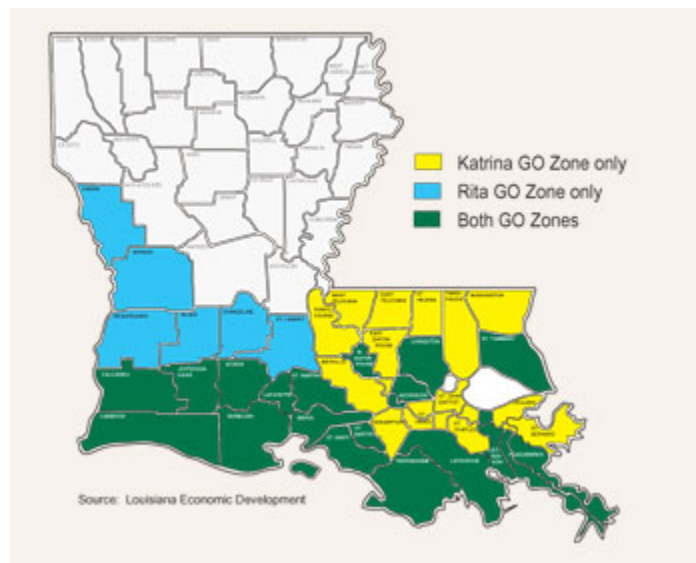


# GO ZONE BENEFITS, SECTION 168 BONUS DEPRECIATION AND MIDWESTERN DISASTER AREA RELIEF

*With Emphasis on Affordable Housing Transactions*

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This outline presents a summary of the tax benefits applicable to housing projects located in the Gulf Opportunity Zone (or “Go Zone”). Most of these benefits result from the Gulf Opportunity Act of 2005 (P.L. 109-135) signed into law by President Bush on December 21, 2005.

One important advantage that projects in the Go Zone enjoy is the accelerated depreciation of certain property (“Go Zone bonus depreciation”). As such bonus depreciation is similar to and often confused with bonus depreciation under Code Section 168(k) available throughout the United States (“Section 168 bonus depreciation”), this outline includes a discussion comparing and contrasting the requirements of the two bonus depreciation regimens.

In addition to bonus depreciation, the following Go Zone benefits are summarized:

- Increased allocations of LIHTC
- Relaxation of Carryover Allocation Benefits
- Increased Section 179 Expensing
- Tax Exempt Bond Issuance Authority

## I. GULF OPPORTUNITY ZONE DEFINED

The “Go Zone” discussed herein refers to the Katrina Zone – as opposed to the Rita or Wilma Zones.

The Go Zone is comprised of counties and parishes in Alabama, Louisiana and Mississippi as listed in IRS Publication 4492, Information for Taxpayers Affected by Hurricanes Katrina, Rita, and Wilma, under Gulf Opportunity (GO) Zone (Core Disaster Area) (page 2) (available at: <http://www.irs.gov/publications/p4492/ar02.html>).

**Alabama.** The counties of Baldwin, Choctaw, Clarke, Greene, Hale, Marengo, Mobile, Pickens, Sumter, Tuscaloosa, and Washington.

**Louisiana.** The parishes of Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana.

**Mississippi.** The counties of Adams, Amite, Attala, Choctaw, Claiborne, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Holmes, Humphreys, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Lowndes, Madison, Marion, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, Winston, and Yazoo.

### **Specified Gulf Opportunity Zone**

Certain counties and parishes within the Go Zone have been identified as the Specified Gulf Opportunity Zone (“Specified Go Zone”). Counties and parishes in the Specified Go Zone are those in which hurricanes during 2005 damaged more than 60 percent of the housing units in such county or parish. Internal Revenue Service Notice 2007-36 defines the Specified Go Zone as the following:

**Louisiana.** The parishes of Calcasieu, Cameron, Orleans, Plaquemines, St. Bernard, St. Tammany and Washington

**Mississippi.** The counties of Hancock, Harrison, Jackson, Pearl River and Stone

The primary advantage to projects located in the Specified Go Zone are extended placement in service deadlines for certain types of property, as discussed below.

