

Small Business Jobs Act of 2010

Legislation includes increased IRC Section 179 expensing limits, "bonus" first-year depreciation, changes to treatment of small business stock, general business credit, and health insurance costs of self-employed individuals.

On September 27, 2010, President Obama signed into law the Small Business Jobs Act of 2010 (H.R. 5297). Provisions contained in the act include:

- ▶ Increased IRC Section 179 expense limits -- Effective for 2010 and 2011, the Small Business Jobs Act increases the maximum amount that may be expensed under IRC Section 179 to \$500,000 and increases the phase-out threshold amount to \$2 million. The act also temporarily expands the application of Section 179 to up to \$250,000 of certain real property (e.g., qualified restaurant property).
- ▶ First-year "bonus" depreciation extended -- The Small Business Jobs Act extends the additional 50% first-year depreciation deduction that was in effect for 2008 and 2009 for one year, to qualified property acquired and placed in service during 2010 (or placed in service during 2011 for certain long-lived property and transportation property).
- ▶ Small business stock exclusion increased -- The act temporarily increases the exclusion percentage for qualified small business stock to 100 percent, and does not treat the excluded gain as an alternative minimum tax preference item. Therefore, no regular tax or alternative minimum tax will generally be imposed on the sale of qualified small business stock issued and acquired after September 27, 2010, and before January 1, 2011, if the stock is held for at least five years.
- ▶ General business credit enhanced for small businesses -- Eligible small businesses (generally, non-publicly traded corporations, partnerships, or sole proprietorships with gross receipts of \$50 million or less) will be able to carry back excess general business credits up to 5 years in 2010, and will be able to use the general business credit to offset both regular and alternative minimum tax liability.
- ▶ Health insurance costs will reduce self-employment tax -- For 2010 only, the deduction allowed to self-employed individuals for the cost of health insurance for themselves, their spouses, dependents, and children who have not attained age 27 as of the end of the taxable year will be taken into account not only for income tax purposes, but in calculating net earnings from self-employment for purposes of self-employment tax (Self-Employment Contributions Act "SECA" taxes).
- ▶ Cell phones no longer listed property -- Effective for tax years ending after December 31, 2009, cell phones are removed from the definition of listed property, significantly reducing the substantiation rules and depreciation limits that apply.
- ▶ New reporting requirements for rental property expenses -- With some exceptions, starting in 2011 individuals who receive rental income from real property will be required to file an information return (Form 1099) when they make payments totaling \$600 or more to a service provider (such as a plumber, painter, or accountant) in the course of earning rental income.
- ▶ Retirement plan Roth availability expanded -- Beginning in 2011, governmental 457(b) plans will be able to allow participants to make Roth contributions. Effective immediately, 401(k) plans, 403(b) plans, and governmental 457(b) plans can allow participants to roll over pretax dollars into a designated Roth account under the plan.
- ▶ Portion of nonqualified annuity can be annuitized -- Beginning in 2011, a portion of a nonqualified annuity (an annuity that is not held by a qualified retirement plan or IRA), endowment, or life insurance contract can be annuitized, provided the annuitization period is for 10 years or more, or is for the lives of one or more individuals. The portion of the annuity or contract that is annuitized is treated as a separate contract for purposes of federal income taxation, and the investment in the contract is allocated on a pro rata basis.