation Tax Credit available to taxpayers who perform remediation activities at in-state Brownfield sites. Information on such sites must be submitted to and approved by the Mississippi Department of Environmental Quality ("MDEQ") prior to submission of to the Mississippi State Tax Commission. The amount of the allowable credit for such Brownfield sites is 25% of the remediation costs as approved by MDEQ. The annual credit for such a site is equal to the lesser of $40,000 or the amount of income tax imposed upon the particular Brownfield site for the tax year. The maximum lifetime credit for a Brownfield site is $150,000.

Timber Expensing / Carryback

The federal GO Zone Act provides that small timber producers who own less than 500 acres will be allowed to double the expense amounts for qualified timber property. The GO Zone Act also provides a five year "farming" carryback of specified timber net operating losses. However, Mississippi statute provides specific guidance for reforestation credits and net operating losses; thus Mississippi does not follow the federal provisions.

Public Utility Casualty Losses

At the federal level, public utilities located in the GO Zone are eligible for a 10 year carryback on casualty losses. However, as stated above, Mississippi does not follow this provision because of state statutes that limit net operating losses to a carryback of 2 years and a carry-forward of 20 years.

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