

KEY BUSINESS CHANGES IN THE “SMALL BUSINESS JOBS ACT”

On September 27, the President signed into law the “Small Business Jobs Act of 2010” (P.L. 111-240) which includes a number of important tax provisions for business. Here's a brief overview of the tax changes in the Small Business Jobs Act.

Enhanced small business expensing - To help small businesses quickly recover the cost of capital outlays, small business taxpayers can elect to write off these expenditures in the year they are made instead of recovering them through depreciation. Under the old rules, taxpayers could generally expense up to \$250,000 of qualifying property—generally, machinery, equipment and software—placed in service during the tax year. This annual limit was reduced by the amount by which the cost of property placed in service exceeded \$800,000. Under the Small Business Jobs Act, for tax years beginning in 2010 and 2011, the \$250,000 limit is increased to \$500,000 and the investment limit to \$2,000,000. The Small Business Jobs Act also makes certain real property eligible for expensing. Thus, for property placed in service in any tax year beginning in 2010 or 2011, the \$500,000 amount can include up to \$250,000 of qualified leasehold improvement, restaurant and retail improvement property.

Extension of 50% bonus first-year depreciation - Before the Small Business Jobs Act, Congress already allowed businesses to more rapidly deduct capital expenditures of most new tangible personal property placed in service in 2008 or 2009 by permitting the first-year write-off of 50% of the cost. The Small Business Jobs Act extends the first-year 50% write-off to apply to qualifying property placed in service in 2010 (as well as 2011 for certain aircraft and long production period property).

Boosted deduction for start-up expenditures - The Small Business Jobs Act allows taxpayers to deduct up to \$10,000 in trade or business start-up expenditures for 2010. The amount that a business can deduct is reduced by the amount by which startup expenditures exceed \$60,000. Previously, the limit of these deductions was capped at \$5,000, subject to a \$50,000 phase-out threshold.

100% exclusion of gain from the sale of small business stock - Ordinarily, individuals can exclude 50% of their gain on the sale of qualified small business stock (QSBS) held for at least five years (60% for certain empowerment zone businesses). This percentage exclusion was temporarily increased to 75% for stock acquired after Feb. 17, 2009 and before Jan. 1, 2011. Under the Small Business Jobs Act, the amount of the exclusion is temporarily increased yet again, to 100% of the gain from the sale of qualifying small business stock that is acquired in 2010 after September 27, 2010 and held for more than five years. In addition, the Small Business Jobs Act eliminates the alternative minimum tax (AMT) preference item attributable to such sales.

General business credits of eligible small businesses for 2010 get five-year carryback - Generally, a business's unused general business credits can be carried back to offset taxes paid in the previous year, and the remaining amount can be carried forward for 20 years to offset future tax liabilities. Under Small Business Jobs Act, for the first tax year of the taxpayer beginning in 2010, eligible small businesses can carry back unused general business credits for five years instead of just one. Eligible small businesses are sole proprietorships, partnerships and non-publicly traded corporations with \$50 million or less in average annual gross receipts for the prior three years.

General business credits of eligible small businesses not subject to AMT for 2010 - Under the AMT, taxpayers can generally only claim allowable general business credits against their regular tax liability, and only to the extent that their regular tax liability exceeds their AMT liability. A few credits, such as the credit for small business employee health insurance expenses, can be used to offset AMT liability. The Small Business Jobs Act allows eligible small businesses to use all types of general business credits to offset their AMT in tax years beginning in 2010.

Deductibility of health insurance for the purpose of calculating self-employment tax - The Small Business Jobs Act allows business owners to deduct the cost of health insurance incurred in 2010 for themselves and their family members in calculating their 2010 self-employment tax.

Cell phones no longer listed property - This means that cell phones can be deducted or depreciated like other business property, without onerous recordkeeping requirements.

S corporation holding period for appreciated assets shortened to five years - Generally, a C corporation converting to an S corporation must hold onto any appreciated assets for 10 years or face a built-in gain tax at the highest corporate rate of 35%. The 2010 Small Business Jobs Act temporarily shortens the holding period of assets subject to the built-in gains tax to 5 years if the 5th tax year in the holding period precedes the tax year beginning in 2011.

New tax break for long-term contract accounting - The Small Business Jobs Act provides that in determining the percentage of completion under the percentage of completion method of accounting, bonus depreciation in 2010 is not taken into account as a cost. This prevents the bonus depreciation from having the effect of accelerating income.

Limitation on penalty for failure to disclose certain reportable transactions - The Small Business Jobs Act generally limits the penalty to 75% of the decrease in tax resulting from the transaction, retroactively to penalties assessed after Dec. 31, 2006. Minimum and maximum penalties apply.

Revenue raisers - These tax breaks come at a cost. To mention a few of these unfavorable provisions, information reporting will generally be required for rental property expense payments made after Dec. 31, 2010, and increased information return penalties will be imposed.

Please keep in mind that these are only highlights of the most important changes in the Small Business Jobs Act. If you would like more details about any aspect of the new legislation, please do not hesitate to call our office.