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SMALL BUSINESS JOBS ACT OF 2010

OCTOBER 2010

HIGHLIGHTS OF THE SMALL BUSINESS JOBS ACT OF 2010

New legislation affects more than just small businesses

Congress has passed — and President Obama has signed — the Small Business Jobs Act of 2010 (SBJA); thereby, creating a \$30 billion fund to provide capital to community banks to encourage lending to small businesses. The legislation also includes \$12 billion in tax relief for small businesses and incentives to encourage investment in them. The SBJA also provides some benefits for larger businesses as well as for the self-employed and individual taxpayers. Here's an overview of the most significant tax provisions:

Increased exclusion on small business stock gains

To make investing in certain small businesses more attractive, SBJA temporarily increases the qualified small business (QSB) stock gain exclusion. The exclusion will be 100% for stock acquired after the date of enactment [Sept. 27, 2010] and before Jan. 1, 2011 and which is held for at least five years. Additionally, the act eliminates the alternative minimum tax (AMT) preference item on such gain, making it tax free for AMT purposes as well.

Increased and expanded Sec. 179 expensing

SBJA also helps small-business owners invest in their own businesses by increasing the Internal Revenue Code Section 179 expensing election limit. For tax years beginning in 2010 and 2011, the limit will now be \$500,000, with a dollar-for-dollar phaseout starting when purchases for the year exceed \$2 million. Thus, no Sec. 179 expensing is allowed if acquisitions equal \$2.5 million or more.

Under Sec. 179, you may elect to expense the cost of certain tangible personal property — such as equipment, furniture and off-the-shelf computer software — in the year of acquisition, instead of recovering the costs more slowly through depreciation deductions. A business can claim the expensing election only to offset its net income, not to reduce net income below zero.

Before SBJA, the 2010 expensing limit was \$250,000, subject to an \$800,000 acquisition limit, and the 2011 expensing limit was scheduled to drop to \$25,000, with a \$200,000 acquisition limit.

MP&S LAUNCHES ONLINE TAX GUIDE

To facilitate access to the latest tax rules and regulations, the firm has launched an [online tax guide](#). This web-based tax guide is updated as changes occur. A link to the guide appears at the end of the [Tax services](#) section on our website. If you have questions about anything you read in the tax guide, please contact your [MP&S tax advisor](#).

SERVICES FOR EMERGING GROWTH COMPANIES

[Emerging growth companies](#) and their entrepreneurs/owners/investors face a myriad of issues as they navigate the business life cycle. Decisions must be made that will determine the jurisdiction in which the business is based and the type of entity that is formed. Business agreements need to be negotiated and intellectual property must be managed. MP&S supports companies and individuals through these and many other challenges during the life cycle of a venture.

MP&S PUBLICATIONS

As a leading professional services firm, Marks Paneth & Shron offers thought leadership on a wide range of topics. We have begun a global series for start-up businesses. The first [article](#), written by Senior Consultant [Jeanne Goulet](#), serves as an introduction to a series of tax publications focusing on the six basic concepts that a CEO/founder of a start-up needs to know about international tax

SBJA also temporarily expands the definition of eligible property to include qualified leasehold-improvement, restaurant and retail-improvement property. The maximum amount of such property that can be expensed is \$250,000.

Extended bonus depreciation

Another depreciation-related provision extends the special allowance for certain property, generally if placed in service in calendar year 2010. Businesses can recover the costs of qualifying depreciable property more quickly by immediately deducting 50% of the cost.

The following types of property qualify for this special bonus depreciation:

- Tangible property with a recovery period of 20 years or less,
- Computer software purchased by the business,
- Water utility property, and
- Qualified leasehold improvement property.

Bonus depreciation isn't subject to any asset purchase limits, so businesses ineligible for Sec. 179 expensing can take advantage of it. And businesses that qualify for Sec. 179 expensing can take bonus depreciation on asset purchases in excess of the \$500,000 Sec. 179 limit. Of course, they'll still want to keep in mind the \$2 million Sec. 179 phaseout threshold, because Sec. 179 expensing is more beneficial than bonus depreciation.

