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Contacts

Washington, DC Office

1900 K Street, NW
Washington, DC 20006-1109

Richmond Office

Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074

Atlanta Office

Bank of America Plaza
Suite 4100
600 Peachtree Street, NE
Atlanta, Georgia 30308-2216

[Laura Ellen Jones](#)

(804) 788-8746
ljones@hunton.com

[David S. Lowman, Jr.](#)

(202) 419-2070
dlowman@hunton.com

[Timothy L. Jacobs](#)

(202) 955-1669
tjacobs@hunton.com

[Joshua Z. Mishoe](#)

(404) 888-4197
jmishoe@hunton.com

Small Business Jobs Act of 2010 — Extension of Bonus Depreciation

On September 23, 2010, the House of Representatives passed the Small Business Jobs Act of 2010 (H.R. 5297) (the “Act”). The Act was approved by the Senate last week and is expected to be signed by the president early next week.

Among other tax provisions, the Act would extend first-year “bonus” depreciation for qualified property placed in service in 2010. Bonus depreciation allows a taxpayer to take a deduction equal to 50 percent of the adjusted basis of qualified property for the year the property is placed in service. The basis of the property and the remaining depreciation allowances are adjusted to reflect the additional first-year depreciation. The bonus depreciation deduction is allowed for both regular tax and alternative minimum tax purposes. A special election allows taxpayers to elect out of bonus depreciation if they so choose.

Congress had previously allowed bonus depreciation for qualified property placed in service in 2008 and 2009. The Act would extend the availability of this bonus depreciation to qualifying property purchased and placed in service during

2010. “Qualified property” is defined as (1) property to which the Modified Accelerated Cost Recovery System (“MACRS”) applies with an applicable recovery period of 20 years or less, (2) computer software other than computer software covered by Code Section 197, (3) water utility property and (4) qualified leasehold improvement property. A one-year extension also applies to the placed-in-service date (e.g., extending to January 1, 2012) for certain aircraft and long-term production-period property. Long-term production-period property is generally qualified property that (1) has a recovery period of at least 10 years (except for certain transportation property), (2) is subject to the capitalization rules of Section 263A (covering among other things property produced by the taxpayer) and (3) an estimated production period exceeding one year and a cost exceeding \$1 million. A special progress expenditure rule applies to long-term production-period property and limits the amount of basis eligible for bonus depreciation to the portion that is properly attributable to costs incurred before January 1, 2011.