

## **CLIENT REPORT:**

### **2008 Stabilization Act: Disaster Relief for Midwestern Businesses**

Dear Client:

The Emergency Economic Stabilization Act of 2008 (2008 Stabilization Act) provides tax relief to victims of storms that hit the Midwest in the summer of 2008, including businesses. In general, the 2008 Stabilization Act applies certain provisions that were available for victims of the 2005 hurricanes to the taxpayers affected by the Midwestern storms. These provisions include tax benefits and incentives for reinvestment by businesses located in the Midwestern disaster area, including an increase to the low income housing credit, expensing for disaster recovery assistance clean-up costs, the extension of expensing for environmental remediation costs, an increase in the rehabilitation credit, a five-year carryback of net operating losses attributable to storm losses, an employee retention tax credit, an increase in first year expensing for qualified disaster assistance property, bonus depreciation for investment in qualified disaster assistance property, and other business-related incentives.

*Employee retention credit.* An employee retention credit is allowed for certain employers in the Midwestern disaster area. In general, eligible employers in the Midwestern disaster area are granted a 40-percent credit for qualified wages paid to eligible employees. The amount of qualified wages which may be taken into account with respect to any eligible employee may not exceed \$6,000. The credit is part of the current year business credit and therefore is subject to the tax liability limitations.

*Special Depreciation Allowance for Qualified Disaster Assistance Property.* An additional 50-percent depreciation allowance can be claimed for real and personal business property that is purchased to rehabilitate or replace similar property that is destroyed or condemned as a result of a federally declared disaster. The provision applies to property placed in service after December 31, 2007, with respect to disasters declared after that date and occurring before January 1, 2010.

*Increased Expensing for Qualified Disaster Assistance Property.* The maximum Code Sec. 179 expense allowance and investment limitation amount are both increased for qualified Code Sec. 179 disaster assistance property placed in service after 2007. The Code Sec. 179 expense deduction (\$250,000 for 2008) is increased by the lesser of \$100,000 or the cost of qualified Code Sec. 179 disaster assistance property placed in service during the tax year. The amount of the investment limitation (\$800,000 for 2008) is increased by the lesser of \$600,000 or the cost of qualified Code Sec. 179 disaster assistance property placed in service during the tax year.

*Low income housing credit.* The increase to the low income housing credit is modified and extended for the Midwestern disaster area. The aggregate increase is the lesser of the aggregate housing credit dollar amount allocated by the state housing credit agency to buildings located in the Midwestern disaster area for the relevant year, or an amount equal to \$8 multiplied by the portion of the state population located in the Midwestern disaster area according to the most recent census estimate released before the earliest applicable disaster date. The increase is only available in 2008, 2009 and 2010.

*Expensing for certain demolition and clean-up costs.* The cost of debris removal is generally capitalized. The 2008 Stabilization Act, however, permits a 50-percent deduction for "qualified Disaster Recovery Assistance clean-up costs" paid or incurred during the period beginning on the applicable disaster date, and ending on December 31, 2010. A "qualified Disaster Recovery Assistance clean-up cost" is an amount paid or incurred for the removal of debris from, or the demolition of structures on, real property located in the Midwestern disaster area, to the extent that the amount would

otherwise be capitalized. In order to qualify, the property must be held for use in a trade or business, for the production of income, or as inventory.

*Extension of expensing for environmental remediation costs.* The expiration date of the environmental remediation expenditure deduction is extended to December 31, 2010, in the case of qualified environmental remediation expenditures paid or incurred in connection with a qualified contaminated site located in the Midwestern disaster area. In order to be treated as a qualified contaminated site, the release (or threat of release) or disposal of a hazardous substance at the site must be attributable to the applicable storms. In addition, expenditures paid or incurred for the clean-up of petroleum products in the Midwestern disaster area may qualify for the deduction.

*Increase in rehabilitation credit.* The rehabilitation credit is increased from 20 to 26 percent for any certified historic structure, and from 10 to 13 percent for qualified rehabilitated buildings, for qualified rehabilitation expenditures made on or after the applicable disaster date, and before January 1, 2012. To qualify, the expenditure must be made on building or structures damaged or destroyed by the Midwestern storms that otherwise qualify for the credit.

*Net operating losses (NOLs) attributable to storm losses.* Businesses in the Midwestern disaster area are generally allowed to use a five-year carryback period for NOLs attributable to storm losses. The amount of eligible NOLs is limited to the aggregate amount of the following deductions: (1) "qualified Disaster Recovery Assistance losses"; (2) certain moving expenses; (3) certain temporary housing expenses; (4) depreciation deductions with respect to qualified Recovery Assistance property for the tax year the property is placed in service; and (5) deductions for certain repair expenses resulting from the relevant storms. The provision applies for losses paid or incurred after the applicable disaster date, and before January 1, 2011. However, an irrevocable election not to apply the five-year carryback under the provision may be made with respect to any tax year.

If you have sustained a loss from the storms, tornadoes or flooding this summer, some or all of these or other business tax incentives and benefits may be of interest to you. Please call our office to arrange an appointment to discuss how they may benefit you.