Armstrong Teasdale

Client Alert

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Small Business Jobs Act of 2010

On September 27, 2010, President Obama signed into law the Small Business Jobs Act of 2010 (the "Act") which includes a number of tax breaks and incentives for businesses. The following is a brief overview of the most important tax changes in the Act.

Tax Breaks and Incentives

- ***Enhanced Small Business Expensing under Code Section 179.*** In some instances small business taxpayers can elect to write-off the cost of capital outlays in the year they are made in lieu of recovering these costs over time through depreciation. Prior to the Act, taxpayers could expense up to $250,000 of qualifying property - generally, machinery, equipment and certain software - placed in service in tax years beginning in 2010. This annual expensing limit was reduced by the amount by which the cost of qualifying property placed in service in tax years beginning in 2010 exceeded $800,000. Under the new law, for tax years beginning in 2010 and 2011, the $250,000 limit is increased to $500,000 and the investment ceiling to $2,000,000. In addition, the Act makes qualified real property eligible for expensing.

- ***Extension of 50 Percent Bonus First Year Depreciation.*** Businesses are allowed to deduct the cost of capital expenditures over time according to depreciation schedules. For most new tangible personal property that was placed in service in 2008 and 2009, businesses were able to deduct capital expenditures by permitting the first-year write-off of 50 percent of the cost. The Act extends the first-year 50 percent write-off to apply to qualifying property placed in service in 2010 (as well as 2011 for certain property).

- ***Boosted Deduction for 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. Previously, the limit of these deductions was capped at $5,000, subject to a $50,000 phase-out threshold.

- ***100 Percent Exclusion of Gain from the Sale of Small Business Stock***. Before the 2009 Recovery Act, individuals could generally exclude 50 percent of their gain on the sale of qualified small business stock ("QSBS") held for at least five years. Under the 2009 Recovery Act, the percentage exclusion for gain on QSBS sold by an individual was increased to 75 percent for stock acquired after Feb. 17, 2009 and before Jan. 1, 2011. Under the Act, the amount of the exclusion is temporarily increased to 100 percent of the gain from the sale of qualifying small business stock that is acquired after Sept. 27, 2010 and prior to January 1, 2011 and held for more than five years. In addition, the new law eliminates the alternative minimum tax preference item attributable to such sales.

- ***Carryback of General Business Credits of Eligible Small Businesses for 2010.*** Under the Act, for the first tax year of the taxpayer beginning in 2010, eligible small businesses can carry back unused general business credits for five years. In addition, the Act allows eligible small businesses to use all types of general business credits to offset their AMT in tax years beginning in 2010.

- ***Deductibility of Health Insurance for the Purpose of Calculating Self-Employment Tax***. The Act allows business owners to deduct the cost of health insurance incurred in 2010 for themselves and their family members in calculating their 2010 self-employment tax.

- ***Cell Phones Removed from Listed Property Category.*** This means that cell phones can be deducted or depreciated like other business property without excessive recordkeeping requirements.

- ***S Corporation Holding Period for Appreciated Assets.*** Generally, a C corporation converting to an S corporation must hold onto any appreciated assets for 10 years following its conversion or face a business-level tax imposed on the built-in gain at the highest corporate rate of 35 percent. The Act temporarily shortens the holding period of assets subject to the built-in gains tax to five years if the fifth tax year in the holding period precedes the tax year beginning in 2011.

- ***New Tax Break for 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. This prevents the bonus depreciation from having the effect of accelerating income.
- ***Limitation on Penalty for Failure to Disclose Certain Reportable Transactions.*** The Act limits the penalty to 75 percent of the decrease in tax resulting from the transaction. The minimum penalty is $10,000 for corporations and $5,000 for individuals. These changes are retroactively effective to penalties assessed after Dec. 31, 2006.

Revenue Raisers

In an attempt to offset these tax breaks, the Act includes some revenue raisers. A few of the revenue raisers include information reporting for certain rental property expense payments made after December 31, 2010, allowing participants in governmental 457 plans to treat elective deferrals as Roth contributions, making crude tall oil ineligible for the cellulosic biofuel producer credit, and changing the tax treatment of guarantee fees under source rules for income earned by U.S. subsidiaries of foreign businesses.

For more information, please contact an attorney in the Armstrong Teasdale Tax Department:

Daniel J. Cooper / 314.259.4715
dcooper@armstrongteasdale.com

Joseph D. Demko / 314.342.4143
jdemko@armstrongteasdale.com

Guy Schmitz / 314.259.4738
gschmitz@armstrongteasdale.com

Robert L. Jackson / 314.342.8076
rjackson@armstrongteasdale.com

Scott E. Hunt / 314.342.4145
shunt@armstrongteasdale.com

Christopher J. Anderson / 816.472.3117
canderson@armstrongteasdale.com

Larry M. Sewell / 314.342.8020
lsewell@armstrongteasdale.com

Jonathan W. Igoe / 314.342.8019
jigoe@armstrongteasdale.com

John E. Dooling, Jr. / 314.259.4743
jdooling@armstrongteasdale.com

Jill M. Palmquist / 314.552.6635
jpalmquist@armstrongteasdale.com