## II. BONUS DEPRECIATION – GO ZONE and SECTION 168(k)

Taxpayers can claim an allowance equal to 50% of the adjusted basis of certain types of property in the year such property is placed in service. (Section 1400N(d)(1)(A) and 168(k)(1)(A)). Section 168(k) of the Code provides this benefit to certain property and is unlimited geographically. Section 1400N of the Code provides bonus depreciation to more types of property but is limited geographically to the Go Zone. The sections that follow set out the requirements applicable to each type of bonus depreciation.

The remaining basis of such property is depreciated as usual over such property's remaining depreciable life. (Section 1400N(d)(1)(B) and Section 168(k)(1)(B))

### **Only Certain Types of Property are Eligible**

As depicted in the table below, Go Zone bonus depreciation is available to residential rental property whereas Section 168 bonus depreciation is primarily available to site work.

|  | <b><u>Go Zone<br/>Depreciation</u></b> | <b><u>168 Bonus<br/>Depreciation</u></b> |
|--|--|--|
| • Residential Rental Property              | X                                      |  |
| • Nonresidential real property             | X                                      |  |
| • Personal Property                        | X                                      | X  |
| • Site Work                                |  | X  |
| • Certain computer software                | X                                      | X  |
| • Water utility property                   | X                                      | X  |
| • Qualified Leasehold Improvement Property | X                                      | X  |

**APPLICATION TO AFFORDABLE HOUSING:** Section 168(e)(2)(A) defines “residential rental property” as any building if 80% or more of the gross rental income from such building is rental income from dwelling units. As this standard must also be met to satisfy LIHTC requirements under Section 42, LIHTC project buildings should qualify. An affordable housing project’s personal property will also likely have a 5-year recovery period and should also fall within the above definition. Site-work not otherwise depreciated as part of a building’s basis, while likely to be depreciated over 15 years and fall within the definition above, will not qualify for Go Zone bonus depreciation due to special placement in service deadlines, discussed below.

**Go Zone Bonus Depreciation Only: The Property Must Be Used in an Active Trade or Business in the GO Zone.**

Code Section 1400N(d)(2)(A)(ii) requires that “substantially” all of the use of the property be in the Go Zone in the active conduct of a trade or business by the taxpayer. The Internal Revenue Service provided guidance as to this requirement in Notice 2006-67:

- “Substantially all” means 80% or more.
- “Trade or business” has the same meaning as in Section 162 and does not include property held merely for the production of income or used in an activity not engaged in for profit.
- “Active conduct” requires meaningful participation in the management or operations of such trade or business. A triple-net lease in which the lessee is responsible for all costs of the building, for example, would not satisfy the “active conduct” requirement.

Notice 2006-67 also repeatedly cautions that other provisions of the Code, such as the passive loss or at-risk rules, could disallow Go Zone bonus depreciation otherwise permitted by Section 1400N(d).

APPLICATION TO AFFORDABLE HOUSING: Most LIHTC projects located in the Go Zone should meet this requirement, so long as project units are not leased to tenants pursuant to triple-net leases. The owner/taxpayer should manage the day-to-day operations of the project with the intent of making a profit, should be responsible for maintenance and repair of the project and ideally provide certain utilities to the project. Adding weight to this general conclusion is Notice 2006-67, which includes the management and operation of an apartment building as an example of a trade or business satisfying the requirements of 1400N(d)(2)(A)(ii). (Notice 2006-67, Sec. (3)(a) Example (1)). In addition, we typically assume that “at-risk” and “passive loss” limitations of the Code do not apply to LIHTC investors. Provided such assumption is correct, such provisions should also not act to disallow the allocation of Go Zone bonus depreciation to a taxpayer’s limited partners or investor members.

**Original Use Requirements**

To be eligible for Section 168 bonus depreciation, Section 168(k)(2)(a)(II) requires the original use of such property to have commenced with the taxpayer after December 31, 2007. Similarly, Code Section 1400N(d)(2)(A)(iii) requires that to be eligible for Go Zone bonus depreciation, the original use of such property in the Go Zone must commence with the taxpayer on or after August 28, 2005. Newly purchased personal property, newly constructed site work and residential rental buildings should unquestionably satisfy this requirement.