Extended carryback of general business credit

SBJA extends the maximum carryback period for the general business credit to five years for most privately held businesses. Eligible businesses include sole proprietorships, partnerships and non-publicly traded corporations with \$50 million or less in average annual gross receipts for the previous three years. The extended carryback period applies to credits for the tax year beginning in 2010.

The general business credit (the total of various credits) can't exceed certain limits. Normally, any credit in excess of the limits can be carried back only one year to offset taxes paid in the previous year, with any remainder carried forward up to 20 years to offset future tax liabilities.

SBJA also allows the general business credit to offset 2010 AMT liability.

Reduced recognition period for S corporation built-in gains tax

SBJA temporarily reduces the asset holding period that S corporations which have converted from C corporations must meet to avoid built-in gains tax. For assets sold in the tax year beginning in 2011 (*not* 2010), the holding period will be five years.

Built-in gains tax is a corporate-level tax of 35% that's generally imposed on an S corporation's gain that 1) is the result of a sale of assets acquired before the business converted to an S corporation, and 2) is recognized by the S corporation during the holding period. Normally, this is the 10-year period that begins on the first day of the first taxable year for which the S election is in effect. So to avoid the 35% tax, the S corporation generally must hold any

law and practice before going global. This article along with other recent publications can be found in the [Library](#) on our website.

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FOR MORE INFORMATION

Any number of the tax relief provisions discussed here could apply to your situation; plus, there are others we didn't have room to cover. To learn more about how SBJA may affect you or your business, please contact your [MP&S tax advisor](#) or [Steven Eliach](#), JD, LLM, the Principal-in-Charge of the MP&S Tax Practice, by phone at 212.503.6388 or by email at seliach@markspaneth.com.

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appreciated assets for 10 years after the conversion.

In 2009, the holding period for assets subject to the built-in gains tax was reduced to seven years for assets sold in tax years beginning in 2009 and 2010. So, S corporations that have been holding on to assets because they didn't meet the seven-year holding period should see if they'll qualify for the five-year holding period next year.

Increased deductions for start-up expenses

The deduction for start-up expenses under Sec. 195 would increase from \$5,000 to \$10,000 for tax years beginning after Dec. 31, 2009 and before Jan. 1, 2011. Additionally under Sec. 195 (b)(3), the phase-out threshold would increase from \$50,000 to \$60,000.

Penalties increase for late filing of information returns

Sec. 6721 penalties for late filing of information returns will increase significantly after Dec. 31, 2010. The minimum first-tier penalty will rise to \$30 and the calendar year maximum will increase to \$250,000. The minimum second-tier penalty will rise to \$60 and the calendar year maximum will increase to \$500,000.

New information reporting requirements for rental property expense payments

Under SBJA, rental income recipients will have to file Form 1099 information returns with the IRS to report payments of \$600 or more for rental property expenses paid to service providers. This requirement will apply to payments made after Dec. 31, 2010.

New breaks for the self-employed and individuals

As mentioned, the law doesn't benefit just businesses and their investors; it also provides new tax saving opportunities for the self-employed and other individuals:

- If you're self-employed, SBJA permits you to deduct for 2010 self-employment tax purposes any costs incurred in 2010 for health insurance for you and your spouse, dependents and children age 26 or under. (You already could deduct these expenses for income tax purposes.)
- If you're a government employee who participates in a 457(b) plan, be aware that SBJA may allow your employer to start providing you the option to designate some or all of your contributions as Roth contributions. The contributions won't reduce your taxable income, but you won't have to pay any tax on qualified distributions.
- Under SBJA, your 401(k), 403(b) or 457(b) plan may allow (but isn't *required* to allow) you to roll any portion of your pretax account balance into a Roth account. The amount of the rollover would be includible in your taxable gross income — except to the extent it's the return of any after-tax contributions. If the rollover is made in 2010, you can elect to pay the tax over a two-year period in 2011 and 2012.

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