

# Gulf Coast Recovery is Ready to “GO”

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NEARLY A YEAR AFTER HURRICANE KATRINA, “GO Zone” and other incentives offer new options for businesses in and out of the region.



In late August 2005, the Southeastern coastal states of Mississippi, Louisiana, and Alabama were barraged by one of the most devastating and deadly storms ever to hit the United States. Months later, these states are still digging out from the physical and fiscal harm imposed by Hurricane Katrina. Fortunately, they aren't alone in their recovery efforts, thanks to several Congressional relief bills, among them one of the most powerful ever created for states dealing with the effects of widespread disasters.

These recovery tools are designed to assist existing business and industry in recovering from damage caused by Katrina. They are also designed to attract new business and industry to the region through attractive and accelerated incentives. With such widespread physical destruction throughout the region and the loss of thousands of businesses, these incentives are vital to assist the region in economic recovery and employment stabilization.

It is important to note that there has already been significant recovery in many of the areas impacted. Electricity has been restored to all areas capable of

receiving it. Telephone and Internet access have been reconnected in most areas. Significant efforts are underway to provide both temporary and permanent housing. And infrastructure is being repaired, reconstructed, and relocated to provide critical services. Significant analysis and evaluation has already been conducted, and additional studies, plans, and strategies are currently under development — all designed to help individuals, businesses, and industries return to stability and growth as soon as possible.

The Gulf Opportunity Zone — or “GO Zone” — Act, signed into law by President Bush on December 21, 2005, contains significant economic incentives to rebuild the Gulf Coast and to attract new investments to the affected areas. Modeled after the New York Liberty Zone incentives created for parts of lower Manhattan after 9/11, these incentives are intended to stimulate rapid private investment in the GO Zone within the window of time provided. These economic incentives are so significant that any business considering an investment in new, replacement, or expanded operations, or buildings or equipment within the GO Zone should

consider how to employ these incentives to the fullest extent possible.

The GO Zone incentives have been written in a manner to help make them easy to understand and to implement. However, parties interested in the incentives should be aware that there are time limitations under which a qualifying entity must make application and complete their new or expanded investments. The incentives are aggressive, high impact, and designed for immediate benefit to those who qualify.

after August 28, 2005; and (4) which was acquired by "purchase" for which there was no "written binding contract" for its acquisition in effect before August 28, 2005. The window of opportunity for using the bonus depreciation is narrow: qualified GO Zone property must be placed in service by December 31, 2007 for personal property and on or before December 31, 2008 for real property.

The 50 percent bonus depreciation is available for both costs incurred on new

enable a business to convert operating losses into refunds for taxes previously paid.

Qualifying losses may be used to offset up to 100 percent of income subject to the Alternative Minimum Tax. Qualifying losses include: (1) depreciation deductions with respect to qualified Zone property; (2) in-Zone casualty losses; (3) moving expenses; (4) temporary housing expenses; and (5) repair expenses resulting from Katrina.

### TAX-EXEMPT, PRIVATE-ACTIVITY "GO BONDS"

Tax-exempt, private-activity bonds have now 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 in tax-exempt "GO Bonds," while Louisiana may issue nearly \$7.9 billion, and Alabama may issue in excess of \$2.1 billion. These bonds are available to most business sectors, but gaming and certain other activities discussed above are excluded. Bond proceeds may be used to fund construction and renovation of nonresidential real property and certain residential rental property (movable fixtures and equipment are excluded). For new acquisitions of existing property to qualify, improvements must be made to the property in an amount not less than 50 percent of the purchase price.

A project must choose between bonus depreciation and tax-exempt bonds on costs that otherwise would qualify for both incentives. Additionally, GO Bonds must be issued on or before December 31, 2010. Under current federal tax law, borrowers may use bond proceeds to reimburse for costs previously incurred by the borrower for only 60 days prior to initial approval by the governmental authority issuing the bonds.

### ADDITIONAL STATE LAW INCENTIVES IN MISSISSIPPI

If properly structured, projects financed with tax-exempt GO Bonds can be exempt from the sales and use tax — generally 7 percent — and, with proper planning, can avoid a portion of the contractor's tax — the 3 percent tax on component materials and on design services. Also, projects financed with

**If business and industry response to the GO Zone incentives reaches the proportion representatives expect, the Gulf Coast region will be back, better and stronger than ever.**

The paragraphs to follow include an analysis of the GO Zone incentives, prepared by Steve Rosenblatt, Barry Cannada, and John England, attorneys with Butler, Snow, O'Mara, Stevens & Cannada, a law firm with offices in Mississippi and Tennessee. Any business or industry considering a new location in the Southeast should take a serious look at the GO Zone incentives and determine how they may provide immediate impact.

