

# Small Business Jobs Act of 2010



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The recently passed Small Business Jobs Act of 2010 ("the bill") included some incentives for real estate and construction businesses and one not so pleasant revenue raiser directed at landlords. Below are some of the details:

**Bonus Depreciation**– The bill reinstates the bonus first-year depreciation law for 2010, which had expired on January 1, 2010. This is a windfall for those businesses that purchased "qualified property" already this year and might encourage others to purchase and place such property in service before December 31, 2010. Qualified property which is defined in Internal Revenue Code Section 167(k) includes most all personal property, certain leasehold improvements, and most computer software.

**Increased and Expanded Expensing Limits Under Section 179**– For tax years beginning in 2010 and 2011, the expense deduction limit is \$500,000. The deduction is phased out on a dollar-for-dollar basis once the business has made \$2,000,000 of capital expenditures. For the first time up to \$250,000 of real property can be included in the expensing election. Prior to this bill the deduction limit in 2010 was \$250,000 and was scheduled to be reduced to \$25,000 in 2011. This is clearly geared to small and medium sized businesses and self employed individuals.

Example – Assume a taxpayer wants to purchase \$250,000 of nonresidential real property and \$450,000 of personal property. Let's assume the regular first year depreciation percentage for the personal property is 14.29%.

- a. If the property is purchased in December 2010, the taxpayer's 2010 deduction would total \$614,290.
- b. If the property is purchased in January 2011,

the taxpayer's 2011 deduction would total \$528,580. The amount is lower since the bonus depreciation rules expire at the end of 2010.

Without this legislation, the comparative first year deductions would have been \$278,848 if acquired in December 2010 or \$91,885 if acquired in January 2011.

**General business tax credits to be more valuable to small businesses**– Previously general business credits could not offset alternative minimum taxes and could only be carried back for one year and, then forward 20 years. The new law will allow business credits to offset alternative minimum taxes and permit a five-year carry back. The new provisions are generally available to privately held small businesses that have averaged less than \$50 million in gross receipts for the last three years and is effective for tax years beginning after December 31, 2009. Related companies will need to be aggregated in determining gross receipts. Business credits are listed in Internal Revenue Code Section 38 and include the research and development credit, work opportunity credit, low-income housing credit, and empowerment zone employment credit among others.

**Information reporting required of landlords**– Most persons receiving rental income will be considered to be in a trade or business and, therefore required to report to the IRS payments made in excess of \$600 to other persons. Persons include corporations that are not organizations exempt under IRC Section 501(a). Penalties for noncompliance have been increased. Penalty amounts vary based upon the size of your business and when the forms are filed, if at all. Assuming a business that had gross receipts in excess of \$5,000,000 in its most

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recent three years had failed to file Form 1099-MISC for payments to certain persons could have been assessed a penalty of \$50 per Form up to maximum of \$250,000. Under the Small Business Jobs Act of 2010, the penalties could increase to \$100 per Form 1099-MISC up to a maximum of \$1,500,000. We would not be surprised to see the IRS increase the allocation of additional resources to improve compliance in this area.

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