

On September 27, 2010, President signed into law the “Small Business Jobs Act” (SBJA) as Public Law 111-240

TAX RELIEF

Increase of Section 179 Expensing and Expansion to Certain Real Property

Under current law, taxpayers may elect to write off the costs of certain tangible personal property that is purchased for use in the active conduct of a trade or business in the year of acquisition, in lieu of recovering these costs over time through depreciation. For the taxable year beginning in 2010, taxpayers may write off up to \$250,000 of these capital expenditures subject to a phase-out once these capital expenditures exceed \$800,000. This new law increases the allowance and phase out threshold to \$500,000 and \$2,000,000 for the taxable years beginning in 2010 and 2011. At the end of 2011, the amounts will revert to \$25,000 and \$200,000, respectively.

Within the temporary higher thresholds, the new law allows taxpayers to expense up to \$250,000 of the cost of qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property.

Extension of Bonus Depreciation

Businesses are allowed to recover the cost of capital expenditures over time according to a depreciation schedule. Congress temporarily allowed businesses to recover the costs of certain capital expenditures made in 2008 and 2009 more quickly than under ordinary depreciation schedules by permitting those businesses to immediately write off 50 percent of the cost of depreciable property placed in service in those years. The new law extends the additional, first-year 50 percent depreciation for qualifying property purchased and placed in service in 2010.

Deductibility of Health Insurance for the Purposes of Calculating Self-Employment Tax

Under current law, business owners are not permitted to deduct the cost of health insurance for themselves and their family members for purposes of calculating self-employment tax. The new law allows business owners to deduct temporarily the cost of health insurance incurred in 2010 for themselves and their family members in the calculation of their 2010 self-employment tax only

Modification of the Section 6707A Penalty

The new law revises section 6707A of the Internal Revenue Code to make the penalty for failing to disclose a reportable transaction proportionate to the underlying tax savings. The penalty for failure to disclose reportable transactions to the IRS is set at 75 percent of the tax benefit received. Reportable transactions are defined as investments in transactions that the IRS has identified as listed tax shelters or that have characteristics of tax shelters, including large losses or confidentiality agreements. The minimum penalty under the new law is \$10,000 for corporations and \$5,000 for individuals, and the maximum penalty is \$200,000 for corporations and \$100,000 for individuals.

Increased Deduction for Start-up Expenditures

Under current law, taxpayers may deduct up to \$5,000 in trade or business start-up expenditures. The amount that a business may deduct is reduced by the amount by which start-up expenditures exceed \$50,000. Start-up expenditures are defined as expenses paid or incurred in connection with investigating or creating an active trade or business, which would be deductible if paid or incurred in connection with the operation of an existing trade or business. For the taxable year beginning in 2010, the new law temporarily increases the amount of start-up expenditures that may be deducted to \$10,000, subject to a \$60,000 phase-out threshold.

Cellular Phone Deductibility

The new law removes cell phones and similar devices from the list of items that require taxpayer business purpose substantiation so their cost can be deducted or depreciated like other business property, without onerous recordkeeping requirements.

Small Business Stock

Under a provision of the Internal Revenue Code (Section 1202), individuals may exclude 50 percent of the gain from the sale of certain small business stock acquired at original issue and held for more than five years. For stock acquired after February 17, 2009, and before January 1, 2011, the exclusion was increased to 75 percent. Qualifying small business stock is from a C corporation whose gross assets do not exceed \$50 million (including the proceeds received from the issuance of the stock) and that meets a specific active business requirement. The new law temporarily increases further the amount of the exclusion to 100 percent of the gain from the sale of qualifying small business stock that is acquired after September 27, 2010 and held for more than five years.

Extension of General Business Credit Carry-Back to 5 Years

Under current law, a business's unused general business credit may generally be carried back to offset taxes paid in the previous year, and the remaining amount may be carried forward for 20 years to offset future tax liabilities. The new law extends the one-year carryback for general business credits to five years for those sole proprietorships, partnerships, and non-publicly traded corporations with \$50 million or less in average annual gross receipts for the prior three years.

Allowability of General Business Credits Against AMT

Under the Alternative Minimum Tax (AMT), taxpayers may 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. A few credits may be used to offset AMT liability, such as the credit for small business employee health insurance expense. The new law allows small businesses to use all types of general business credits against their AMT. This applies to general business credits for those sole proprietorships, partnerships, and non-publicly traded corporations with \$50 million or less in average annual gross receipts for the prior three years.

S Corp Built-in Gains Tax

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 percent. This holding period is reduced where the seventh taxable year in the holding period preceded the taxable year beginning in 2009 or 2010. The new law temporarily shortens the holding period of assets subject to the built-in gains tax to five years if the fifth taxable year in the holding period precedes the taxable year beginning in 2011.

Special Rule for Long-Term Contract Accounting

The new law separates the bonus depreciation from allocation of contract costs under the percentage of completion accounting method rules for assets with a depreciable life of seven years or less in order to allow contractors that do not complete contracts within the same year in which they are entered into to benefit from bonus depreciation.

