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Client Alert

Earlier this week, the Small Business Jobs Act of 2010 became law. The tax incentives are valuable to investors and entrepreneurs, but many are temporary, and taxpayers only have a short window to take advantage of them in some cases.

Highlights of the Small Business Jobs Act for Investors and Entrepreneurs

On September 27, 2010, President Obama signed into law the Small Business Jobs Act of 2010 with valuable individual and business tax incentives for investors and entrepreneurs. Many of the tax incentives are temporary, so taxpayers have only a short window in which to take advantage of them.

Complete Gain Exclusion for Qualified Small Business Stock. To encourage investment in small businesses, the Act increases the exclusion from capital gains tax on the sale of "qualified small business stock" purchased during the remainder of tax year 2010 from 75% to 100% (provided the qualified small business stock is held for more than five years). The excluded capital gains will also be temporarily excluded from the alternative minimum tax. On and after January 1, 2011, the exclusion will return to its original 50% level (and the excluded gain will again be taken into account for the purpose of computing alternative minimum taxes) for purchases of qualified small business stock.

Increased Deduction Limit for Start-up Expenses. To encourage small business formation, the Act doubles the deduction limit for start-up expenses from \$5,000 to \$10,000, beginning with tax year 2010. The current \$5,000 deduction limit will resume for tax years beginning on or after January 1,



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2011.

Reduction of S Corporation Built-In Gains Period to Five Years. S corporations that were previously C corporations (or acquired assets from a C corporation in certain transactions) are subject to a special corporate-level tax on gain from the sale of assets held at the time of the election to be classified as an S corporation (or the time assets were acquired from a C corporation) known as the "built-in gains tax." This corporate level tax is not imposed if the assets are sold after the end of a "recognition period" of 10 years (or seven years for tax years beginning in 2009 or 2010). Under the Act, for tax years beginning during 2011 only, the recognition period will be reduced to five years. As a result, if such assets are sold in a tax year that begins in 2011, which tax year also begins at least five years after the beginning of the recognition period, built-in gains on such assets will not be subject to the built-in gains tax.

Business Credit Carry-Back. The Act extends the carry-back period for general business credits of eligible small businesses determined in the first taxable year of the taxpayer beginning in 2010 from one year to five years. In addition, for taxable years that begin during the calendar year 2010, these credits will not be subject to the alternative minimum tax.

Increased Expense Limitations. The Act also increases the expensing limitation under Section 179 of the Internal Revenue Code to \$250,000 for taxable years beginning in 2008 or 2009, and to \$500,000 for taxable years beginning in 2010 or 2011. It also increases the phase-out threshold amount to \$800,000 for 2008 and 2009, and \$2,000,000 for 2010 and 2011, and taxpayers may now elect to add qualified leasehold investment property, qualified restaurant property and qualified retail improvement property to the definition of "Section 179 Property" for any taxable year beginning in 2010 or 2011.

Extended Bonus Depreciation. The Act provides a one-year extension of the 50% bonus depreciation for qualified property placed in service in 2008 and 2009 (2009 and 2010 for certain longer-lived property and transportation property) and extends bonus depreciation for qualified property acquired and placed in service during 2010 (or placed in service during 2011 for certain longer-lived property and transportation property).

Temporary Health Insurance Deduction. The Act

will allow self-employed taxpayers to deduct the cost of health insurance for the purpose of computing 2010 self-employment taxes. The provision is temporary and applies to the self-employed taxpayers' first tax year beginning after December 31, 2009.

Employer-Provided Cell Phones. The Act also relaxes the tax rules for employer-provided cell phones, effective for 2010 and thereafter by removing cell phones and similar devices from the definition of so-called "listed property." While this change does not eliminate all substantiation requirements for employer-provided cell phones, this means that the heightened substantiation requirements and special depreciation limitations for listed property will no longer apply to cell phones. IRS guidance issued in 2009 indicates that personal use of an employer-provided cell phone will be taxable to the employee and will require some substantiation to ascertain the value of such personal usage. The Act does not appear to override this general treatment.

About TroyGould

Founded in 1970, TroyGould is a Los Angeles law firm with a diverse client base and a practice covering a broad range of business transactions, litigation, and legal counseling, with emphasis in the areas of corporate finance, mergers & acquisitions, real estate, financial services, entertainment, employment, tax, and competitive business practices.

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