

## TAX INCENTIVES IN THE SMALL BUSINESS JOBS ACT OF 2010

TUESDAY, JANUARY 25, 2011

A little lost in the attention garnered by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 are for the tax incentives for small businesses enacted under the Small Business Jobs Act of 2010. These provisions are meant to encourage growth and expansion for small businesses.

The following summary is largely based on the article by Linda Nelsestuen and Michael Chiasson in the December 2010 version of Practical Tax Strategies/Taxation for Accountants entitled "*Exploiting the Tax Incentives Included in the Small Business Jobs Act of 2010.*"

### **1 Capital Gains Tax Relief**

1.1 Those who purchased qualified small business stock between 9/27/10 and 1/1/11 and hold it for at least five years, will pay absolutely no tax on the capital gain when the stock is sold.

1.2 This is an expansion of the 50% excluding available under Code Section 1202(a).

1.3 Qualified small businesses generally are domestic C Corporations whose aggregate assets are under \$50 million and which use at least 80% of their assets in one or more active trade or businesses.

### **2 Section 179 Expensing**

2.1 Increased to \$500,000 in 2010 and 2011.

2.1.1 Under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 for tax years beginning in 2012 a small business taxpayer will be allowed to write off up to \$125,000 (indexed for inflation).

2.2 The limitations on the value of assets placed into service have increased from \$800,000 to \$2 million. For assets placed into service beyond the \$2 million limit, the deduction is lost dollar for dollar.

2.3 The expensing now temporarily applies to “qualified real property” for the 2010 and 2011 tax years, which is defined as qualified, domestic (1) leasehold improvement property, (2) restaurant property, and (3) retail improvement property. Excluded, however, are units for air conditioning and heating.

### **3 Section 168(k) Depreciation Bonus**

3.1 This 50% depreciation bonus has been extended to include 2010.

3.2 Note that the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 also subsequently provided for a 100% bonus for qualified tangible personal property placed in service after September 8, 2010 and through December 31, 2011 (through December 31, 2012 for certain longer-lived and transportation property).

### **4 Carryback of Credits**

4.1 The general business credit carryback period is temporarily increased to five years from one year. Other limitations and restrictions relating to the carrybacks are reduced or eliminated.

### **5 Health Insurance Deduction for Self-Employment Taxes**

5.1 For 2010, self-employed taxpayers may deduct health insurance costs to offset employment taxes.

5.2 Note this is different from the deduction available against federal income to reduce income taxes.

### **6 Increase in Deductible Start-Up Expenditures**

6.1 The initial deduction is increased from \$5,000 to \$10,000, and with the phase-out threshold increased from \$50,000 to \$60,000.

### **7 Removal of Cell Phones from Listed Property**

7.1 Cell phones and other personal communication devices are no longer treated as listed property. Listed property is subject to strict substantiation requirements, and thus these items are no longer subject to these requirements.

7.2 This is a permanent change.

7.3 Note that personal use is still not deductible, and there still has to be some type of documentation as to the portion of the cell phone used for business purposes.

## **8 Reduction in Penalties for Failure to Disclose Information with Respect to "Reportable Transactions"**

8.1 Section 6707A penalties will now be based in large part on the tax savings resulting from the unreported Reportable Transaction instead of being a flat amount penalty.

Authored by Charles Rubin, Esq. Mr. Rubin is a Florida Bar Board Certified tax attorney with the firm of Gutter Chaves Josepher Rubin Forman Fleisher P.A. ([www.floridatag.com](http://www.floridatag.com)) His practice focuses on protecting & enhancing individual, family & business wealth through: Planning to Minimize Taxes (U.S. & International) • Estate Planning, Charitable, Marital & Succession Planning • Business Structuring & Transactions • Trusts & Estates (Administration-Disputes-Drafting) • Creditor Protection. He can be reached at 561-998-7847 or at [crubin@floridatag.com](mailto:crubin@floridatag.com). This article was previously published at <http://www.rubinontax.blogspot.com>.