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New Proposed Capital Gains Tax Breaks for Angel Investors

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The Obama administration has proposed capital gains tax breaks for angel investors who invest in fledgling start-up companies in 2010 and 2011. The House of Representatives has already passed the legislation. The Senate has yet to take it up. Let us further analyze the specifics of this legislation.

SOME SPECIFICS OF THE LEGISLATION AS PASSED BY THE HOUSE

The following outlines some specifics of the legislation as passed by the House of Representatives. Please, note, this legislation is subject to multitude of changes before its possible enactment.

- **Individual Investors Are Only Eligible:** Only individual investors such as angel investors are eligible to take advantage of capital gains tax break. This means venture capitalists or banks are not eligible.
- **The Business MUST Be C Corporation with Assets Less Than \$50 Million:** Despite the oddity of this provision in its current form, only C corporations are eligible investment tools. This means, unfortunately, no LLCs, no Limited Partnerships or no S Corporations would qualify.
- **Several Businesses Excluded:** The current piece of legislation also excludes several businesses such as law, farming, accounting, hotels and restaurants. The rationale is to tailor the tax breaks towards businesses with the best potential to generate relatively more jobs such as technology and manufacturing.

MORE STRINGENT REQUIREMENTS

In addition to the requirements already specified, the current provision includes some other stringent requirements such as:

- **Original Issue by C Corporation:** For individual investors to be eligible for such tax breaks, the investors MUST purchase stocks directly from a company issuing them.
- **5-Year Holding Requirement:** The investors MUST hold such original issuance for at least 5 years.

COMMENTS

It is important to note such tax breaks might not necessarily produce its intended purposes of generating jobs. The reason is start-up investments do not generate that much capital gains taxes in the first 5 years. Hence, angel investors need more prodding to be convinced. Nonetheless,

this is a very important step that proves the Administration is devising new strategies to assist small businesses.

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