

Small Business Jobs Act of 2010 Enacted

October 2010

The Small Business Jobs Act of 2010 (“the Jobs Act”) was signed into law on September 27, 2010. The legislation contains a number of tax benefits for small and large businesses affecting the 2010 and 2011 tax years, as well as several changes for individuals.

Section 179 Expensing

Generally, taxpayers must recover the cost of assets used in a trade or business or for the production of income through annual depreciation deductions on their tax returns over several years.

The tax law includes a provision (Section 179) to help businesses quickly recover the costs of certain capital expenditures. Smaller businesses may elect to deduct the costs of many types of otherwise depreciable-over-time assets in the year they are acquired and placed in service, within tax law limits.

Prior to the Jobs Act, businesses could expense up to \$250,000 of certain property, such as machinery, equipment, and certain software, placed in service in tax years beginning in 2010. The \$250,000 maximum Section 179 deduction limit was reduced dollar-for-dollar as the cost of the taxpayer's total qualifying assets placed in service for the year exceeded \$800,000.

Under the Jobs Act, for tax years beginning in 2010 and 2011, the \$250,000 limit is increased to \$500,000 and the \$800,000 investment ceiling is increased to \$2,000,000. Therefore, for many businesses, an additional \$250,000 of immediate write-offs may be available for the 2010 tax year.

The Jobs Act also makes certain real-estate-related expenses eligible for the Section 179 deduction. For tax years beginning in 2010 and 2011, the \$500,000 expensing limit may consist of up to \$250,000 of the cost of qualifying real property. Qualifying real property is generally defined as consisting of qualifying leasehold improvement property, qualified restaurant property, and qualified retail improvement property.

“Bonus” First-Year Depreciation Extended

Pre-Jobs Act law allowed business taxpayers to significantly increase their first-year depreciation deduction by providing an additional first-year depreciation “bonus” equal to 50% of the adjusted basis (generally, the cost) of qualifying property acquired and placed in service in the relevant tax year. This bonus depreciation generally expired after 2009 for most asset acquisitions. The Jobs Act extends this benefit for 2010 (and 2011 for certain long-lived property).

Qualified Small Business Stock (QSBS)

Generally, non-corporate taxpayers may exclude from income a portion of capital gain realized when they sell “qualified small business stock” (QSBS) held for more than five years, so long as other tax law requirements are met. Previously, a taxpayer could exclude 50% of up to \$10 million (or 10 times the basis, if greater) of gain when he or she sold QSBS held more than five years. Under the 2009 economic stimulus legislation, the 50% gain exclusion was increased to 75% for QSBS acquired after February 17, 2009, and before January 1, 2011. To encourage investment in small business, the Jobs Act enhances this provision even further to provide that taxpayers may exclude 100% of the gain realized on the sale of QSBS purchased after September 27, 2010, and before January 1, 2011. The more-than-five-year holding period still applies.

Increased Start-up Expense Deduction

The Jobs Act increases the amount that taxpayers may immediately deduct for trade or business start-up expenditures incurred in 2010 to \$10,000 (from \$5,000). The new \$10,000 limit is reduced dollar-for-dollar once total start-up costs exceed \$60,000 (increased from \$50,000). Covered start-up expenditures include costs such as conducting market surveys, traveling to locate customers or supplies, advertising and training employees.

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S Corporation Built-in Gain Period

In situations where a corporation that was formed as a C corporation elects to become an S corporation, the S corporation is taxed at the highest marginal corporate tax rate on all asset gains that were “built in” at the time of the election if the gain is recognized during a recognition period. For tax years beginning in 2011, the Jobs Act decreases that recognition period to five years if that five-year period ends before the 2011 tax year. Thus, no tax is imposed on the net unrecognized built-in gain of an S corporation if the fifth year in the recognition period ended prior to the 2011 tax year.

Deductibility of Health Insurance for Purposes of Self-Employment Tax

The Jobs Act allows taxpayers to deduct the cost of health insurance incurred in 2010 for themselves, spouses, dependents, and children up to age 26 in calculating their 2010 net earnings from self-employment for purposes of OASDI (Social Security) and Medicare taxes.

Rollovers Permitted to 401(k), 403(b), and 457(b) Designated Roth Accounts

The Jobs Act permits qualified retirement plan sponsors to adopt provisions allowing rollovers from 401(k) and 403(b) plan accounts to those plans' existing “designated Roth” accounts for eligible distributions received after September 27, 2010. Governmental 457(b) plans may also treat elective deferrals as Roth contributions beginning in 2011 and can then allow for rollovers to those designated Roth accounts. A rollover to a Roth account is not tax-free. However, there are special Roth rollover rules for 2010 that could result in tax savings. See us for details.

Doeren Mayhew Can Help

The Jobs Act contains many more provisions that may affect you and your business. Please contact the experts at Doeren Mayhew for assistance in determining how the new law's provisions might apply to your circumstances.

