

## **Small Business Jobs Act of 2010**

### **H.R.5297**

President Obama signed the *Small Business Jobs Act* on September 27, 2010. The Act includes provisions to provide support to small businesses and incentives to help them grow and hire.

The Act includes eight new small business tax cuts – all effective as of September 27, 2010, and applying to small businesses' taxes for this year – providing an immediate incentive for businesses to make new investments and expand.

The Act also immediately extends successful SBA Recovery Act provisions, meaning that it will restart the SBA's Recovery lending. The bill also increases the maximum loan size for SBA loan programs, which should allow more small businesses to access more credit to enable them to expand and create new jobs. In addition to these SBA provisions, there are two new programs designed to support private-sector lending to credit-worthy small businesses, the *Small Business Lending Fund* and *State Small Business Credit Initiative*.

<b>Provisions to Encourage Investment</b>	
Increase of Section 179 Expensing and Expansion to Certain Real Property	Increase the amount of §179 expense to a maximum of \$500,000 subject to phase-out at \$2,000,000 of assets placed in service.  Within those thresholds, the Act allows taxpayers to expense up to \$250,000 of the cost of qualified leasehold improvement property, qualified restaurant property,

	<p>and qualified retail improvement property.</p> <p><b>Effective date:</b> For taxable years beginning in 2010 and 2011.</p>
Extension of Bonus Depreciation	<p>Extends the additional, first-year 50 percent depreciation for qualifying property purchased and placed in service in 2010.</p> <p><b>Effective date:</b> For qualifying property purchased and placed in service in 2010.</p>
Special Rule for Long-Term Contract Accounting	<p>Bonus depreciation is decoupled from allocation of contract costs under the percentage of completion accounting method rules for assets with a depreciable life of seven years or less. This provision allows such contractors to claim bonus depreciation without triggering an increase in the completion percentage.</p> <p><b>Effective date:</b> For qualifying property purchased and placed in service in 2010.</p>
Increase Vehicle Depreciation Limit	<p>Increased first-year depreciation limits on vehicles by \$8,000. New limits are \$11,060 for autos and \$11,160 for light trucks and vans.</p> <p><b>Effective date:</b> For vehicles purchased and placed in service in 2010.</p>
Extends Time To Claim §179 Election for Computer Software	<p>Increases time to in which computer software is eligible for §179 election by one year to include any tax year beginning after 2002 and ending before 2012.</p>
Extends Time To Revoke §179 Election	<p>Increases time to revoke §179 Election without IRS consent by one year to include any tax year beginning after 2002 and ending before 2012.</p>

**Provisions to Provide Access to Capital**

100% Exclusion of Small Business Capital Gains

Temporarily increased the amount of the exclusion to 100 percent of the gain from the sale of qualifying small business stock that is acquired after the date of enactment in 2010 and held for more than five years.

Additionally, the Act eliminates the AMT preference item attributable for that sale. Qualifying small business stock is from a C corporation whose gross assets do not exceed \$50 million (including the proceeds received from the issuance of the stock) and who meets a specific active business requirement.

The amount of gain eligible for the exclusion is limited to the greater of ten times the taxpayer's basis in the stock or \$10 million of gain from stock in that corporation.

**Effective date:** Stock acquired after September 27, 2010 and before January 1, 2011, *and held for more than five years.*

General Business Credit Carried Back Five Years

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.

**Effective date:** Tax years beginning in 2010.

General Business Credit Not Subject to AMT	<p>Allows certain small businesses to use all types of general business credits against their AMT. 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.</p> <p><b>Effective date:</b> Tax years beginning in 2010.</p>
S Corp Holding Period – Built In Gains Tax	<p>Temporarily shortens the holding period of assets subject to the built-in gains tax to five years if the fifth taxable year in the holding period precedes the taxable year beginning in 2011.</p> <p><b>Effective date:</b> Tax years beginning in 2011.</p>
<b>Provisions to Promote Entrepreneurship</b>	
Increased Deduction for Start-up Expenditures	<p>Temporarily increase the amount of start-up expenditures that may be deducted to \$10,000 subject to a \$60,000 phase-out threshold.</p> <p><b>Effective date:</b> Tax years beginning in 2010.</p>
Deductibility of Health Insurance for the Purposes of Calculating Self-Employment Tax	<p>Allow 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.</p> <p><b>Effective date:</b> Tax years beginning in 2010 only.</p>
Remove Cellular Phones from Listed Property	<p>Cell phones are no longer considered listed property allowing their cost to be deducted or depreciated like other business property, without onerous recordkeeping requirements.</p> <p><b>Effective date:</b> Tax years beginning in 2010 and later years.</p>