There are several aspects of the original use rule that allow previously used property can benefit from Go Zone bonus depreciation:

- First, previously used property will meet the original use requirements if such property had not previously been used in the Go Zone (i.e. its original use *in the Go Zone* commences with the taxpayer). (Notice 2007-36)
- Rehabilitation costs to damaged buildings are eligible so long as the materials used in the rehabilitation are new or were not previously used in the Go Zone.
- The cost of the damaged building to be repaired or rehabilitated is not eligible for Go Zone Depreciation unless such cost is not more than 20% of the total costs, including rehabilitation expenses. (Notice 2007-36, Sec. (5))

These considerations are inapplicable to Section 168 Bonus Depreciation as it is not restricted to a certain geographic area outside of which property may have previously been used, and damaged and rehabilitated buildings are not eligible for Section 168 bonus depreciation.

**APPLICATION TO AFFORDABLE HOUSING:** To illustrate how the rehabilitation of an affordable housing project might qualify for Go Zone Depreciation, consider the following example. In 2006, a taxpayer purchases a damaged apartment building in the Go Zone for \$1,000,000 and spends \$9,000,000 to rehabilitate the building. Although the building had previously been placed in service in the Go Zone, because the building cost is less 20% of the \$10,000,000 in total project costs, the taxpayer can take Go Zone Depreciation on both the rehabilitation and building costs. If instead, the taxpayer had spent only \$2,000,000 rehabilitating the building, the building costs would exceed 20% of total project costs of \$3,000,000. In such event, the taxpayer could take bonus depreciation on only the \$2,000,000 in rehabilitation costs.

**The Property Must Have Been Acquired by the Taxpayer On or After August 28, 2005 for Go Zone Bonus Depreciation and After December 31, 2007 for Section 168 Bonus Depreciation.**

Code Section 168(k)(2)(A)(iii)(I) requires the property to have been acquired by the taxpayer after December 31, 2007 and before January 1, 2009, and no written binding contract for such purchase may have been in effect prior to that date.

Similarly, for Go Zone bonus depreciation, Code Section 1400N(d)(2)(A)(iv) requires property to have been acquired by purchase (as defined in Section 179(d)) on or after August 28, 2005 and no written binding contract may have been in effect prior to that date. Section 179(d)(2) defines “purchase” to mean any acquisition, but excludes acquisitions from persons related under Section 267 or 707(b), acquisitions between

component members of a controlled group, acquisitions where carryover basis applies or acquisitions from a decedent.

Notice 2006-67 indicates that rules similar to those for Section 168 bonus depreciation apply to Go Zone Depreciation with regard to binding contracts, self-constructed property and disqualified transactions. For instance, a contract is binding only if it is enforceable under state law against the taxpayer or a predecessor and does not limit damages to a specified amount. (Treas. Reg. 1.168(k)-1(b)(4)(ii))

In addition, Code Section 1400N(d)(3) states that special rules similar to those found in Code Section 168(k)(2)(E) apply to Go Zone Depreciation with certain alterations. Section 168(k)(2)(E) provides special rules related to sale-leaseback transactions, syndications and related parties. For instance, property will not be qualified Gulf Opportunity Zone property if the user of such property or a related person had a written binding contract in effect for acquisition of such property on or before August 27, 2005.

**APPLICATION TO AFFORDABLE HOUSING:** Most LIHTC projects will enter into a contract with a related or unrelated contractor to construct the project buildings and furnish personal property. This situation should satisfy the “purchase” requirement. Treasury Regulation 1.168(k)-1(b)(4)(iii) provides that property constructed by a taxpayer for use in such taxpayer’s trade or business will satisfy the purchase requirement so long as the construction begins after August 28, 2005 for Go Zone depreciation and December 31, 2007 for Section 168 depreciation. The above-referenced Regulation also provides that property constructed for the taxpayer by another person pursuant to a written binding contract entered into before such construction will be considered constructed by the taxpayer. Construction is considered to begin when work of a significant nature begins, which will not be considered to have occurred before the taxpayer incurs more than 10% of the total cost of the property.

### **Placement in Service Deadlines – Go Zone Depreciation**

A general requirement found in Code Section 1400N(d)(2)(A)(v) excludes Go Zone Depreciation for property not placed in service by December 31, 2007 (or December 31, 2008 for nonresidential real property or residential rental property). Section 1400N(d)(6), however, extends the placed-in-service date requirement for certain property in the Specified Go Zone, discussed above.

