THE SMALLBIZ BUILDER

PADGETT THE SMALL BIZ PROS

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SMALL BUSINESS JOBS ACT OF 2010

The recently enacted 2010 Small Business Jobs Act (the Act) provides for $12 million in tax breaks and incentives, and implements various revenue raisers to fund the bill. Despite the name "small business," the act includes retirement saving incentives for individuals. Since only a few provisions are permanent and many have a very short lifespan, this Act is crucial to your year-end tax planning. Here's a brief overview of the new law. Call us to discuss how the Act affects your business.

Tax Breaks & Incentives

- *Section 179 expensing:* Small business taxpayers can elect to write off the cost of qualified purchases in the year of acquisition. The new law also makes certain real property (qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property) eligible for expensing. The bill increases the maximum deduction to $500,000 and the investment limit to $2 million for tax years beginning in 2010 and 2011.

- *Extension of 50% bonus first-year depreciation:* The Act extends the first-year 50% write-off to apply to qualifying property placed in service in 2010 (2011 for certain property).

- *Start-up expenditures:* The Act allows taxpayers to deduct up to $10,000 in trade or business start-up expenditures for 2010. The amount that a business can deduct is reduced by the amount by which startup expenditures exceed $60,000.

- *100% exclusion of gain from the sale of qualified small business stock:* Under the new law, the amount of the exclusion is temporarily increased to 100% of the gain of qualifying stock that is acquired after Sept. 27, 2010 and before Jan. 1, 2011 and held for more than 5 years. In addition, the new law eliminates the alternative minimum tax preference item attributable for that sale.

- *Extended carryback of General Business Credit:* The bill extends the carryback period for eligible small business credits to 5 years. It is effective for credits determined in the taxpayers 1st year beginning after Dec. 12, 2009. This credit may offset regular and AMT liability.

- *S corporation holding period:* The Act temporarily shortens the holding period of assets subject to the built-in gains tax to 5 years, if the 5th tax year in the holding period precedes the tax year beginning in 2011.

- *Deductibility of health insurance in calculating self-employment tax:* The new law allows business owners to deduct the cost

CONTINUED ON NEXT PAGE

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CONTINUED FROM PREVIOUS PAGE

of health insurance incurred in 2010 for themselves and their family members in calculating their 2010 self-employment tax.

- *Cell phones are no longer listed property:* Cell phones can be deducted or depreciated like other business property, without onerous record-keeping requirements.

- *Failure to disclose certain reportable transactions/listed transactions:* The new law limits the penalty to 75% of the decrease in tax resulting from the transaction. The minimum penalty is $10,000 for corporations and $5,000 for individuals (for failure to report a listed transaction, the maximum penalty is $200,000 and $100,000, respectively). These changes are retroactively effective to penalties assessed after Dec. 31, 2006.
- *Long-term contract accounting:* The new law provides that in determining the percentage of completion under the percentage of completion method of accounting, bonus depreciation is not taken into account as a cost.

Revenue Raisers

- *Information reporting for rental property:* For payments after Dec. 31, 2010, the Act requires individuals receiving rental income to file information returns, such as Form 1099-MISC, with the IRS and to service providers reporting payments of $600 for more for rental property expenses.
- *Information return penalties:* The bill substantially increases the failure to timely file penalties for information returns (W-2, 1099, 1098) as of Jan. 1, 2011. For qualified small filers, the calendar year maximum penalty increased to $75K for first tier, $200K for second tier penalty, and $500K for third tier penalty.
- *Allow participants in governmental 457 (b) plans to treat elective deferrals as Roth contributions:* For tax years beginning after Dec. 31, 2010, the new law will allow retirement savings plans sponsored by state and local governments to include designated Roth accounts. Contributions to Roth accounts are made on an after-tax basis, but distributions of both principal and earnings are generally tax-free.
- *401(k) rollovers to Roth:* The Act allows participants of 401(k), 403(b), and governmental 457(b) plans to roll their pre-tax accounts into a designated Roth. The rollover will be taxable, except for after-tax contributions. Rollovers in 2010 are taxed ratably in 2011 and 2012.
- *Nonqualified annuity contracts:* The Act permits holders of nonqualified annuities to elect to receive part of the contract in the form of a stream of annuity payments, leaving the remainder of the contract to accumulate income on a tax-deferred basis.