



TAX ALERT

October 5, 2010

President Signs Small Business Jobs Act of 2010

Background

On September 27, 2010, President Obama signed into law the Small Business Jobs Act of 2010. The Small Business Jobs Act is a misnomer because it carries many tax provisions affecting large as well as small businesses, plus changes that affect individuals, such as eased Roth IRA rules.

What follows is a brief summary of the tax changes in the Small Business Jobs Act of 2010.

Note that the tax provisions are under Title II of the Act.

Sections referenced below refer to sections of the Act.

Summary of Tax Changes

Sec. 2011 - Temporary exclusion of 100% of gain on certain small business stock

Under the provision, the percentage exclusion for qualified small business stock, under IRC §1201, acquired during 2010 is increased to 100 percent on the sale of this stock held at least five years.

Sec. 2012 - General business credits of eligible small businesses for 2010 carried back 5 years

The provision extends the carryback period under IRC §39 for eligible small business credits from one to five years. Under the provision, eligible small business credits are defined as the sum of the general business credits determined for the taxable year with respect to an eligible small business.

An eligible small business is, with respect to any taxable year, a corporation, the stock of which is not publicly traded, a partnership, or a sole proprietorship if the average gross receipts of such corporation, partnership, or sole proprietorship for the 3-taxable-year period preceding such taxable year does not exceed \$50 million.

Sec. 2013 - General business credits of eligible small businesses determined in 2010 not subject to alternative minimum tax

Under this provision, eligible small businesses are able to use all types of general business credits to offset their alternative minimum tax (AMT). More specifically, the tentative minimum tax is treated as being zero for eligible small business credits. Thus, an eligible small business credit could offset both regular and AMT liability.

Credits determined with respect to a partnership or S-corporation shall not be treated as eligible small business credits by any partner or shareholder unless such partner or shareholder meets the gross receipts test (average annual gross receipts for the 3-taxable-year period preceding such taxable year does not exceed \$50 million) for the taxable year in which such credits are treated as current year business credits.



Sec. 2014 - Temporary reduction in recognition period for built-in gains tax

Under IRC §1374, where a C-corporation elects to become an S-corporation (or where an S-corporation receives property from a C-corporation in a nontaxable carryover basis transfer), the S corporation is taxed on all gains that were built-in at the time of the election if the gains are recognized during the recognition period (generally the first ten S corporation years or the ten-period after the transfer). For tax years beginning in 2009 and 2010, no tax is imposed on the net unrecognized built-in gain of an S-corporation if the seventh tax year in the recognition period preceded the 2009 and 2010 tax years. This provision of the Act, for any tax year beginning in 2011, shortens the holding period of assets subject to the built-in gains tax to 5 years if the fifth tax year in the recognition period precedes the tax year beginning in 2011.

Sec. 2021 - Increased expensing limitations for 2010 and 2011; certain real property treated as section 179 property

This provision, for tax years beginning in 2010 and 2011, increases the maximum IRC §179 expensing amount to \$500,000 and the phase-out amount to \$2,000,000.

Additionally, for any tax year beginning in 2010 or 2011, a taxpayer could elect to treat up to \$250,000 of qualified real property (qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property) as expensing-eligible property.

Sec. 2022 - Additional first-year depreciation for 50% of the basis of certain qualified property

The Act extends (retroactively for 2010) 50% bonus first-year depreciation under IRC §168(k) for one year, making it available for qualifying property acquired and placed in service in 2010 (as well as 2011 for certain long-lived property).

The Act makes no changes to depreciation as it relates to the Gulf Opportunity zone.

Sec. 2023 - Special rule for long-term contract accounting

Under this provision, bonus depreciation is decoupled from allocation of contract costs under the percentage of completion accounting method rules for assets with a depreciable life of seven years or less.

This means that for property placed in service after December 31, 2009, solely for purposes of determining the percentage of completion under IRC §460(b)(1)(A), the cost of qualified property is taken into account as a cost allocated to the contract as if bonus depreciation had not been enacted.

