

Small Business Jobs Act of 2010

Congress has passed and President Obama has signed the Small Business Jobs Act of 2010 (the Act). The Act creates a \$30 billion fund to provide capital to community banks to encourage lending to small businesses. The Act includes numerous important tax incentives, including liberalized and expanded expensing for 2010 and 2011, revived bonus depreciation for 2010, and other incentives for large and small businesses as well as individuals. However, there are “revenue raisers” in the Act as well, including new informational reporting requirements on persons receiving income related to rental real estate.

Accelerated cost recovery

The Act extends and/or expands a number of expensing provisions including Section 179 expensing, bonus depreciation, the first-year depreciation cap for autos and trucks, and the deduction for start-up expenses. These new rules provide taxpayers who have already purchased eligible property this year an opportunity to save cash now. By updating your taxable income projections to incorporate the new law, you might be able to reduce your estimated tax payments going forward.

- > **Section 179 expense increase.** For 2010 and 2011, the Act increases the Section 179 deduction to \$500,000 and the threshold to begin phasing out the deduction to \$2 million, with the fully phased out amount now at \$2.5 million. The increased limit includes eligible property already purchased and placed in service in 2010.
- > **Real property eligible for Section 179 expensing.** For the first time, qualified real property placed in service in 2010 or 2011 is eligible for up to \$250,000 of Section 179 expensing. Qualified real property includes qualified leasehold improvements, qualified restaurant property, and qualified retail property. Note that the \$250,000 qualified real property limitation is included in the overall \$500,000 Section 179 limitation described above.
- > **Bonus depreciation extended.** Fifty percent bonus depreciation is available for qualified property placed in service during 2010 (2011 for certain long production period property). This extension applies to businesses of all sizes, and to property already purchased and placed in service in 2010.
- > **First year dollar cap for autos boosted by \$8,000.** The Act boosts the first year business auto write-off by \$8,000 (to \$11,060 for autos and \$11,160 for light trucks or vans) for vehicles that are qualified property for bonus depreciation purposes (i.e., are new and acquired and placed in service in 2010).
- > **Increased deduction for start-up costs.** For tax years beginning in 2010, taxpayers may deduct start-up costs of \$10,000 (increased from \$5,000). The deduction will begin to phase out when start-up costs reach \$60,000 (increased from \$50,000).

Eligible small business credits

The Act extends the carryback period for the general business credit to five years for most privately-held companies (eligible small businesses). An eligible small business is a sole proprietorship, partnership or nonpublicly-traded company with average annual gross receipts (for the last three years) of no more than \$50 million. Aggregation rules for related entities apply when determining gross receipts. Credits eligible for the extended carryback include all of the component credits of the general business credit, including the Section 41 research and development credit.

- > **Five-year carryback of unused general business credits.** Under the new law, eligible small businesses may carryback unused general business credits that were generated in tax years beginning in 2010 for five years. Any remaining amount may be carried forward for 20 years to offset future tax liabilities.
- > **2010 general business credits can offset AMT.** The same taxpayers may use 2010 general business credits to offset their alternative minimum tax (AMT) liability. Eligible small business credits also can be carried back for five years to offset AMT in prior years.

Other Small Business Tax Breaks

- > **S corporation built-in gain relief.** The Act contains a **temporary** relief provision for S corporations that shortens the built-in gain recognition period for tax years beginning in 2011. For any tax year beginning in 2011, no tax is imposed on the net unrecognized

built-in gain if the fifth tax year in the recognition period precedes such tax year. Note that this provision applies **only to tax years beginning in 2011** unless it is further extended by Congress. A seven-year recognition period applies for the 2009 and 2010 tax years.

- > **Gain on sale of small business stock.** The Act excludes 100 percent of the gain from the sale of qualifying small business stock issued after the enactment date and before January 1, 2011 and held for more than five years. The exclusion applies for both regular tax and AMT purposes.
- > **One-year break related to health insurance deduction for self-employment taxes.** For the tax year beginning in 2010, self-employed taxpayers may deduct health insurance costs to calculate net earnings from self-employment.
- > **Cell phones removed from listed property category.** Cell phones have been removed from the definition of listed property. This means that cell phones can be deducted or depreciated like other business property, without onerous recordkeeping requirements.

Limitation on penalties for failure to disclose reportable or listed transactions. The Act changes the general rule for determining the amount of the applicable penalty to achieve proportionality between the penalty and the tax savings that were the object of the transaction.

Regardless of the amount determined under the general rule, the penalty for each such failure may not exceed certain maximum amounts. The new law provides that the amount of the penalty with respect to any reportable transaction for any tax year can't exceed:

- A. in the case of a listed transaction, \$200,000 (\$100,000 in the case of a natural person),
- B. in the case of any other reportable transaction, \$50,000 (\$10,000 in the case of a natural person).

The result of these changes is a dramatic lowering of the penalties.

Revenue raisers

The revenue raisers in the Act include the following:

- > **Information returns to report payments of \$600 or more.** For payments made after 2010, persons receiving rental income from real property must submit an information return to the IRS and to their service providers (e.g., plumbers, electricians, cleaning services, etc.) to report payments of \$600 or more during the year for rental property expenses. There are exceptions for members of the military who rent their homes on a temporary basis, individuals who receive minimal amounts of rental income (to be defined by regulations), and individuals for whom the requirements would cause hardship, as determined by the Secretary in accordance with regulations. This new requirement applies to payments made after December 31, 2010.
- > **Changes to cellulosic biofuel producer credit.** For fuels sold or used after December 31, 2010, eligibility for the Section 40 tax credit for the production of biofuel from cellulosic feedstocks would be limited to fuels that are not highly corrosive (i.e., fuels that could be used in a car engine or in a home heating application).
- > **Increase in corporate estimated tax payments.** Corporations with assets of at least \$1 billion must increase the tax payment due in July, August, or September 2015 by 36 percent.
- > **Roth retirement accounts.** Under the Act your 401k, 403(b), or 457(b) plan might allow (but isn't required to allow) you to roll any portion of your pretax account balance into a Roth account. The amount of the rollover would be includible in your taxable gross income - except to the extent that it is the return of any after-tax contributions. If the rollover is made in 2010, you can elect to pay the tax over a two-year period in 2011 and 2012.

If you have questions or require further information, please contact your Baker Tilly tax advisor or send an e-mail to tax@bakertilly.com.