

## Automation Alley Newsletter

October 2010

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### Small Business Jobs Act of 2010

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On September 27, 2010, President Obama signed the Small Business Jobs Act of 2010 (the "Jobs Act"). The Jobs Act focuses on making credit available to small businesses easier to obtain in the current difficult credit market, and establishing other governmental programs to assist small businesses. A business bill these days would not be complete without some tax provisions. Some of the tax provisions are extensions of benefits that were set to expire this year. This article will briefly describe these provisions.

Section 1202 allows a taxpayer to exclude a portion of the gain recognized on the sale of certain qualifying small business stock. The exclusion was increased to 100% but this was set to expire. The Jobs Act extends the full exclusion for 2010.

General business credits that are unused by a taxpayer in the year created are eligible to be carried back to the previous tax year and then forward 20 years. The Jobs Act increases the carry back period to the five previous tax years for credits created for tax years beginning after December 31, 2009. Furthermore, the credits will not be limited by the alternative minimum tax.

The built in gains tax applicable to S corporations during the 10 year post election period was previously reduced to 7 years for 2009 and 2010. The Jobs Act further reduces the period to 5 years for 2011. It appears that this is an attempt to incentivize small businesses that are S corporations to sell in order to spur economic activity.

Certain provisions are meant to encourage investment. The expensing of capitalized expenditures called 179 expensing has been liberalized to allow eligible capitalized costs of up to \$500,000 to be expensed in the year incurred and it increased the phase-out threshold to \$2,000,000 for 2010 and 2011. The previous legislation that included certain qualified leasehold improvements, restaurant property and retail improvement property has been extended for 2010 and 2011. The 50% bonus depreciation rules have been extended for 2011. Finally, the dollar thresholds for immediate expensing of business start up expenses not otherwise qualifying for "179 expensing" or "bonus depreciation" has increased from \$5,000 to \$10,000 and the phase-out threshold to \$60,000.

The Jobs Act includes a change to the penalty for a small taxpayer that is assessed a penalty for including tax benefits from a "reportable transaction" (transactions that the IRS has pre-determined

do not have economic substance) to reduce the penalty based on the amount of tax as opposed to the flat dollar penalties of \$200,000 and \$100,000 for listed transactions (really abhorrent transactions but not tax shelters) and \$50,000 and \$10,000 for other reportable transactions.

Sole proprietors (Schedule C taxpayers) will be able to deduct the cost of their health insurance for them and their family from the amount of self employment income for the self employment tax for 2010.

Certain types of assets that can be used for both personal and business use are subject to limitations in the amount of depreciation that can be claimed by the taxpayer. These types of assets are referred to as "listed property" and generally include cars and computer equipment. Cellular phones were included in the list but the Jobs Act removed them.

To offset the tax breaks, revenue raisers are included which are, in general, an expansion of the rules increasing the scope of information reporting and the penalties for failure to comply with the information reporting rules as passed by the Health Care Reform acts. In particular, payment for rental property expense is added to the trade or business expenses that all businesses will have to report on Forms 1099. These rules generally take effect in 2011. The expanded reporting under the Health Care Reform acts takes effect in 2012 and applies to payments to all recipients including corporations and other business entities. This is a highly controversial provision due to the extensive amount of costs in order for all companies to implement this provision.

Another problem which is not receiving much attention yet is the amount of time to reconcile the gross revenue of a taxpayer to the total amount of 1099s received. Several proposals have been made to repeal this requirement however the administration is intent on enforcing this provision as a measure to increase compliance.

If you would like to speak to a Butzel Long attorney about the provisions of the Small Business Jobs Act of 2010, please contact the author or any other member of the Tax Group.

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