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The Small Business Jobs Act became controlling law on September 27, 2010, upon receiving Presidential imprimatur. Formally known as the Small Business Jobs Act of 2010 (H.R. 5297), the Bill was approved and sent to the President for signature on September 23, 2010. The House approval stats. - 237 to 187. By way of background, the Bill previously cleared the Senate by a 61 to 38 margin on September 16, 2010, and this Act resulted from months of congressional negotiation and sometimes hot debate.

In titular terms, the moniker "Small Business" is somewhat of a misnomer. As widely expected, the Bill is chock-a-block full of provisions benefitting the largest of public and privately held corporations alike. As implied by its name, the centerpiece provisions of the Bill are general business incentives which include, without limitation, the following:

- 100% gain exclusion for qualified small business stock;
- Shortening of the holding period requirements subjecting Sub-S corporations and their shareholders to the existing Built In Gains (BIG) tax to 5 years;
- The carryback period for eligible small business credits is pushed out to five years;
- Code Section 179 expensing election limits are doubled;
- Bonus Depreciation – Fifty percent first year bonus depreciation has been extended through December 31, 2010, with January 1, 2010 retroactivity. Dollar limits are reduced by schedule for property with its cost exceeding \$800,000. Expensing limits are restored to prior levels for 2011, sans inflation indexing;
- Cell phones will no longer be considered Listed Property for cost recovery purposes;
- Deductions for start-up businesses are enhanced;
- A self-employment tax deduction is available for 2010 health insurance costs;
- The penalty rules under Section 6707A for failure to disclose participation in certain tax shelters have been clarified and rendered more readily calculable which may result

in considerably lower penalties for some taxpayers. The new law applies to 6707A penalties assessed after December 31, 2006.

Retirement – Tax Deferral Related Provisions

The Act provides a considerable level of new flexibility to participants in dealing with retirement plans. Certain participants' balances in 401(k), 403(b) and 457(b) plans will be eligible for rollover into a designated Roth account within their plans. Moreover, certain participants in 457(b) state and local government plans (excluding non-profit entity plans) will be eligible for deferrals into Roth accounts similarly as participants in 401(k) and 403(k) plans are eligible under pre-existing law. New annuity provisions permit certain owners of non-qualified annuities (meaning owners of contracts are owned outside of an IRA or qualified plan) to enjoy an option to fractionalize their annuity contract in a manner so as to disaggregate the annuity payment stream from the contract balance, which provides for some interesting tax planning opportunities. This change applies to annuity payments received in tax years commencing on or after January 1, 2011.

Tax Revenue Impact

The Revenue impact of many provisions of the Act means foregone dollars in the public fisc, projected to range in the tens of billions of dollars in the near term. While, in this writer's opinion, such amounts are inestimable within any degree of precision, an equal opaqueness surrounds whether the objective of economic stimulus which inspired the Act will be achieved. Enthusiasts of economic recovery are depending upon it. Bear in mind that at least some of the new provisions are projected by the Joint Committee of Taxation to provide increased tax revenues such as the retirement savings provisions and limitations on eligibility for cellulosic biofuel producer credit.

In summary, the foregoing provisions of the new Act and many not referenced in this blog will provide tax planning opportunities for small and large businesses alike, at a time when they may be more necessary than merely welcome. Readers are encouraged to consult with their tax advisors for more details.

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