

Rosen Seymour Shapss Martin & Company LLP  
*Certified Public Accountants & Profitability Consultants*

## **Tax Alert**

### **Small Business Jobs Act of 2010 Signed Into Law**

Dear Clients and Friends of the Firm:

The Small Business Jobs Act of 2010 ("SBJA") just signed by President Obama benefits more than just small businesses. It also provides benefits to larger businesses, self-employed individuals, small investors and employees saving for retirement. Among its main provisions are:

#### ***Increase in Section 179 Expensing***

Businesses can quickly recover the cost of certain capital investments in fixed assets by electing under Internal Revenue Code Section ("IRC") 179 to write off these expenses in the year of acquisition rather than recovering the cost over time through depreciation. For tax years beginning in 2010 and 2011 the IRC 179 expense election limit will increase from \$250,000 to \$500,000. A dollar-for-dollar phaseout of this limit will now begin when the cost of qualifying property placed in service during the year exceeds \$2,000,000 rather than \$800,000 under the previous law. The new law also allows the expense limit to include up to \$250,000 of qualifying leasehold improvements, qualifying retail improvements or qualifying restaurant property.

#### ***Bonus Depreciation***

For 2010 purchases of qualifying fixed asset property, the taxpayer can expense 50% of the cost of the property. Unlike IRC 179 expense, bonus depreciation is not subject to any asset purchase limits.

The SBJA also provides that bonus depreciation shall not be taken into account as a cost when determining the percentage of completion for construction projects.

#### ***Elimination of Cell Phones as Listed Property***

The SBJA removes cell phones from the definition of "listed property" for tax years beginning after December 31, 2009. Listed property is subject to tighter substantiation requirements and special depreciation limits.

#### ***Extension of Enhanced First-Year Dollar Cap on Luxury Auto Depreciation***

For qualifying autos placed in service in 2010, the business-auto depreciation write-off for 2010 will be increased by \$8,000 to \$11,060 for autos and \$11,160 for light trucks or vans.

#### ***Exclusion of Gain from the Sale of Small Business Stock***

Under the 2009 Recovery Act, individuals could exclude 75% of the gain on the sale of qualified small business stock. Under the new law the amount of the exclusion is increased to 100% for stock acquired after September 27, 2010 and before January 1,

2011 and held for five year. The alternative minimum tax preference item attributed to the sale is also eliminated.

#### ***General Business Credits for Eligible Small Business Entities***

For the first tax year of the taxpayer beginning in 2010, eligible small businesses can carry back unused general business credits for five years. The credits can now be used to offset alternative minimum, as well as regular, taxes. Eligible small businesses include sole proprietors, partnerships and non-publicly traded corporations with \$50 million or less in average annual receipts over the previous three years.

#### ***S Corporation Holding Period to Avoid Built in Gains is Shortened***

For tax years beginning in 2011, the SBJA shortens the period of time assets must be held to avoid the built in gains tax on appreciation after converting from a C Corporation to an S Corporation to 5 years.

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

For tax years beginning in 2010, the new law allows the taxpayer to deduct up to \$10,000 (up from \$5,000) in business start-up costs. The deduction is reduced by the amount by which start-up expenditures exceed \$60,000 (up from \$50,000).

#### ***Health Insurance and Calculating Self-Employment Taxes***

The SBIA permits self-employed taxpayers to deduct the cost of health insurance incurred in 2010 for themselves, their spouses, dependents and children age 26 or under, in calculating their self-employment taxes (social security and Medicare).

#### ***Roth 457(b) Plans***

For plan tax years beginning after 12/31/2010, the SBJA permits the designation of some or all of an employee's contribution as ROTH contributions. The ROTH contributions will not reduce your taxable income, but you will be exempt from tax on any qualified distribution in the future.

#### ***Rollovers to ROTH Accounts***

For distributions made after September 27, 2010, 401(k), 403(b) and 457(b) plans may, but are not required to, allow participants to roll any portion of their pretax accounts into a ROTH account. The amount of the rollover, to the extent not taken from any after-tax contributions to the plan, is included in income in the year of the rollover. For rollovers made in 2010, the taxpayer may elect to pay the tax over a two-year period in 2011 and 2012.

#### ***Guarantee Fees***

Amounts received directly or indirectly for guarantees of indebtedness of a U.S. payor are now sourced, like interest, in the U.S. As a result, amounts paid by U.S. taxpayers to foreign persons will generally be subject to U.S. withholding tax. The new requirements were effective September 27, 2010.

#### ***Increased Penalties for Failure to Timely File Information Returns or Provide Payee Statements***

For information returns required to be filed, or payee statements required to be furnished, after December 31, 2010, the SBJA substantially increases the penalties for the failure to

furnish or provided the required returns or statements. In addition to increasing the penalties for each return or statement not timely filed or provided, the new legislation significantly increases the maximum penalty that can be imposed in any calendar year.

Please contact us at 212-303-1800 or email us at [info@rssmcpa.com](mailto:info@rssmcpa.com) for more details about the SBJA. For more information on RSSM, please visit our website at [www.rssmcpa.com](http://www.rssmcpa.com).

Sincerely,

***Rosen Seymour Shapss Martin & Company LLP***

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