OFFSETS

Increase in Penalties for Failure to File Information Returns

The new law increases penalties for failure to timely file information returns to the IRS (Form 1099 is the one with which most small businesses are familiar). The first-tier (i.e., not filed correctly within 30 days of due date) penalty is increased from \$15 to \$30, and the calendar year maximum is increased from \$75,000 to \$250,000. The second-tier (i.e., not filed correctly by August 1) penalty is increased from \$30 to \$60, and the calendar year maximum is increased from \$150,000 to \$500,000. The third-tier (i.e., not filed correctly after August 1) penalty is increased from \$50 to \$100, and the calendar year maximum is increased from \$250,000 to \$1.5 million. For small filers (\$5 million or less in gross receipts), the calendar year maximum is increased from \$25,000 to \$75,000 for the first-tier penalty, from \$50,000 to \$200,000 for the second-tier penalty, and from \$100,000 to \$500,000 for the third-tier penalty. The minimum penalty for each failure due to intentional disregard is increased from \$100 to \$250. The penalty amounts are adjusted every five years for inflation. Penalties for failure to file information returns to payees are similarly increased.

Information Reporting for Rental Property Expense Payments

The new law requires persons receiving rental income from real property to file information returns to the IRS and to service providers reporting payments of \$600 or more during the year for rental property expenses.

SMALL BUSINESS ASSISTANCE

Small Business Lending Fund

The new law creates the Small Business Lending Fund to provide Treasury with the ability to purchase preferred stock and other debt instruments from eligible financial institutions with less than \$10 billion in total assets. Eligible institutions include insured depositories, bank and savings and loan holding companies, and certain community development loan funds. Eligible institutions with less than \$1 billion in total assets can apply to receive investments of up to 5 percent of their risk-weighted assets. Eligible institutions between \$1 billion and \$10 billion in total assets can receive investments of up to 3 percent of risk-weighted assets. Participating institutions will pay a 5 percent dividend rate on the preferred stock, but this rate can be reduced to as low as 1 percent if a bank demonstrates a 10 percent increase in small business lending relative to a baseline set using the four quarters prior to enactment. The dividend rate is increased to 7 percent after two years, if the bank does not increase its small business lending. To encourage timely repayment, the rate increases to 9 percent after four and a half years.

Increases in Small Business Administration (SBA) Loan Limits

The new law increases 7(a) loan limits from \$2 million to \$5 million, 504 loans from \$1.5 million to \$5.5 million, and microloans from \$35,000 to \$50,000. It also increases the government guarantee on 7(a) loan limits, while providing the elimination of borrower fees on 7(a) and 504 loans through December 31, 2010. It increases the 7(a) Express Loans from \$300,000 to \$1 million to increase working capital to small businesses. The package also includes an Intermediary Lending Pilot program, which allows the SBA to make direct loans to eligible nonprofit lending intermediaries, in turn allowing them to make loans to new or growing small businesses.

Extension of the Elimination of Small Business Administration (SBA) Loan Fees

The new law extends the American Recovery and Reinvestment Act small business lending program that eliminates the fees normally charged for loans through the SBA 7(a) and 504 loan programs and increases the government guarantees on 7(a) loans from 75 percent to 90 percent.

State Small Business Credit Initiative (SSBCI)

The new law provides \$1.5 billion in grants to States to support small business lending programs. States will apply for the funds to be used for approved programs that leverage private lenders to extend greater credit to small businesses and manufacturers.

Small Business Export Promotion

The new law authorizes funds for the United States Trade Representative's (USTR) market access and trade enforcement activities targeted at helping small businesses increase market access and ensure a level playing field on which to sell their U.S.-made goods.

Enhanced Small Business Trade Opportunities

The new law improves the SBA's trade and export finance programs and elevates the Office of International Trade within the SBA. It adds Export Finance Specialists to the SBA's trade

counseling programs. It also establishes the State Export Promotion Grant Program (STEP). The new law increases the activities and staffing of the Department of Commerce in carrying out its mission to promote U.S. exports. The new law authorizes increased funding for export grants available to industry associations and non-profit institutions. The new law requires that decisions to fund manufacturing and innovation grants include exporting potential as one of the application considerations.

Improved Small Business Contracting

The new law removes the red tape and closes loopholes in the government contracting process. The new law also provides for a periodic review of small business size standards to ensure that size indicators are consistent with inflation and industry growth of small businesses. It establishes accountability of large business prime contractors for prompt payment to small business subcontractors.

Relief for Community Partners

The new law allows SBA to waive or reduce the non-federal share of its funding requirements for up to one year, through fiscal year 2012. It also gives relief to Women's Business Centers (WBCs) and microloan intermediaries, which provide assistance to underserved communities to start and grow small businesses. The new law also provides an additional \$50 million for the Small Business Development Centers to provide technical assistance to small business owners and entrepreneurs.

Enhancements to Small Business Contracting Parity Programs

The new law removes the priority that one contracting program has over another, making clear that no single restricted competition program has priority over another. It places the small business contracting programs, HUBZone, 8(a), Service-Disabled Veterans and Women-Owned Businesses on a level playing field when competing for Federal contracts.

Requirement for Federal Agencies to Expand Their Assessments of Economic Effects on Small Businesses

The new law strengthens the Regulatory Flexibility Act by requiring agencies to respond to the SBA Chief Counsel of Advocacy's comments in the final rule. It also seeks more independence for the Office of Advocacy by mandating a separate line item in the SBA's annual budget.