The extended deadline for placing in service nonresidential real property or residential rental property in the Specified Go Zone is December 31, 2010. In addition, property described in 168(k)(2)(A)(i) (i.e., having a recovery period of 20 years or less) can qualify for the extended placement in service deadline if substantially all (80%) of such property is used within a building that qualifies for the extension and such property is

placed in service not later than 90 days following placement in service of the building in which it is used.

For LIHTC projects in the Specified Go Zone, this extension would allow Go Zone Depreciation for buildings placed in service by December 31, 2010, along with personal property used inside those buildings that is placed in service concurrently or within 90 days after such building is placed in service. Site work, however, would not be used inside a building and, because the general deadline of December 31, 2007 has passed, is no longer eligible for Go Zone Depreciation.

Although the placement in service deadline for specified Gulf Opportunity Zone extension property is extended, 1400N(d)(6)(D) limits Go Zone Depreciation to only the extent of basis attributable to construction occurring before January 1, 2010. Notice 2007-36 provides guidance that the amount attributable to construction occurring by such date generally will be determined by the amount paid or incurred by the taxpayer that is properly chargeable to the capital account with respect to the property. In situations where property is constructed by another person pursuant to a written binding contract, the amount properly chargeable to the capital account includes any payments under the contract that represent part of the purchase price of the property but only to the extent progress is made in construction or to the extent costs are incurred by the taxpayer earlier than payments are made.

**APPLICATION TO AFFORDABLE HOUSING:** For LIHTC projects in the Specified Go Zone, this extension would allow Go Zone bonus depreciation for buildings placed in service by December 31, 2010, along with personal property used inside those buildings that is placed in service concurrently or within 90 days after such building is placed in service. Site work, however, would not be used inside a building and, because the general deadline of December 31, 2007 has passed, is no longer eligible for Go Zone Depreciation. Go Zone depreciation will only apply to those building and personal property costs incurred through the end of 2009, and financial projections should reflect such limitation based on a project's construction schedule.

**Placed in Service Deadlines – Section 168 Bonus Depreciation**

Property eligible for Section 168 bonus depreciation must generally be placed in service no later than the end of 2008. (Section 168(k)(2)(A)(iv) For certain types of property having longer production periods, Code Section 168(k)(2)(B) provides a one-year extension of such deadline to the end of 2009.

Property eligible for such extension must have a depreciable life of at least 10 years, be subject to Section 263A (capitalization of property produced by the taxpayer), a production period exceeding 1 year and a cost more than \$1,000,000. (Section 168(k)(2)(B)).

Just as the extended placement in service deadline for property in the Specified Go Zone did not extend the time for incurring costs eligible for Go Zone bonus depreciation, so does the extension for long production period property apply only to costs incurred before January 1, 2009.

**APPLICATION TO AFFORDABLE HOUSING:** For LIHTC projects, the extension of the placement in service deadline will primarily benefit site work having a depreciable cost of at least \$1,000,000. Personal property, having a recovery period of 5 years, would not be eligible. Only those costs incurred by the end of 2008 are eligible for bonus depreciation. A typical example would include site work completed in 2008 but placed in service in connection with residential buildings in 2009.

**Placement in Service Deadlines – Summary Chart**

| <b>Property Class</b> | <b>Section 168</b>                                      | <b>Go Zone</b>   |
|-----------------------|---|--|
| Residential Buildings | N/A   | 12/31/2008<br><br>Specified Go Zone:<br>12/31/2010   |
| Personal Property     | 12/31/2008  | 12/31/2007<br><br>Specified Go Zone:<br>No later than 90 days following placement in service of building in which personal property is used, no later than 3/31/11 |
| Site Work             | 12/31/2008<br><br>Long production period:<br>12/31/2009 | 12/31/2007   |

**Construction Commencement Requirments**

For self-constructed property, Code Section 168(k)(2)(E) requires construction to begin no later than January 1, 2009. Given the placement in service deadlines described above, this commencement deadline imposes no real additional hurdle.

Code Section 1400N(d)(3) imposed a requirement similar to that found in Code Section 168(k)(2)(E) that construction of property be commenced prior to certain dates in order to

be eligible for Go Zone Depreciation. Section 3082(b) of the Housing and Economic Recovery Act of 2008, however, revised section 1400N(d)(3) to eliminate such requirement for property placed in service after December 31, 2007.