Qualified property is property otherwise eligible for bonus depreciation that has a MACRS recovery period of 7 years or less and that is placed in service after December 31, 2009, and before January 1, 2011 (January 1, 2012, in the case certain longer-lived property).



Sec. 2031 - Increase in amount allowed as deduction for start-up expenditures in 2010

For tax years beginning in 2010, the deduction for startup expenses under IRC §195 is increased from \$5,000 to \$10,000 and the phase-out threshold is increased from \$50,000 to \$60,000.

Sec. 2032 - Authorization of appropriations for the United States Trade Representative to develop market access opportunities for United States small- and medium-sized businesses and to enforce trade agreements

The provision authorizes additional appropriations in the amount of \$5,230,000 for The United States Trade Representative to analyze and develop opportunities for U.S. businesses to access foreign markets and enforce trade agreements to which the United States is a party.

In obligating and expending the funds, the United States Trade Representative shall give preference to initiatives that will create or sustain the greatest number of U.S. jobs or result in the greatest benefit to the U.S. economy and consider the needs of U.S. small and medium-sized businesses.

Sec. 2041 - Limitation on penalty for failure to disclose reportable transactions based on resulting tax benefits

Under this provision, the penalty under IRC §6707A is 75% of the tax benefit received, with a minimum penalty of \$10,000 (\$5,000 for individuals). The maximum penalty for listed transactions is \$200,000 (\$100,000 for individuals). The maximum penalty for other reportable transactions is \$50,000 (\$10,000 for individuals).

This limitation applies to penalties assessed after December 31, 2006.

Sec. 2042 - Deduction for health insurance costs in computing self-employment taxes in 2010

For tax years beginning after December 31, 2009, but before January 1, 2011, when calculating self-employment taxes, the deduction for health insurance costs of a self-employed taxpayer under IRC §162(l) could be taken into account in computing net earnings from self-employment.

It is intended that earned income within the meaning of section 401(c)(2) be computed without regard to this deduction for the cost of health insurance. Thus, earned income for purposes of the limitation applicable to the health insurance deduction is computed without regard to this deduction.

Sec. 2043 - Removal of cellular telephones and similar telecommunications equipment from listed property

Cell phones (and similar telecommunications equipment) are removed from the definition of listed property under IRC §280F for tax years beginning after December 31, 2009.

Sec. 2101 - Information reporting for rental property expense payments

Under the provision, recipients of rental income from real estate generally are subject to the same information reporting requirements as taxpayers engaged in a trade or business. In particular, rental income recipients making payments of \$600 or more to a service provider (such as a plumber, painter, or accountant) in the course



of earning rental income are required to provide an information return (typically Form 1099-MISC) to the IRS and to the service provider.

Exceptions to this reporting requirement are made for (i) members of the military or employees of the intelligence community (as defined in section 121(d)(9)) who rent their principal residence on a temporary basis, (ii) individuals who receive only minimal amounts of rental income, as determined by the Secretary in accordance with regulations, and (iii) individuals for whom the requirements would cause hardship, as determined by the Secretary in accordance with regulations.¹

Sec. 2102 - Increase in information return penalties

For information returns required to be filed after December 31, 2010, the IRC §6721 penalties for failure to timely file information returns to IRS are increased.

- If a person files a correct information return after the prescribed filing date but on or before the date that is 30 days after the prescribed filing date the penalty increases from \$15 to \$30, and the calendar year maximum from \$75,000 to \$250,000.
- If a person files a correct information return after the date that is 30 days after the prescribed filing date but on or before August 1, the penalty increases from \$30 to \$60, and the calendar year maximum from \$150,000 to \$500,000.
- If a correct information return is not filed on or before August 1 of any year, the penalty increased from \$50 to \$100, and the calendar year maximum from \$250,000 to \$1,500,000.

