



OCTOBER 2010

2010 Small Business Jobs Act

The recently enacted 2010 Small Business Jobs Act includes a wide-ranging assortment of tax breaks and incentives for small businesses, paid for by various revenue raisers. Here's a brief overview of the tax changes in the new law.

Tax Breaks and Incentives

Enhanced small business expensing (Section 179 expensing). In order to help small businesses quickly recover the cost of certain capital expenses, small business taxpayers can elect to write off the cost of these expenses in the year of acquisition in lieu of recovering these costs over time through depreciation. Under pre-2010 Small Business Jobs Act law, taxpayers could expense up to \$250,000 of qualifying property—generally, machinery, equipment and certain software—placed in service in tax years beginning in 2010. This annual expensing limit was reduced (but not below zero) by the amount by which the cost of qualifying property placed in service in tax years beginning in 2010 exceeded \$800,000 (the investment ceiling). Under the new law, for tax years beginning in 2010 and 2011, the \$250,000 limit is increased to \$500,000 and the investment ceiling to \$2,000,000.

As with prior versions of this provision, the ability to write off the cost of assets is limited to overall taxable income and cannot create a tax loss for the year.

The Small Business Jobs Act introduces a new opportunity. The new law makes certain “real property” eligible for the

above expensing. For property placed in service in any tax year beginning in 2010 or 2011, the up-to-\$500,000 of property expensed can include up to \$250,000 of qualified real property (qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property).

The qualified property must be depreciable (i.e. not land) and used in the active conduct of a trade or business. Among other restrictions, the property cannot be used for residential purposes or outside the United States. Additionally, air conditioning or heating units (HVAC) also do not qualify for the expensing election.

The Small Business Jobs Act introduces a number of nuances to Section 179 expensing which will require careful planning to maximize the benefits available under the new law.

Extension of 50% bonus first-year depreciation. Businesses are allowed to deduct the cost of capital expenditures over time according to depreciation schedules. In previous legislation, Congress allowed businesses to more rapidly deduct capital expenditures of most new (not used) tangible personal property, and certain other new property, placed in service in 2008 or 2009 (2010 for certain property), by permitting the first-year write-off of 50% of the cost. The new law extends the first-year 50% write-off to apply to qualifying property placed in service in 2010 (2011 for certain property).

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100% exclusion of gain from the sale of small business stock for qualifying stock acquired after Sept. 27, 2010 and before Jan. 1, 2011. Before the 2009 Recovery Act, individuals could 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). To qualify, QSBS must meet a number of conditions (it must be stock of a corporation that has gross assets that don't exceed \$50 million, and the corporation must meet active business requirements and others). Under the 2009 Recovery Act, the percentage exclusion for gain on QSBS sold by an individual was increased to 75% for stock acquired after Feb. 17, 2009 and before Jan. 1, 2011. Under the new law, 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 Sept. 27, 2010 and held for more than five years. In addition, the new law eliminates the alternative minimum tax (AMT) preference item attributable to that sale.

General business credits of eligible small businesses for 2010 allowed to be carried back five years. 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 the new law, eligible small businesses are able to carry back unused general business credits generated in 2010 for five years. Eligible small businesses are businesses with \$50

million or less in average annual gross receipts for the prior three years.

General business credits of eligible small businesses in 2010 aren't subject to AMT. 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. The new law allows eligible small businesses, as defined above, to use all types of general business credits generated in 2010 to offset their AMT in tax years beginning in 2010. Examples of the credits which are covered by this provision include the Energy Credit, the Credit for Increasing Research Activities, the Low Income Housing Credit and several others.

Deductibility of health insurance for the purpose of calculating self-employment tax. The new law 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.

Revenue Raisers

Information reporting required for rental property expense payments. For payments made after Dec. 31, 2010, the new law requires persons receiving rental income from real property to file information returns with the IRS and service providers reporting payments made of \$600 or more during the tax year for rental property expenses. Therefore, payments of \$600 or more to plumbers, painters, landscapers, etc. are required to

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be reported on Form 1099-MISC. IRS Form W-9 can be used to obtain a taxpayer identification number from the service provider. Exceptions from reporting are provided for individuals renting their principal residences on a temporary basis, taxpayers whose rental income doesn't exceed an IRS-determined minimal amount, and those for whom the reporting requirement would create a hardship (to be determined under IRS regs).

Increased information return penalties (effective for information returns required to be filed after Dec. 31, 2010). For information returns required to be filed after December 31, 2010, the penalties in the tax code for failure to timely file information returns (Forms 1099) with the IRS will be increased. For example, the initial penalty will be increased from \$15 to \$30 per information return, and the calendar year maximum will be increased from \$75,000 to \$250,000. For small filers, the calendar year maximum will be increased from \$25,000 to \$75,000 for the initial penalty.

Allow rollovers from elective deferral plans to designated Roth accounts. The new law allows 401(k), 403(b), and governmental 457(b) plans to permit participants to roll their pre-tax account balances into a designated Roth account. The amount of the rollover will be includible in taxable income except to the extent it is the return of after-tax contributions. If the rollover is made in 2010, the participant can elect to pay the tax in 2011 and 2012. Plans will be able to allow these rollovers immediately as of Sept. 27, 2010.

While the full details of the 2010 Small Business Jobs Act are beyond the scope of this Alert, your Wilkin & Guttenplan advisor can help you determine how these provisions may benefit you.

Any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

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