

Tax Update

November 2004

New Rules Governing Restaurant Improvements

On October 22, 2004, the President signed new tax legislation that significantly accelerates the depreciation period for restaurant improvements. Under the American Jobs Creation Act of 2004, "qualified restaurant property" is depreciated over a 15-year period instead of the current 39-year period for property placed in service before Jan. 1, 2006

In enacting the new legislation, Congress believed that unlike other commercial buildings, restaurant buildings generally are more specialized structures. Restaurants also experience considerably more traffic, and remain open longer than most retail properties. This daily assault causes rapid deterioration of restaurant properties and forces restaurateurs to constantly repair and upgrade their facilities. Thus, restaurant facilities have a much shorter life span than other commercial establishments. The new provision in the 2004 Jobs Act is intended to more accurately reflect the true economic life of the improved restaurant properties.

The new rules classify "qualified restaurant property" that is placed in service before Jan. 1, 2006 as property that must be depreciated on the straight-line method over 15 years.

Further, the new legislation makes "qualified restaurant property" eligible for bonus depreciation because of its assigned

15-year recovery period. Thus, qualified restaurant property can also qualify as "50-percent bonus depreciation property" if it meets the other requirements.

However, the period of time in which property will qualify as both qualified restaurant property and 50-percent bonus depreciation property is brief. In most cases, the property must be placed in service after Oct. 22, 2004 and before Jan. 1, 2005.

"Qualified restaurant property" is any real estate improvement to a building if:

- The improvement is placed in service more than three years after the date the building was first placed in service; and
- More than 50 percent of the building's square footage is devoted to preparation of, and seating for, on-premises consumption of, prepared meals.

If you want more information about this new law, please contact:

John R. Bonn(978) 594-0170

Richard L. Kintz(858) 720-8919

D. Matthew Richardson(213) 617-4222

Randy B. Short.....(415) 774-2942

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

LOS ANGELES
213·620·1780

SAN FRANCISCO
415·434·9100

SANTA BARBARA
805·568·1151

CENTURY CITY
310·228·3700

ORANGE COUNTY
714·513·5100

SAN DIEGO
619·338·6500

DEL MAR HEIGHTS
858·720·8900

NEW YORK
212·332·3800

WASHINGTON, D.C.
202·218·0000