

THE EXECUTIVE *Informer*

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The Small Business Jobs Act, 2010

Depreciation and Asset Expensing

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The new legislation extends 50% bonus depreciation through December 31, 2010. This provision had expired at the end of 2009, and the new law is retroactive to January 1, 2010. The bill also allows for bonus depreciation on property with a recovery period of 10 years or longer and for transportation property. For vehicles subject to the luxury auto limits, bonus depreciation in the first year will be an additional \$8,000.

Section 179 asset expensing is greatly expanded to allow for a maximum deduction of \$500,000. It also increases the investment limit to \$2 million before the deduction begins to phase-out. This provision will allow larger businesses with higher spending to expense more of their purchases in 2010 and 2011. Computer software is once again qualifying property. The provision impacts tax years beginning in 2010 and 2011.

The bill also allows qualified leasehold improvements, qualified restaurant property and qualified retail improvements to be eligible for expensing up to \$250,000 in 2010 and 2011. A significant limitation on expensing this realty is that there is no carryforward of excess 179 expense beyond 2011. Any unused excess will be depreciated as if there were no Section 179 deduction taken.

Cell phones have officially been "listed property" since the time when they were new, expensive, and rare. The IRS has already stopped strict substantiation enforcement as these have become less expensive and much more common. The Small Business Jobs

Act officially removes cell phones from being listed property.

S corporation Built-In Gains

When a C corporation converts to an S corporation, it must pay C corporation tax on built-in gains from appreciated C corporation property it sells within the following 10 years. Prior legislation shortened the recognition period for 2009 and 2010. The new legislation further shortens the recognition period for 2011. The new legislation exempts from tax any 2011 dispositions of built-in gain assets if the 5th year in the recognition period precedes the 2011 tax year.

Other Benefits

The Small Business Tax Act also includes a number of smaller provisions:

- For tax years beginning in 2010, Eligible Small Businesses have the 1 year carryback for general business tax credits extended to a 5 year carryback and may use the tax credits to offset AMT.
- The deduction for start-up expenses is increased from \$5,000 to \$10,000 for tax years beginning in 2010. The phase-out threshold is also increased from \$50,000 to \$60,000.
- 100% of gain from the sale of Qualified Small Business Stock is excluded from income for stock acquired between September 27, 2010 and January 1, 2011 and which is held for 5 years.
- Health insurance costs may be deducted in computing self-employment income for 2010.

- Reportable transaction and listed transaction penalties are relaxed retroactive to assessments after December 31, 2006.

Retirement Provisions

Governmental 457(b) plans will allow participants to contribute to designated Roth accounts for tax years beginning after December 31, 2010.

401(k), 403(b), and 457(b) plan participants will be allowed to rollover pre-tax account balances into a Roth account after September 27, 2010. For 2010 rollovers, the tax may be deferred until 2011 and 2012. These provisions are similar to Roth rollovers currently allowed for IRAs.

Revenue Raisers

Persons receiving real property rental income will be required to file information returns reporting the rental property expenses paid to service providers. The provision applies to payments of \$600 or more on a calendar year basis, and is effective for payments made after December 31, 2010. There are exemptions for taxpayers temporarily renting their principal residences, taxpayers under a de minimus threshold, and taxpayers who can demonstrate that the filing would create an undue hardship.

The legislation increases the late filing penalties for information returns and for failure to furnish a payee statement.

Estimated tax payments for large corporations are increased for July, August, or September 2010 in order to accelerate revenue collection.