

New Tax Provisions in the Small Business Jobs Act

On September 27, 2010, President Obama signed the Small Business Jobs Act. It is hoped that providing some tax relief to small business will spur growth and jobs will be created. Obama promised it will do “Two big things: It’s going to cut taxes, and its going to make more loans available.”

Unfortunately, most of the tax relief provisions are not permanent - they expire after 2011.

Expensing and Depreciation

The option to immediately deduct the expense of qualifying property instead of depreciating it over time is raised to \$500,000. Generally the option applies to tangible personal property, for example, computers, delivery trucks, machinery and some software. Even some types of depreciable real property are included in the expense option - qualified leasehold improvements, qualified restaurant property and qualified retail improvement property. These expensing provisions revert back to only \$25,000 in 2012, and for all years only \$25,000 of the expense of a large personal vehicle is deductible.

Bonus depreciation for qualified real property is extended for another year at 50%. (This provision had expired on January 1, 2010.) Bonus depreciation allows 50% depreciation for the first year depreciable property is purchased and placed in service,

The deduction for start-up expenses is increased to \$10,000 from \$5,000 for 2010 and 2011. The first year depreciation cap for cars and trucks is increased by \$8,000.

Credits

General business credits can be carried back 5 years instead of only one year. Carryforward periods are also extended. Examples of the credits are The Research and Development Tax Credit, Work Opportunity Credit, Low Income Housing Credit, Disabled Access Credit, Empowerment Zone Hiring Credit, and the Employer Provided Child Care Credit.

Most importantly, for 2010 only, the general business credits are not subject to the Alternative Minimum Tax (AMT). Lots of businesses make expenditures that would qualify for credits, especially the Research and Development Credit, but the AMT has made it impossible for them to use the credits.

The new carry-back provisions and AMT elimination apply to “small” businesses - businesses not publicly traded that averaged less the \$50 million in gross receipts for the last three years.

Gain Exclusions

Gains for the disposition of qualified small business stock now can be 100% excluded (up from 75%). This applies only to stock acquired before 2011 but after March 15, 2010 - that is a very

small window. Don't get too excited; while increasing the expensing to 100% for the regular tax, the law takes away the special AMT treatment, so the gain is included for AMT.

The S-Corporation built-in gains period is reduced to 5 years for 2011.

Retirement Plans

Section 457 retirement plans now can include options for the employee to convert to a Roth IRA. Retirement plan distributions may be rolled over to Roth IRA accounts.

Other

Health insurance expenses for business owners, spouses and dependants are deductible in computing self-employment tax. This is for 2010 only.

All taxpayers owning rental properties must issue a Form 1099 to any unincorporated service providers (e.g. plumbers, painters, accountants) they pay \$600 or more to in a year, beginning with payments made in 2011. This applies even if you just rent out your vacation home for part of the year.

Cell phones are no longer listed property. You are no longer required to keep logs of personal versus business use. (Not that anyone was doing it anyway.)

In addition to the tax provisions, there are also provisions in the legislation intended to increase Small Business Administration lending and lending to small business by banks and other financial institutions.

Make sure your accountant is aware of these short-term changes provided for in the 2010 Small Business Jobs Act. It would be foolish not to take advantage of them while they exist, but considering the narrow application and short life expectancy of the tax breaks, we will need to wait and see if they have any significant impact on business and job growth. What would be more helpful to businesses making hiring and expansion decisions is if Congress would act so that they actually know what their tax brackets will be next year.