

**Vermont Department of Taxes**  
**TECHNICAL BULLETIN**

**TAX:** Individual Income Tax

**SUBJECT:** Disallowance of bonus depreciation provisions of Federal Economic Stimulus Act of 2008

**STATUTORY REFERENCE:** 32V.S.A. §5811(21)

**TB – 44**

**ISSUED:** Jan. 22, 2009

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## **Introduction**

Vermont Act 190 of 2008 prevents the bonus depreciation allowed under the Federal Economic Stimulus Act of 2008 from flowing through to the Vermont individual income tax return. This technical bulletin provides guidance for individual income taxpayers who must adjust their business income to exclude the bonus depreciation.

## **Taxpayers Affected**

The disallowance of the bonus depreciation affects individuals filing Federal schedules for business income and those who receive business income passed through by partnerships, limited liability companies and S corporations, and beneficiaries of estates and trusts. Examples of Federal forms that may reflect bonus depreciation deductions include, but are not limited to: Federal Schedules C, E, F; and Federal Forms 2106 and 4562.

Vermont previously amended its law to disallow bonus depreciation provisions for C corporations. *See* 32 V.S.A. §5811 (18)(A). The amendment disallowed the bonus depreciation in 2002 as well as any bonus depreciation provisions enacted in subsequent years.<sup>1</sup> For 2008 and subsequent years, C corporations will file VT Form CO-418 to adjust income and basis for gain/loss on assets for Vermont income tax purposes.<sup>2</sup>

## **Vermont Law**

32 V.S.A. §5811(21) as amended reads:

“Taxable income” means federal taxable income determined without regard to Section 168(k) of the Internal Revenue Code and ...

## **Guidelines**

Disallowance of the 50% bonus depreciation does not reduce the total depreciation allowed, but changes when it may be taken for Vermont tax purposes. In the first year, the disallowed bonus

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<sup>1</sup> This change was prompted by the Federal Job Creation and Worker Assistance Act of 2002.

<sup>2</sup> In prior years, C corporations adjusted for the bonus depreciation difference before entering Federal taxable income on VT Form CO-411.

depreciation requires an adjustment adding the bonus depreciation that exceeds the normal MACRS schedule to Vermont taxable income. In the following years, depreciation will be greater for Vermont tax purposes than for Federal. Therefore, Vermont taxpayers claiming the bonus depreciation on their federal return will be required to keep two depreciation schedules over the depreciable life of the asset — one for Federal income tax purposes and another for Vermont income tax purposes using the normal MACRS schedule.

Vermont law did not decouple from IRC Section 179 provisions of the Federal Economic Stimulus Act of 2008. The temporarily increased deduction and threshold amounts (\$250,000/\$800,000) affect Vermont returns for the taxable year beginning January 1, 2008.

The treatment of assets must be consistent at both the federal and state level. If you elect to depreciate the qualified asset, you must also depreciate for Vermont purposes. You cannot utilize the bonus depreciation for Federal purposes and use Section 179 for Vermont purposes.

Upon disposition of a depreciated asset, the gain or loss must be recalculated using the depreciation allowed for Vermont income tax purposes. This will result in a different Vermont and Federal basis as well as a different Vermont and Federal gain or loss.

### Calculation of Bonus Depreciation Adjustment

For assets qualified for the bonus depreciation, use VT Form IN-111, Section 3, Line 12b to enter the difference between the Federal depreciation amount (that will include the bonus depreciation) and the normal MACRS depreciation.

**NOTE:** In subsequent years, the difference between the Federal depreciation amount and Vermont depreciation amount will be a deduction from Federal taxable income for Vermont income tax purposes.

*Example:*

Betty Bookkeeper decided to expand her business into tax preparation and payroll services. She purchased \$15,000 of computer equipment (5-year property) and made \$25,000 of leasehold improvements (15-year property). Her depreciation and Vermont adjustment for 2008:

Property	Federal Depreciation			Vermont MACRS Depreciation	Vermont Adjustment
	MACRS	Bonus	Total		
Computer Equip.	\$1,500	\$ 7,500	\$ 9,000	\$3,000	\$ 6,000
Leasehold	625	12,500	13,125	1,250	<u>11,875</u>
Adjustment for IN-111, Line 12b					\$17,875

### Pass-Through Entities (Partnerships, Limited Liability Companies, S corporations)

Pass-through entities that are Vermont-based or do business in Vermont issue a K-1VT. The Vermont K-1 provides the partner, member or shareholder with information on the amount of disallowed bonus depreciation. Enter the amount on Line 8 of the K-1VT on VT Form IN-111, Section 3, Line 12b. If there is more than one K-1VT, enter the sum of Lines 8.

For pass-through entities that are not required to issue a K-1VT, the partner, member or shareholder will need to contact the entity and request his or her allocated share of the difference in depreciation.

Non-resident partners, members or shareholders filing VT Form IN-113, must use the information from the Federal K-1 *before* disallowance of the bonus depreciation. By using the amount before disallowance of bonus depreciation for both the Federal and Vermont columns, the income adjustment calculated on VT Form IN-113 measures comparable income and reflects the appropriate ratio of non-Vermont to Vermont income.

### **Estates, Trusts and Beneficiary Share**

Estates and trusts that applied the 2008 bonus depreciation to qualified assets enter on Line 2b of VT Form FI-161 the difference between the Federal depreciation amount and the regular MACRS amount. Beneficiaries receiving a Federal Form 1041 K-1 will need to contact the estate or trust to request his or her allocated share of the difference in the depreciation allowed for Vermont tax purposes.

### **Underpayment of Estimated Individual Income Tax**

If the taxpayer can show to the Department's satisfaction that adjustment for bonus depreciation caused an underpayment of estimated individual income tax, underpayment penalty will be waived. Waiver penalty will be upon request by the taxpayer and handled on a case-by-case basis.

### **Use of Technical Bulletins**

A technical bulletin provides general information to the public and does not replace the need for competent legal or accounting advice. This technical bulletin supersedes all prior department pronouncements on this subject.

Prepared by:

Approved:

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Gloria Hobson

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Tom Pelham  
Commissioner of Taxes