



## The Small Business Jobs and Credit Act

The Small Business Jobs and Credit Act (the Act) was signed into law by President Obama on Monday, September 27, 2010. The tax relief provided by this Act is intended to allow small businesses and the self-employed to be able to reinvest in their companies and create new jobs.

The Act's incentives, many of which take immediate effect, will allow businesses to make critical decisions on investments and hiring. Some of the more significant incentives include:

### Increased Depreciation Expensing allowed under Code Section 179

For tax years beginning in 2010 or 2011 the amount of a deduction allowed for §179 property, which was scheduled to be reduced from \$250,000 in 2010 to \$25,000 in 2011, was increased to \$500,000.

This deduction is limited in both the maximum deduction (\$500,000) and a reduction in the benefit once the eligible property placed into service in a tax year exceeds \$2,000,000 (beginning of phase-out). For eligible property placed into service in 2010 or 2011, the deduction will not phase out completely until the acquisition cost exceeds \$2,500,000.

### Up to \$250,000 of Qualified Real Property Eligible for Expensing

For any tax year beginning in 2010 or 2011, taxpayers may elect to treat qualified real property as §179 property; thus, making it eligible for accelerated depreciation under Code Section 179. When calculating the \$500,000 limitation for §179 property under the Act, not more than \$250,000 of the aggregate cost can be attributable to qualified real property.

Qualified real property includes:

- Qualified leasehold improvement property
- Qualified restaurant property
- Qualified retail improvement property

The qualified property also must be depreciable and acquired for the use in the active conduct of a trade or business. There are certain types of property that are exempt from this election including property used for lodging, property used outside the United States, air conditioning units, heating units and property used by governmental units, foreign persons or entities, and certain tax-exempt organizations.

### **Additional Bonus Depreciation allowance extended**

Under §168(k) a 50% depreciation expense is allowed in the year any qualified property is placed into service. This reduces the basis of the property and thus the depreciation allowed in future years; but, allows for a much quicker expensing of qualified property. Scheduled to end on December 31, 2009, the Act extends this option for property acquired and placed into service in 2010.

Property qualifies for bonus depreciation generally if it is machinery, equipment, tangible personal property, computer software, and certain leasehold improvements. There are additional restrictions that may apply so speak with your tax advisor about any acquisition you think may meet the criteria.

### **Deduction for Start-Up Expenses Increased**

For tax years beginning during calendar year 2010, a taxpayer may choose to deduct up to \$10,000 of start-up expenses when beginning an active trade or business (increased from \$5,000). This election is made unless the taxpayer decides to clearly capitalize those expenses on the tax return for the tax year in which the trade or business began.

This deduction is limited by a phase-out threshold that reduces the deduction by the amount which the cumulative cost of start-up expenses exceed \$60,000 (increased from \$50,000). Therefore, the deduction would be reduced to \$0 once total cumulative costs reached \$70,000 (\$10,000 over the \$60,000 threshold).

### **Self-Employed Health Insurance**

For a self-employed taxpayer's first tax year beginning after December 31, 2009 (2010 for most calendar year taxpayers), when determining the amount of self-employment tax due, the calculation for net employment earnings now allows the deduction for health insurance costs. This deduction for tax calculation purposes is allowed only for one year and is meant to reduce the after-tax costs of health insurance to allow the self-employed to increase or afford their coverage more easily.

### **Cell Phones no longer listed property**

A taxpayer is not able to tax a deduction for listed property unless there is substantial evidence and/or records to prove the amount of the expense, the use (percent personal vs. percent business) and the business purpose for each expense claimed. The Act removes cell phones and other similar telecommunications equipment from the listed property category, removing the heightened substantiation requirements and special depreciation rules that apply to listed property.

### **100% Gain Exclusion for Qualified Small Business Stock**

The Act changes the exclusion for gains realized on the sale or exchange of qualified small business stock (QSBS) acquired after 2/17/2009 and before 1/1/2011 which is held for more than five years. This 100% exclusion applies for both the calculation of regular tax and the alternative minimum tax (AMT).

This is a very complex area of the Act. If you believe you have a sale or exchange that would meet the criteria for QSBS, please contact our office for a more thorough evaluation of your specific situation.

### **Five year carry-back of eligible small business credits**

Eligible small business credits that are unused (determined in the first tax year of the taxpayer beginning in 2010) will now be carried back to each of the five tax years preceding the unused credit year, (previously, was a one year carry-back to the immediately preceding tax year) .

Eligible small business credits must be for an eligible small business (ESB) but now include all of the component credits of the General Business Credit. An ESB is:

- A corporation with stock that is NOT publicly traded, partnership or sole proprietorship; AND
- Has average annual gross receipts of no more than \$50 million for the immediately preceding three-tax-year period

The new Act also allows ESBs to offset alternative minimum tax with general business credits in 2010 tax years.

While the incentives mentioned above are not the only items addressed in the Act, they represent some of the best opportunities for small business owners to take advantage of tax savings now to help grow their business.

To discuss this Act or your specific situation in more detailed, please contact your Sobel & Co. advisor at 973-994-9494.