

Summary of the Small Business Jobs Act

Signed into law on September 27, 2010

Retirement Provisions

Allow Rollovers from Elective Deferral Plans to Roth Designated Accounts. The Small Business Jobs Act (SBJA) allows 401(k), 403(b), and governmental 457(b) plans to permit participants to roll their pre-tax account balances into a Roth account. The amount of the rollover would be includible in taxable income except to the extent it is the return of after-tax contributions. If the rollover is made in 2010, the participant can elect to pay the tax in 2011 and 2012. Plans would be able to allow these rollovers immediately upon enactment.

Allow Participants in Governmental 457 Plans to Treat Elective Deferrals as Roth Contributions. SBJA allows retirement savings plans sponsored by state and local governments (governmental 457(b) plans) to include Roth accounts beginning in 2011.

Permit Partial Annuitization of a Nonqualified Annuity Contract. The legislation allows holders of nonqualified annuities (i.e., annuity contracts held outside of a tax-qualified retirement plan or IRA) to elect to receive a portion of the contract in the form of a stream of annuity contracts, leaving the remainder of the contract to accumulate income on a tax-deferred basis, provided that the annuitization period is for 10 years or more or is for the lives of one or more individuals.

Individual Taxpayer Provisions

Require Information Reporting for Rental Property Expense Payments. SBJA makes recipients of rental income from real estate generally subject to the same information reporting requirements as taxpayers engaged in a trade or business. In particular, rental income recipients making payments of \$600 or more to a service provider (such as a plumber, painter, or accountant) in the course of earning rental income are required to provide an information return (typically Form 1099-MISC) to the IRS and to the service provider. Exceptions are provided for members of the military who rent their principal residence on a temporary basis, and individuals who receive only minimal amounts of income, as determined by regulation.

1-Year Deductibility of Health Insurance for the Purposes of Calculating Self-Employment Tax. This bill allows business owners to deduct the cost of health insurance incurred in 2010 for themselves and their family members in the calculation of their 2010 self-employment tax. This provision expires at the end of 2011.

Remove Cellular Phones from "Listed Property." This provision would "delist" cell phones so their cost can be deducted or depreciated like other business property, without onerous recordkeeping requirements.

Small Business Provisions

Increase of Section 179 Expensing and Expansion to Certain Real Property. Under current law for the taxable year beginning in 2010, taxpayers may write-off up to \$250,000 of capital expenditures purchased for the use in the active conduct of a trade or business subject to a phase-out once these capital expenditures exceed \$800,000. After 2010, the thresholds revert to \$25,000 and \$200,000, respectively. The Act increases the thresholds to \$500,000 and \$2,000,000 for the taxable years beginning in 2010 and 2011. Within those thresholds, it allows taxpayers to expense up to \$250,000 of the cost of qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property.

Extension of Bonus Depreciation. Congress temporarily allowed businesses to recover the costs of certain capital expenditures made in 2008 and 2009 more quickly than under ordinary depreciation schedules by permitting those businesses to immediately write off 50 percent of the cost of depreciable property placed in service in those years. The legislation extends the additional, first-year 50-percent depreciation for qualifying property purchased and placed in service in 2010.

General Business Credit Carried Back Five Years. Under current law, a business' unused general business credit may generally be carried back to offset taxes paid in the previous year, and the remaining amount may be carried forward for 20 years to offset future tax liabilities. This bill extends the one-year carryback for general business credits to five years for certain small businesses. This applies to general business credits for those sole proprietorships, partnerships and non-publicly traded corporations with \$50 million or less in average annual gross receipts for the prior three years.

Temporary Reduction in Holding Period for S Corp Conversions. 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. This holding period is reduced where the 7th taxable year in the holding period preceded the taxable year beginning in 2009 or 2010. The legislation temporarily shortens the holding period of assets subject to the built-in gains tax to 5 years if the 5th taxable year in the holding period precedes the taxable year beginning in 2011.

Temporary 100% Exclusion of Small Business Capital Gains. Generally, section 1202 of the Internal Revenue Code provides that individuals may exclude 50 percent of the gain from the sale of certain small business stock acquired at original issue and held for at least five years. The bill temporarily increases the amount of the exclusion to 100 percent of the gain that is acquired after the date of enactment in 2010 and held for more than five years. Additionally, the bill eliminates the AMT preference item attributable for that sale.

Increased Deduction for Start-up Expenditures. Under current law, taxpayers may deduct up to \$5,000 in trade or business start-up expenditures. The amount that a business may deduct is reduced by the amount by which start-up expenditures exceed \$50,000. The Act temporarily increases the amount of start-up expenditures that may be deducted to \$10,000 subject to a \$60,000 phase-out threshold for the taxable year beginning in 2010.

Sources: U.S. Senate Committee on Finance; U.S. Congress Joint Committee on Taxation

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