### **Exceptions to Eligibility – Go Zone Bonus Depreciation**

Code Section 1400N(d)(2)(B) sets forth a number of exceptions that will preclude property from being qualified Gulf Opportunity Zone property:

- Tax-exempt use property (Property subject to alternative depreciation as described in Code Section 168(k)(2)(D)(i));
- Tax-exempt bond-financed property;
- Certain qualified revitalization buildings under 1400I;
- Property described in Code Section 168(f), including certain public utility property, film and video tape, sound recordings, and churning transactions (Notice 2006-67);
- Golf course, country club, massage parlor, hot tub facility, suntan facility, liquor store, gambling or animal racing property (Code Section 1400N(p)(3));
- Property placed in service and disposed of during the same taxable year with certain exceptions; and
- property converted from business or income producing use to personal use in the same taxable year in which the property is placed in service.

A taxpayer may also elect out of Go Zone bonus depreciation pursuant to Section 1400N(d)(2)(B)(iv).

Tax-exempt use property is similarly not eligible for Section 168 bonus depreciation and a taxpayer may elect out of such bonus depreciation pursuant to Section 168(k)(2)(D)(iii).

### **III. LIHTC BENEFITS IN THE GO ZONE**

Code Section 1400N(c) provides a number of benefits to LIHTC projects in the Go Zone, including additional credit allocations to states in the Go Zone and the designation of the Go Zone as difficult development area and a relaxation of the requirements for a carryover allocation of LIHTC.

#### **States in the Go Zone received increased allocations of LIHTC.**

Code Section 1400N(c)(1) provides increased LIHTC credit cap to states in the Go Zone during the calendar years of 2006, 2007 and 2008.

#### **The Go Zone is a difficult development area for purposes of Section 42.**

Code Section 1400N(c)(3) provides that the Go Zone is a difficult development area (“DDA”), allowing the 30% basis “boost” allowable under Section 42(d)(5)(B). Such

designation as a DDA applies to LIHTC allocations no later than December 31, 2008 and to buildings placed in service no later than December 31, 2010. Projects financed with tax-exempt bonds issued after December 31, 2005 are not eligible to benefit from the DDA designation.

**Carryover allocations in the Go Zone do not require satisfaction of the “10 percent test”**

Code Section 1400N(c)(5) provides that “Section 42(h)(1)(B) shall not apply to an allocation of housing credit dollar amount to a building located in the Gulf Opportunity Zone” so long as such allocation “is made in 2006, 2007, or 2008, and such building is placed in service before January 1, 2011.

Section 42(h)(1)(B) provides that “except in the case of an allocation which meets the requirements of subparagraph (C), (D), (E), or (F), an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.” One exception referenced by that section is Section 42(h)(1)(E), in which an allocation can be made prior to the year of placement in service and is typically referred to as a carryover allocation. This is conceptually confusing as 42(h)(1)(B) restricts how late, rather than how early, an allocation can be made. Presumably, an allocation made prior to the year of placement in service would not violate nor require an exception from Section 42(h)(1)(B).

Treasury Regulation 1.42-1T(d)(8)(i), however, provides that a credit agency may not make a housing credit allocation to a building prior to the calendar year in which such building is placed in service. Together with 42(h)(1)(B), this provision would seem to require an allocation in the year a building is placed in service (unless the allocation was made later than placement in service pursuant to one of the exceptions to 42(h)(1)(B). Because it provides for an allocation prior to the year of placement in service, the carryover allocation prescribed by 42(h)(1)(E) can be better seen as an exception to the restriction imposed by Regulation 1.42-1T(d)(8)(i) rather than 42(h)(1)(B).

Treasury Regulation 1.42-6(d)(1) provides some clarification as to how such exception is achieved. Referencing Regulation 1.42-1T(d)(8), it notes that allocations are generally made by issuance of Form 8609, which may not be issued until placement in service. For allocations made pursuant to 42(h)(1)(E) or (F) however, the allocating document is not Form 8609 but is instead a carryover allocation document meeting the requirements of 1.42-6(d)(2). While the allocation for purposes of 1.42-1T(d)(8) (the 8609) cannot be made until placement in service, a carryover allocation pursuant 42(h)(1)(E) or (F) can be made in a year prior to placement in service (and will reduce the state’s credit ceiling in the year the carryover is issued, rather than the year in which the 8609 is issued). By providing a mechanism for making an allocation other than pursuant to an 8609, Regulation 1.42-6(d)(1) enables the actual allocation of credits prior to the year of placement in service without violating the prohibition on issuance of 8609s prior to placement in service.

