

## BENEFITS AVAILABLE UNDER THE GULF OPPORTUNITY ZONE ACT OF 2005 AND STATE INCENTIVES

### EXECUTIVE SUMMARY:

The Gulf Opportunity Zone Act of 2005, signed into law by President Bush on December 21, 2005, contains significant economic incentives to rebuild the Gulf Coast, as well as to attract new investments to the affected areas. **These economic incentives are so significant that any business which is considering investing in any new, replacement or expanded operations, buildings or equipment within the GO Zone should consider how to utilize these incentives to the fullest extent possible.**

The most significant incentives of the Gulf Opportunity Zone Act include:

- **50% Bonus Depreciation.** The GO Zone Act allows for a significant acceleration of the normal depreciation deduction by allowing a **bonus depreciation deduction** in the first year Qualified GO Zone Property is placed in service **equal to 50% of its cost, in addition to the normal depreciation deduction for the balance of such costs.** This bonus depreciation is available to businesses of all sizes for their investments in equipment, non-residential real property or residential rental property substantially all of which is used both in the **active conduct of the taxpayer's trade or business and in the GO Zone.** This tax benefit applies to rehabilitation costs and costs incurred on new projects. The original use of the property in the Zone must commence on or after August 28, 2005 (the day before Hurricane Katrina made landfall), and the construction of certain property must commence on or before January 1, 2008. To qualify, eligible personal property must be placed in service on or before December 31, 2007, and eligible real property must be placed in service on or before December 31, 2008. The business is subject to recapture provisions if the property ceases to be GO Zone Property. Also, losses resulting from the bonus depreciation remain subject to the "at-risk" and "passive activity" limitation rules as they existed under prior law. A business may opt out of the bonus depreciation allowance on its property on an asset-class basis. If any portion of any property is financed with tax-exempt bonds, then bonus depreciation may not be used on that property.
- **5-Year NOL Carryback.** Recognizing that the deductions generated by the 50% bonus depreciation may exceed current year income, Congress expanded the opportunity for taxpayers in the GO Zone to carry back their net operating losses from 2 years to 5 years. These taxpayers also will retain the right to carry forward their net operating losses for up to 15 years.
- **Tax-exempt Financing.** Tax-exempt, private activity bonds have been authorized to finance development of a wide array of commercial projects in the Zone on or after August 28, 2005. Mississippi may issue in excess of **\$4.9 Billion** of these "GO Zone Bonds." Bonds are available to most business sectors (gaming and certain other activities are excluded). Bond proceeds may be used to fund acquisition, construction and renovation of nonresidential real property and certain residential rental property (movable fixtures and equipment are excluded). A project must

choose between bonus depreciation and tax-exempt bonds on project costs that would otherwise qualify for both incentives. Bonds must be issued on or before December 31, 2010.

- **100% Deduction for Qualifying Tangible Personal Property for Small Businesses.** The GO Zone Act increases to \$200,000 (from \$100,000) the amount that eligible small businesses can expense qualifying tangible personal property and computer software placed in service in the Zone.
- **Demolition and Cleanup Expenses May Be Expensed.** The GO Zone Act allows businesses to expense 50% of their demolition and cleanup expenses incurred through 2007.
- **Special Incentives for Employers.**
  - **Employee Retention Tax Credit.** The Employee Retention Tax Credit was expanded to apply to all employers in the Zone, regardless of the number of employees. The credit is equal to 40% of qualifying wages up to a subject to a maximum of \$6,000 (for a maximum credit of \$2,400 per qualifying employee). This credit applies to qualifying amounts expended prior to December 31, 2005.
  - **WOTC.** Employers may claim the work opportunity tax credit (WOTC) if they hire a “Hurricane Katrina employee.” This is an individual who, on August 28, 2005, had a principal place of abode in the “core disaster area” and (1) who is hired after August 27, 2005, and before August 28, 2007, for a job located in the core disaster area; or (2) who was displaced by Hurricane Katrina and is hired after August 27, 2005, and on or before December 31, 2005 for a job located outside the core disaster area. For employers outside the GO Zone, the employee must have been hired after August 27, 2005, and before January 1, 2006. For employers within the GO Zone, the WOTC is extended for employees hired through August 27, 2007. Eligible employers are allowed a credit of 40% of the first \$6,000 of qualified first-year wages paid to each eligible employee.
- **Combination of Bond Financing with other State Incentives.** A project financed with tax-exempt bonds issued by the Mississippi Business Finance Corporation, if properly structured, could avoid the **sales and use tax (generally 7%)**, and with proper planning, the **contractor’s tax (3½% on component materials)**. Also, with proper planning and structuring of the contracts, the contractor’s tax on design services can be avoided. If the project is to be financed through a sale of taxable bonds to the markets, the MBFC has provided a Pool Program for smaller projects (generally in the range of \$300,000 to \$4 Million).

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and reinvest in the future of South Mississippi and the Gulf Coast.*

*The Butler Snow team is ready to help.*

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