<b>Retirement Provisions</b>	
Allow Participants in Governmental 457 Plans to Treat Elective Deferrals as Roth Contributions	<p>Retirement savings plans sponsored by state and local governments (governmental 457(b) plans) can include Roth accounts, which are currently available only in 401(k) and 403(b) plans.</p> <p><b>Effective date:</b> January 1, 2011</p>
Allow Rollovers from Elective Deferral Plans to Roth Designated Accounts	<p>Participants in 401(k), 403(b), and governmental 457(b) plans are permitted 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.</p> <p><b>Effective date:</b> September 27, 2010 (Requires plan document change.)</p>
Permit Partial Annuitization of a Nonqualified Annuity Contract	<p>Holders of nonqualified annuities (i.e., annuity contracts held outside of a tax-qualified retirement plan or IRA) can 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.</p> <p><b>Effective date:</b> January 1, 2011.</p>

## Information Reporting Provisions

### Require Information Reporting for Rental Property Expense Payments

Persons receiving rental income from real property are required to file information returns to the IRS and to service providers reporting payments of \$600 or more during the year for rental property expenses.

In general, there is an exception for individuals renting their principal residences, including active members of the military, from the reporting requirements.

**Effective date:** January 1, 2011.

### Increase Penalties for Failure to File Information Returns

Penalties are increased for failure to timely file information returns to the IRS. The first-tier penalty increases from \$15 to \$30, and the calendar year maximum increases from \$75,000 to \$250,000.

The second-tier penalty increases from \$30 to \$60, and the calendar year maximum increases from \$150,000 to \$500,000.

The third-tier penalty increases from \$50 to \$100, and the calendar year maximum increases from \$250,000 to \$1.5 million.

For small filers, the calendar year maximum increases from \$25,000 to \$75,000 for the first-tier penalty, from \$50,000 to \$200,000 for the second-tier penalty, and from \$100,000 to \$500,000 for the third-tier penalty.

The minimum penalty for each failure due to intentional disregard increases from \$100 to \$250. The penalty amounts are adjusted every five years for inflation.

Penalties for failure to file information returns to payees are similarly increased.

**Effective date:** January 1, 2011.

<b>Other Select Provisions</b>	
<p>Application of Continuous Levy to Tax Liabilities of Certain Federal Contractors</p>	<p>Allows IRS to issue levies prior to a collection due process (CDP) hearing on Federal tax liabilities of Federal contractors. It also provides the taxpayer with an opportunity for a CDP hearing within a reasonable time after a levy is issued.</p> <p>For non-Federal contractors, before the IRS can issue a levy for an unpaid Federal tax liability, it must give the taxpayer an opportunity for a CDP hearing.</p> <p><b>Effective date:</b> September 27, 2010.</p>
<p>Modify §6707A Penalty</p>	<p>Revises IRC §6707A to make the penalty for failing to disclose a reportable transaction proportionate to the underlying tax savings.</p> <p>The penalty for failure to disclose reportable transactions to the IRS would be set at 75 percent of the tax benefit received.</p> <p>Reportable transactions are defined as investments in transactions that the IRS has identified as listed tax shelters or that have characteristics of tax shelters, including large losses or confidentiality agreements.</p> <p>The minimum penalty under this bill is \$10,000 for corporations and \$5,000 for individuals, and the maximum penalty is \$200,000 for corporations and \$100,000 for individuals.</p> <p><b>Effective date:</b> September 27, 2010.</p>
<p>State Small Business Credit Initiative (SSBCI)</p>	<p>Provides \$1.5 billion in grants to states to support small business lending programs. States will apply for the funds to be used for approved programs that leverage private lenders to extend greater credit to small businesses and manufacturers.</p>

	<p>Funds are allocated to the states using formulas based on certain state employment and unemployment rate data.</p> <p><b>Effective date:</b> States have nine months to apply for the program.</p>
<p>Small Business Lending Fund</p>	<p>Authorizes creation of the Small Business Lending Fund to provide the Treasury with the ability to purchase preferred stock and other debt instruments from eligible financial institutions with less than \$10 billion in total assets.</p> <p>Eligible institutions include insured depositories, bank and savings and loan holding companies, and certain community development loan funds.</p> <p>Participating institutions will pay a five percent dividend rate on the preferred stock. This rate can be reduced to as low as one percent if a bank demonstrates a 10 percent increase in small business lending relative to a baseline set using the four quarters prior to enactment.</p> <p>The dividend rate is increased to seven percent after two years, if the bank does not increase its small business lending.</p> <p><b>Effective date:</b> September 27, 2010 through September 27, 2011.</p>