### FIFTY PERCENT 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 percent of its cost, in addition to the normal depreciation deduction for the balance of such costs. This benefit is available to businesses of all sizes, and there is no dollar cap on the total amount of bonus depreciation that can be claimed.

The bonus depreciation can be used for investments in qualified GO Zone property, which must meet the following four elements: (1) eligible property — generally equipment, non-residential real property, or residential rental property; (2) "substantially all" of the use of which is in an "active trade or business" in the Go Zone; (3) the original use of which began in the GO Zone on or

projects and for rehabilitation costs. (Costs incurred for replacement, renovation, or rehabilitation of existing property are treated as separate property for purposes of the GO Zone Act.) Opt-outs of bonus depreciation allowance are permitted by asset class.

There are some restrictions on the use of bonus depreciation. If any portion of property is financed with tax-exempt bonds, that entire property is ineligible for bonus depreciation. Gaming property is excluded, as is property used in connection with any private or commercial golf course, country club, or liquor store. Recapture provisions apply if the property ceases to be qualified GO Zone property, usually because it is sold or because it is moved out of the GO Zone. The use of the deductions afforded by bonus depreciation also remains subject to the normal limitations found in the "at-risk" and "passive activity" rules.

### FIVE-YEAR NET OPERATING LOSS (NOL) CARRYBACK

Recognizing that the deductions generated by the 50 percent bonus depreciation may exceed current year income, Congress expanded the opportunity for businesses in the GO Zone to carry back their net operating losses. The time period for the NOL carryback was extended from two years to five years, and businesses may carry forward NOLs for up to 15 years. This may

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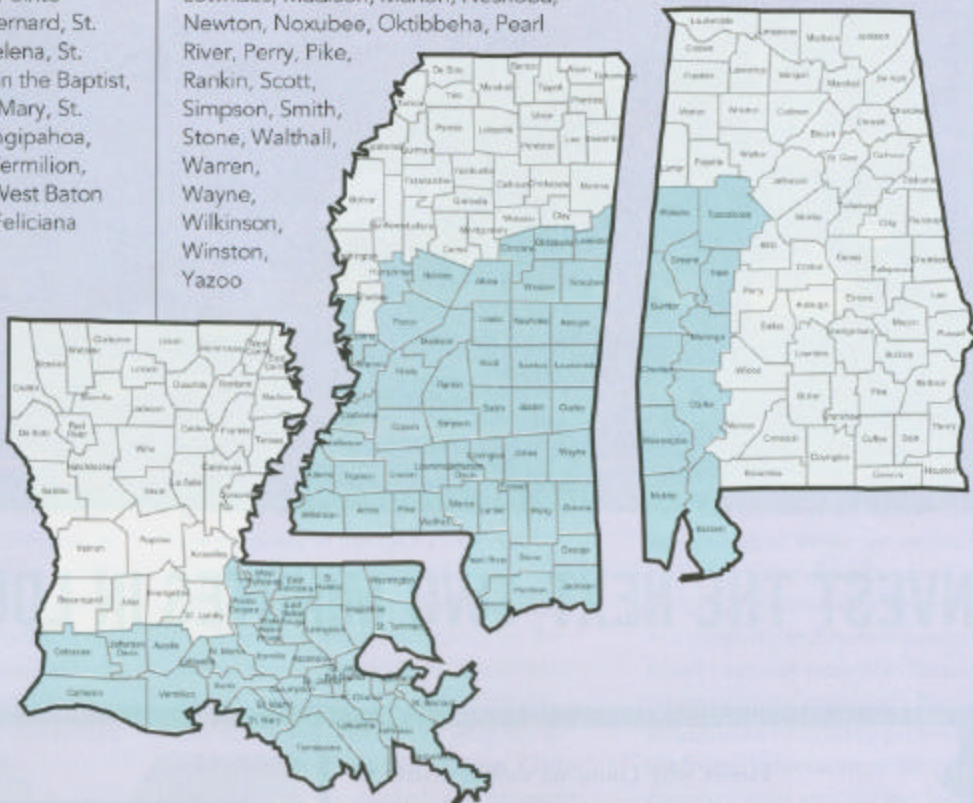
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Business owners and investors interested in learning more about GO Zone incentives should contact the state's economic development department for specific information. In Louisiana, call (800) 450-8115 or visit [www.ided.state.la.us](http://www.ided.state.la.us). In Mississippi, call (601) 359-3449 or visit [www.mississippi.org](http://www.mississippi.org). In Alabama, call (800) 248-0033 or visit [www.ado.state.al.us](http://www.ado.state.al.us).