With the above background in mind, what effect does the elimination of 42(h)(1)(B) have? Unless an allocation is made pursuant to Section 42(h)(1)(E) or (F), in which event the allocation is made pursuant to a carryover allocation document satisfying the requirements of 1.42-6(d)(2), an allocation must be made pursuant to an 8609, which Regulation 1.42-1T(d)(8) allows no sooner than the year of placement in service. Unless another provision is available, the elimination of the requirements of Section 42(h)(1)(B) by 1400N(c)(5) does not appear to allow an allocation prior to the year of placement in service other than pursuant to a valid carryover allocation.

There is evidence, however, that the intent of 1400(c)(5) was to eliminate the requirements of a carryover allocation. In discussing the legislation which added 1400N(c)(5), the Joint Committee on Taxation summarized the effect of that provision as repealing “the requirement that 10 percent of the taxpayer’s reasonably expected basis in the project (as of the close of the second calendar year following the calendar year of the allocation) must be incurred” and “the requirement that such building be placed in service not later than the close of the second calendar year following the calendar year of the allocation.” (See Joint Committee Summary of P.L. 110-28 (Small Business and Work Opportunity Tax Act of 2007)).

With such intent in mind and following discussion with the Internal Revenue Service, we can conclude that, despite regulations to the contrary, carryover allocations made in the Go Zone in 2006, 2007 and 2008 for buildings placed in service not later 2010 do not require satisfaction of the 10 percent test.

#### **IV. ADDITIONAL GO ZONE TAX BENEFITS**

##### **Limitations to Section 179 deductions are increased in the Go Zone.**

Code Section 179 allows certain taxpayers to elect to expense rather than depreciate the costs of certain property acquired by purchase. Section 179 places limits on the amount of expense deduction, which currently equals \$125,000 for taxable years after 2006 and prior to 2011. Such limitation is further reduced to the extent qualifying 179 property placed in service in a given year exceeds \$500,000.

Code Section 1400N(e) increases the Section 179 deduction by \$100,000 (or the total amount of qualified 179 property, if less). In addition, the threshold above which such limitation is reduced is increased by \$600,000 (or the total amount of qualified 179 property, if less). To qualify for such increased limitations, the property must be property eligible under Section 179 for such deduction and also be qualified Gulf Opportunity Zone property, as defined in Code Section 1400N(d) (and must meet the requirements thereunder, as discussed in the “Go Zone Depreciation” section, above) and be placed in service by December 31, 2008. The extension on placement in service for property located in the Specified Go Zone is not applicable to the Section 179 benefits.

##### **Tax-exempt bond issuance authority is increased in the Go Zone.**

Code Section 1400N(a) provides that a “Qualified Gulf Opportunity Zone Bond” will be considered a tax-exempt facility bond. A Qualified Gulf Opportunity Zone Bond must be issued in Alabama, Louisiana, or Mississippi, be used for qualified project costs and be issued prior to January 1, 2011. Qualified Gulf Opportunity Zone Bonds are in addition to the amount of private activity bonds otherwise authorized under a state’s volume cap.

Qualified project costs include (a) the costs of any qualified residential rental project (as defined, with certain modifications, in Section 142(d)), and (b) the costs of acquisition, construction, reconstruction and renovation of nonresidential real property and public utility property located in the Go Zone.

## **V. RELIEF FOR MIDWESTERN DISASTER AREA**

The Emergency Economic Stabilization Act of 2008 applies many of the provisions available in the GO Zone to the Midwestern disaster area.

### **The Midwestern Disaster Area defined.**

The Midwestern Disaster Area is defined to include regions declared disaster areas by reason of severe storms, tornadoes and flooding on or after May 20, 2008 and before August 1, 2008 in: Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska and Wisconsin and determined by the President to warrant federal assistance.

### **Tax Exempt bond authority.**

The Emergency Economic Stabilization Act of 2008 applies the liberalization of the tax-exempt bond rules found in Section 1400N(a) for the Go Zone to the Midwestern Disaster Area.