For persons with gross receipts of not more than \$5 million, the same increases appear to apply except the calendar year maximum differs:

- If a person files a correct information return after the prescribed filing date but on or before the date that is 30 days after the prescribed filing date, the calendar year maximum increases from \$25,000 to \$75,000.
- If a person files a correct information return after the date that is 30 days after the prescribed filing date but on or before August 1, the calendar year maximum increases from \$50,000 to \$200,000.
- If a correct information return is not filed on or before August 1 of any year, the calendar year maximum increases from \$100,000 to \$500,000.

The IRC §6722 penalty for failure to furnish a payee statement is revised. If a person files a correct information return after the prescribed filing date but on or before the date that is 30 days after the prescribed filing date, the penalty is \$30, subject to a maximum of \$250,000. If a person files a correct information return after the date that is 30 days after the prescribed filing date but on or before August 1, the penalty is \$60 per statement, up to \$500,000. If a correct information return is not filed on or before August 1 of any year, the penalty is \$100, up to a maximum of \$1,500,000. Limitations apply on penalties for small businesses and increased penalties for intentional disregard.

¹ Joint Committee on Taxation. Technical Explanation of the Tax Provisions in Senate Amendment 4594 to H.R. 5297, the "Small Business Jobs Act of 2010," Scheduled for Consideration by the Senate on September 16, 2010. 16 September 2010.



Sec. 2103 - Report on tax shelter penalties and certain other enforcement actions

The Commissioner of Internal Revenue, in consultation with the Secretary of Treasury, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate an annual report on the penalties assessed by the IRS during the preceding year under the IRC Sections §§6662A, 6700(a), 6707, 6707A, and 6708.

Sec. 2104 - Application of continuous levy to tax liabilities of certain Federal contractors

This provision amends IRC §6330 in that for levies issued after the enactment date, the Act allows the IRS to issue levies prior to a CDP hearing with respect to Federal tax liabilities of Federal contractors identified under the Federal Payment Levy Program. When a levy is issued prior to a CDP hearing, the taxpayer has an opportunity for a CDP hearing within a reasonable time after the levy.

Sec. 2111 - Participants in government section 457 plans allowed to treat elective deferrals as Roth contributions

This provision amends the definition of “elective deferral” in IRC §402A to include amounts deferred under governmental Section 457(b) plan, allowing participants in government section 457 plans to treat elective deferrals as Roth contributions.

Sec. 2112 - Rollovers from elective deferral plans to designated Roth accounts

For distributions after the enactment date, 401(k), 403(b), and governmental 457(b) plans could permit participants to roll their pre-tax account balances into a Roth account. If the rollover is made in 2010, the participant could elect to pay the tax in 2011 and 2012.

Sec. 2113 - Special rules for annuities received from only a portion of a contract

This provision amends IRC §72 providing that for amounts received in tax years after December 31, 2010, a portion of an annuity, endowment, or life insurance contract shall be annuitized while the balance is not, provided that the annuitization period is for 10 years or more, or is for the lives of one or more individuals.

Sec. 2121 - Crude tall oil ineligible for cellulosic biofuel producer credit

The provision modifies the cellulosic biofuel producer credit under IRC §40 to exclude from the definition of cellulosic biofuel fuels with an acid number of greater than 25.

Sec. 2122 - Source rules for income on guarantees

This provision amends IRC §861 to provide that income from sources within the United States includes amounts received, whether directly or indirectly, from a noncorporate resident or a domestic corporation for the provision of a guarantee of indebtedness of such resident or corporation, or any foreign person, whether directly or indirectly, for the provision of a guarantee of indebtedness of that foreign person if the payments received are connected with income of such person which is effectively connected with conduct of a U.S. trade or business.



Sec. 2131 - Time for payment of corporate estimated taxes

Estimated taxes for large corporations (those with assets of not less than \$1 Action) otherwise due for July, August, or September of 2015, is increased by 36%.

For more information on the Small Business Jobs Act of 2010, and the potential tax implications for your business, please contact your Reznick Group representative. To learn more about Reznick Group's tax services, visit www.reznickgroup.com/tax.

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