

Answers @ The Speed of Business

Tax Breaks and Incentives

On September 27th, President Obama signed into law, the "**Small Business Jobs Act of 2010**" (the "2010 Small Business Jobs Act"), which includes a number of important tax provisions for businesses (both large and small) and changes for individuals as well. 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 stead of recovering these costs over time through depreciation. Under prior law, taxpayers could annually 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 2010 Small Business Jobs Act, 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.

Real Estate Alert: The 2010 Small Business Jobs Act also makes certain real property eligible for 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).

100% Exclusion of Gain From the Sale of Small Business Stock for Qualifying Stock Acquired After Date of Enactment and Before Jan. 1, 2011. Previously, 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 (e.g., 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). Under the 2010 Small Business Jobs Act, the exclusion amount is temporarily increased yet again, to 100% of the gain from the sale of qualifying small business stock that is acquired in 2010 after date of enactment and held for more than five years. In addition, the 2010 Small



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Business Jobs Act eliminates the alternative minimum tax (AMT) preference item attributable for such sale.

General Business Credits of Eligible Small Businesses for 2010 Allowed to be Carried Back Five Years. Under the 2010 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 (previously one prior year).

Eligible small businesses consist of 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 in 2010 Aren't Subject to AMT. Under the AMT, taxpayers can generally only claim allowable general business credits against their regular tax liability, to the extent that their regular tax liability exceeds their AMT liability. The 2010 Small Business Jobs Act allows eligible small businesses, as defined above, to use all types of general business credits to offset their AMT in tax years beginning in 2010.

S Corporation Holding Period. Generally, a C corporation converting to an S corporation must hold onto any appreciated assets for 10 years following its conversion or face a business-level tax imposed on the built-in gain at the highest corporate rate of 35%. This grandfathering holding period is reduced where the 7th tax year in the holding period preceded the tax year beginning in 2009 or 2010. 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.

Extension of 50% Bonus First-Year Depreciation. Businesses are allowed to deduct the cost of capital expenditures over time according to depreciation schedules. Businesses are all to more rapidly deduct capital expenditures of most new tangible personal property, and certain other new property, placed in service in 2010 (2011 for certain property), by permitting the first-year write-off of 50% of the cost. Under the 2010 Small Business Jobs Act extends the first-year 50% write-off to apply to qualifying property placed in service in 2010 (2011 for certain property).

Special Rule for Long-Term Contract Accounting. The 2010 Small Business Jobs Act provides that in determining the percentage of completion under the percentage of completion method of accounting, bonus depreciation is not taken into account as a cost. This prevents the bonus depreciation from having the effect of accelerating income.

Boosted Deduction for Start-Up Expenditures. The 2010 Small Business Jobs Act allows taxpayers to deduct up to \$10,000, previously capped at \$5,000 and subjected to a \$50,000 phase-out threshold, 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.

Deductibility of Health Insurance for the Purpose of Calculating Self-

Employment Tax. The 2010 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 Removed from Listed Property Category. This means that cell phones can be deducted or depreciated like other business property, without onerous recordkeeping requirements.

Please keep in mind that I've described only the highlights of the most important changes in the 2010 Small Business Jobs Act . If you would like more details about any aspect of the new 2010 Small Business Jobs Act , please do not hesitate to call Bernie Vogel.