Unlike qualified Gulf Opportunity Zone Bonds, however, the costs such bonds may be used for are limited to private businesses (as defined in 141(b)(6)) that suffered losses attributable to the storms or public utility property damaged by the storms. Such bonds must be issued prior to January 1, 2013.

### **Increase in LIHTC allocations.**

The state LIHTC cap is increased for years 2008, 2009 and 2010 by an amount equal to \$8.00 per capita in the Midwestern Disaster Area (or the amount actually allocated by a state in the Midwestern Disaster Area).

Unlike the Go Zone, the Midwestern Disaster Area does not constitute a difficult development area and projects in the Midwestern Disaster Area are not relieved of the requirement that 10% of project costs be incurred one year following a carryover allocation of LIHTC.

### **Increase in historic rehabilitation credits.**

Code Section 1400N(h) increased the rehabilitation credit from 20 to 26 percent for certified historic structures, and 10 to 13 percent for qualified rehabilitation buildings in the Go Zone. That benefit will expire in the Go Zone for costs incurred after January 1, 2009, but has been applied to the Midwestern Disaster Area and extended to apply to expenditures made before January 1, 2012.

## Bonus Depreciation Under the Economic Stimulus Act of 2008

**Internal Revenue Code Section 168(k) provides for a 50% first year depreciation deduction (“Bonus Depreciation”) for personal property and site work acquired after December 31, 2007 and placed in service prior to January 1, 2009 (certain extensions apply). The 50% Bonus Depreciation deduction is permitted in the taxable year in which the qualified property is placed in service.**

### Other Bonus Depreciation Requirements and Limitations as Applicable to LIHTC Projects

**Bonus Depreciation applicable to:** (i) MACRS (i.e. accelerated depreciation) property with a recovery period of 20 years or less (ii) original use commences with the taxpayer after 12/31/2007, (iii) the property must be acquired and placed in service after 12/31/2007 and before 1/1/2009, but only if it was not subject to a binding written agreement in effect prior to 1/1/2008.

*Note: Specified GO Zone Property (see GO Zone Chart) does not include property to which this Section 168(k) applies.*

**Bonus Depreciation inapplicable to:** (i) tax-exempt use property and (ii) property elected out under 168(k)(2)(D)(iii).

Below is a chart reflecting applicable construction commencement and placement in service deadlines for the Bonus Depreciation property.

| Property Class                | Construction Commencement [1] and Binding Written Contract ("WBC") Requirements  | Placement in Service Deadline   | Timing of Bonus Depreciation Deduction |
|-------------------------------|--|---|--|
| Residential buildings         | N/A  | Not eligible  | n/a                                    |
| Personal property             | For acquired property, must (i) acquire the property after 12/31/07 & before 1/1/09 with no WBC for property acquisition in effect before 1/1/08; or (ii) acquire the property pursuant to a written binding contract entered into after December 31, 2007, and before January 1, 2009.  | 12/31/2008  | 2008                                   |
| Site work - completed in 2008 | Same as site work rule below   | 12/31/2008  | 2008                                   |
| Site work - completed in 2009 | For <b>self-constructed property</b> , cannot have entered into a WBC prior to 1/1/08. Also, must have begun construction after 12/31/07 and before 1/1/09 or entered into a WBC for such construction after 12/31/07 and before 1/1/09. For acquired property, must (i) acquire the property after 12/31/07 & before 1/1/09 with no WBC for property acquisition in effect before 1/1/08; or (ii) acquire the property pursuant to a written binding contract entered into after December 31, 2007, and before January 1, 2009. | 12/31/2009, but Bonus Depreciation is only available for (i) site work costs incurred prior to 1/1/2009 (ii) site work costs subject to §263A (property produced by the taxpayer and capitalized), and (iii) site work that has (a) an estimated Production Period exceeding 1 year, and (b) cost exceeding \$1,000,000. Production Period begins when physical work of a significant nature begins (taxpayer incurs more than 10% of the total cost of the site work). | 2009 (year of placement in service)    |

[1] For self-constructed property, construction must begin before 1/1/09. Construction begins when physical work of a significant nature begins or when taxpayer incurs more than 10% of the total cost of the property excluding land.

Note: Adjusters based on depreciation may cause a LIHTC Project to be a reportable transaction. Status as a reportable transaction may require disclosure to the IRS and may also cause an excise tax for nonprofit participants.