GO Bonds are eligible to obtain ad valorem tax exemptions, subject to the discretion of the local governing body where the project is located. Finally, businesses utilizing tax-exempt GO Bonds may also be eligible for RED Program state income tax credits. These three state law incentives can produce significant savings, especially when combined with the savings of the cost of funds for a tax-exempt, private activity bond.

**OTHER BENEFITS OFFERED BY THE GO ZONE ACT**

- 100 percent deduction for qualifying tangible personal property for small businesses: The amount small businesses are permitted under Section 179 to expense, rather than depreciate, for investments in qualifying tangible personal property and computer software

placed in service in the Zone has been increased by \$100,000 to \$208,000. The placement in service dates are the same as those that apply to bonus depreciation. The investment ceiling limit for eligible property has been increased by \$600,000 to \$1,030,000.

- Demolition and cleanup expenses may be expensed: Under existing law, the cost of demolition generally is added to the business owner's basis in the underlying land and cannot be recovered until the property is sold. The GO Zone Act allows businesses to expense 50 percent of their demolition and cleanup expenses incurred through 2007.

- Work Opportunity Tax Credit (WOTC): Employers may claim the WOTC if they hire a new "Hurricane Katrina employee." This is an individual who, on August 28, 2005, had a princi-

pal place of abode in the "core disaster area" and (1) who was 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 was 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 percent of the first \$6,000 of qualified first-year wages paid to each eligible employee.

- 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 percent of qualifying wages up to a subject to a maximum of \$6,000 (for a maximum credit of \$2,400 per qualifying employee) and applies to qualifying amounts expended prior to December 31, 2005.

#### OTHER IMPORTANT PROVISIONS OF THE GO ZONE ACT

The GO Zone Act contains a number of additional incentives and relief provisions that are important to businesses considering an investment in the GO Zone.

- Increase in qualified rehabilitation credit: The credit for qualified expenditures for a historic structure was raised to 26 percent and for other qualified structures to 13 percent.
- Expensing of qualified environmental cleanup costs: The deductibility of environmental cleanup costs incurred on qualifying sites was extended for two years and applies to the cleanup of petroleum products. To qualify, costs

must be incurred from August 27, 2005 through December 31, 2007.

- New market tax credit authority increased: The allowable credit is equal to 39 percent of qualifying investments in low-income communities. To qualify, the investment must be made by an authorized community development entity (CDE). An additional \$1 billion in authority was granted for the years 2005–2007.
- Low-income housing: The act authorizes almost \$40 million in additional low-income tax credits for Mississippi. Additional provisions will increase the credits available to investors for new construction and rehabilitation expenditures.
- Reforestation incentives for small timber owners: The cap on the deductibility of reforestation costs was doubled to \$20,000 per year through 2008, and a special five-year NOL carryback for small timber operations was authorized. To qualify, the timber owner must own less than 500 acres of timber.

The damage caused by Hurricane Katrina is unprecedented. The impact on individuals and existing business and industry has been catastrophic. But significant lessons have been learned, and significant efforts are underway to assist the region in recovery and, more importantly, future growth. If business and industry response to the GO Zone incentives reaches the proportion Congressional and regional representatives expect, undoubtedly the entire Gulf Coast region will be back, better and stronger than ever.

*AngelouEconomics is an economic development consulting firm specializing in the site selection needs of the technology industry and the communities seeking to recruit them. The website is [www.angeloueconomics.com](http://www.angeloueconomics.com). Buzz Canup can be reached at [bcanup@angeloueconomics.com](mailto:bcanup@angeloueconomics.com). Butler, Snow, O'Mara, Stevens & Cannada is one of the largest law firms in the mid-South. Contact its attorneys via the company's website, [www.butlersnow.com](http://www.butlersnow.com). **AREA***

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