

Business Tax Provisions

The Small Business Jobs Act of 2010, signed into law in September, features more than a dozen provisions designed to help your business increase growth, reduce taxes, and get through tough economic times.

In addition to removing cell phones from the definition of “listed property,” extending the additional 50% first-year bonus depreciation deduction into 2010, and adjusting the 2015 estimated tax payment by corporations with at least \$1 billion in assets, the new provisions also include the following changes:

- **Temporary Exclusion of 100% of Gain on Qualified Small Business Stock.** For stock purchased between September 27, 2010, and January 1, 2011, only, all gain, not the usual 50%-75% of gain, from the sale of qualified small business stock is excluded and all regular tax and alternate minimum tax is waived for those who hold that stock for at least five years.
- **Business Credit Carrybacks.** For a business's first tax year beginning in 2010, eligible small businesses can carryback excess general-business credits for five years instead of one, providing eligible businesses with a much-needed tax break. This credit may offset both regular and alternative minimum tax liability.
- **Additional \$179 Expensing.** Provisions in the new Act increase both the amount taxpayers are allowed to deduct in the year a depreciable asset is placed in service—from \$250,000 to \$500,000 for 2010 and 2011—and increases the phase-out threshold amount from \$800,000 to \$2 million for those same years.
- **Additional \$5,000 for Start-Up Expenditures.** Beginning in 2010, taxpayers can elect to deduct up to \$10,000 in trade or business expenses incurred before a business began. This provision also increases the deduction phase-out threshold from \$50,000 to \$60,000.
- **Temporary Reduction in Recognition Period for S Corporation Built-In Gains Tax.** The new Act shortens a corporation's recognition period from ten or seven years to five years for taxable years beginning in 2011.

Retirement-Related Provisions

Business owners aren't the only ones poised to benefit under the newly signed Small Business Jobs Act of 2010. New retirement-related provisions allow employers to provide employees of qualified plans with greater flexibility and convenience. Here's how:

- **In-Plan Roth Rollovers.** This provision, which took effect September 27, 2010, allows plan participants in elective deferral plans to rollover their pre-tax account balances to Roth-designated accounts within an employer-sponsored plan instead of migrating to Roth IRAs with brokers, mutual fund companies, banks, etc. The new rule applies to specific participants in specific plans, and plans must contain a qualified designated Roth contribution program that allows rollovers from eligible distributions.
- **Partial Annuitization of Certain Annuity Contracts.** This provision, which takes effect beginning in 2011, simplifies the process for nonqualified deferred annuity owners to annuitize a portion of their annuity contract while allowing the remaining amount to grow tax-deferred.

- **Roth Contribution Accounts in Governmental Deferred Compensation Plans.** Beginning after December 31, 2010, eligible deferred compensation plans maintained by a state or an agency, instrumentality, or political subdivision of a state may include Roth contribution programs under which participants may elect to make contributions to designated Roth accounts. All contributions would be included in a participant's taxable income when made, but if certain conditions are met, distributions from their Roth accounts would be tax-free. For consideration as a qualified Roth contribution program, an employer-sponsored plan must meet specific criteria.

Although the IRS is expected to provide employers with a remedial amendment period to offer the first option to employees and surviving spouses for distributions during 2010 and then to amend their plan to reflect this feature, the process not only involves amending the plan but also setting up new plan features and participant communications.

Each option, in fact, requires meeting certain conditions and putting certain processes in place. Before you start amending your employer-sponsored retirement plans, you should carefully review the provisions themselves or seek the advice of an expert who has.

Individual Tax Provisions

Although the Act seeks primarily to provide tax and lending incentives to small businesses, it does include a number of provisions designed to help individuals lower and simplify their taxes:

- **Temporary Exclusion of 100% of Gain on Qualified Small Business Stock.** For a very brief time—for stock purchased between September 27, 2010, and January 1, 2011, only—all gain, not the usual 50%-75% of gain, from the sale of qualified small business stock is excluded and all regular tax and alternate minimum tax is waived for individuals who hold that stock for at least five years.
- **Cell Phones No Longer Considered Listed Property.** Beginning after December 31, 2009, the heightened substantiation requirements and special depreciation rules cease to apply to cell phones used by individuals for business. Individuals no longer have to substantiate their use of the phone between business and personal use.
- **Deduction for Health Insurance Costs in Computing Self-Employment Taxes.** Beginning in 2010, self-employed individuals can deduct the cost of health insurance for themselves and their family from their net earnings, reducing both self-employment taxes and income taxes.
- **Modification of Penalty for Failure to Disclose Certain Information.** In order to achieve better proportionality between penalties and the tax savings that were the object of a transaction, the new Act changes the rule for determining the penalty imposed on individuals who fail to disclose a reportable transaction. Individuals are now subject to a penalty equal to 75% of the reduction in tax reported on the individual's income tax return as a result of participation in the transaction. Because these changes apply to all penalties assessed under §6707A after December 31, 2006, some individuals may seek refunds for penalties that have already been assessed.

While some of these changes have already taken effect or require no action on your part, some require careful analysis and planning. We welcome the opportunity to meet with you to evaluate your company's situation and help you determine which provisions, if any, benefit you.