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## GO ZONE DEPRECIATION

Internal Revenue Code Section 1400N(d) provides for a 50% first year depreciation deduction (“GO Zone Depreciation”) in areas affected by Hurricane Katrina located in the Gulf Opportunity Zone (“GO Zone”). The 50% Go Zone Depreciation deduction is permitted in the taxable year in which the GO Zone property is placed in service.

### GO Zone Counties and Parishes.

**Alabama:** Baldwin; Choctaw; Clarke; Greene; Hale; Marengo; Mobile; Pickens; Sumter; Tuscaloosa; Washington.

**Louisiana:** Acadia; Ascension; Assumption; Calcasieu; Cameron; East Baton Rouge; East Feliciana; Iberia; Iberville; Jefferson; Jefferson Davis; Lafayette; Lafourche; Livingston; Orleans; Plaquemines; Pointe Coupee; St. Bernard; St. Charles; St. Helena; St. James; St. John the Baptist; St. Martin; St. Mary; St. Tammany; Tangipahoe; Terrebonne; Vermillion; Washington; West Baton Rouge; West Feliciana.

**Mississippi:** Adams; Amite; Attala; Choctaw; Claiborne; Clarke; Copiah; Covington; Forrest; Franklin; George; Greene; Hancock; Harrison; Hinds; Holmes; Humphreys; Jackson; Jasper; Jefferson; Jefferson Davis; Jones; Kemper; Lamar; Lauderdale; Lawrence; Leake; Lincoln; Lowndes; Madison; Marion; Neshoba; Newton; Noxubee; Okibbeha; Pearl River; Perry; Pike; Rankin; Scott; Simpson; Smith; Stone; Walthall; Warren; Wayne; Wilkinson; Winston; Yazoo.

Below is a chart reflecting applicable construction commencement and placement in service deadlines for GO Zone property.

| PROPERTY CLASS  | CONSTRUCTION COMMENCEMENT [1] AND WRITTEN BINDING CONTRACT ("WBC") REQUIREMENTS | PLACEMENT IN SERVICE DEADLINE  | LOCATION  |
|---|---|--|---|
| <b>General GO Zone Property</b>   |   |  |   |
| Residential rental property   | After 8/27/2005 and with no WBC prior to 8/28/2005                              | 12/31/2008   | GO Zone: See list above   |
| Personal property   | Same as above   | 12/31/2007   | GO Zone: See list above   |
| Site work   | Same as above   | 12/31/2007   | GO Zone: See list above   |
| <b>Specified Go Zone Property [2]</b>   |   |  |   |
| Residential rental property (buildings)   | After 8/27/2005 and with no WBC prior to 8/28/2005                              | 12/31/2010 deadline, but GO Zone Depreciation is available only to the extent of adjusted basis attributable to the manufacture, construction or production of property before 1/1/2010. | <p><b><u>Specified portions of the GO Zone:</u></b><br/> <b>Louisiana:</b> parishes of Calcasieu, Cameron, Orleans, Plaquemines, St. Bernard, St. Tammany and Washington.</p> <p><b>Mississippi:</b> counties of Hancock, Harrison, Jackson, Pearl River and Stone.</p> |
| Personal property [3]<br>- Substantially all of the use of the personal property must be in the building located in the Specified GO Zone | After 8/27/2005 and with no WBC prior to 8/28/2005                              | No later than 90 days after the building is placed in service (but no later than March 31, 2011)   | <p><b><u>Specified portions of the GO Zone:</u></b><br/> <b>Louisiana:</b> parishes of Calcasieu, Cameron, Orleans, Plaquemines, St. Bernard, St. Tammany and Washington.</p> <p><b>Mississippi:</b> counties of Hancock, Harrison, Jackson, Pearl River and Stone.</p> |

[1] For self-constructed property, construction begins when physical work of a significant nature begins or when taxpayer incurs more than 10% of the total cost of the property excluding land.

[2] Only specified portions of Go Zone may qualify for an extended placement in service deadline. Specified portions of the GO Zone are counties or parishes in which hurricanes occurring in 2005 damaged more than 60% of occupied housing therein. I.R.C. 1400N(d)(6)(C). See also Notice 2007-36, 2007-17 IRB 1 (Mar. 29, 2007).

[3] Specified GO Zone Property does not include property to which 168(k) applies (See Bonus Depreciation Chart)

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