Tax Law | manatt

October 6, 2010

Practice Area Links

- Tax, Employee Benefits & Global Compensation

Small Business Jobs Act of 2010 Provides Targeted Tax Incentives for Businesses

Authors: Jeffrey A. Mannisto | Matthew A. Portnoff

On September 27, 2010, President Obama signed into law the Small Business Jobs Act of 2010 (HR 5297) (the "Act"). The Act, among other things, provides a number of targeted tax incentives for large businesses, small businesses and individuals. Many of these tax incentives have relatively short life spans, while others are intended to become permanent. The following is a brief overview of the tax incentives in the Act that are relevant to many business owners.

Increased Deduction for Qualified Business Start-Up Expenditures

The Act increases the amount of qualified business start-up expenditures that a taxpayer may elect to deduct from $5,000 to $10,000 for tax years beginning in 2010. These deductions generally phase out for expenditures above $50,000. The Act increases the deduction phaseout threshold so that the $10,000 is reduced, but not below zero, by the amount by which the cumulative cost of qualified business start-up expenses exceeds $60,000.

Small Business Stock Exclusion Increased

The Act amends IRC Section 1202 and temporarily increases the exclusion percentage on gain for certain qualified small business stock sold to 100 percent and does not treat the excluded gain as an alternative minimum tax ("AMT") preference item. Therefore, no regular tax or AMT will generally be imposed on the sale of qualified small business stock issued and acquired after September 27, 2010, and before January 1, 2011; provided, however, that such stock is held for a period of at least five years.

S Corporation Built-In Gains Tax Holding Period Shortened

Under IRC Section 1374, a C corporation that converts to an S corporation generally must hold any appreciated assets for 10 years following the conversion or, if disposed of earlier, pay tax on the appreciation at the highest corporate level rate (currently 35 percent). The American Recovery and Reinvestment Act of 2009 temporarily shortened the 10-year holding period to 7 years for dispositions in tax years beginning in 2009 and 2010. The Act further shortens the holding period to 5 years for tax years beginning in 2011 if the fifth year in the recognition period precedes the tax year beginning in 2011.

Increased IRC Section 179 Expense Limits
Effective for 2010 and 2011, the Act increases the maximum amount that may be expensed under IRC Section 179 to $500,000 and increases the phaseout threshold amount to $2 million. The Act also temporarily expands the application of Section 179 by permitting taxpayers to expense qualified leasehold investment property, qualified restaurant property and qualified retail improvement property. The maximum amount with respect to real property that may be expensed is limited to $250,000.

First-Year "Bonus" Depreciation Extended
The Act extends the additional 50 percent first-year depreciation deduction that was in effect for 2008 and 2009 for one year with respect to qualified property acquired and placed in service during 2010 (or placed in service during 2011 for certain long-lived property and transportation property). The Act also includes a special long-term accounting rule for bonus depreciation.

Increased Limitation Under IRC Section 280F
The Act increases the limitation under IRC Section 280F on the amount of depreciation deductions allowed with respect to certain qualifying passenger automobiles used in a business in the first year by $8,000, and for which the taxpayer does not elect out of the additional first-year deduction available under IRC Section 179, as discussed above. For 2010, the maximum first-year depreciation deduction for passenger automobiles is $11,060.

Carryback of Business Credits Extended for Small Businesses
Previously, unused general business credits could only be carried back one year and carried forward twenty years, to be used against regular tax liability, and only to the extent that the regular tax liability exceeded a taxpayer's AMT liability. The Act provides that eligible small businesses (i.e., non-publicly traded corporations, partnerships, or sole proprietorships with gross receipts of $50 million or less) will be able to carry back excess general business credits up to 5 years in 2010 and can use such general business credits to offset both regular and AMT liability for credits determined in the taxpayer's first year beginning after 2009.

Cell Phones No Longer Classified as Listed Property
Effective for tax years ending after December 31, 2009, cell phones are removed from the IRS's definition of "listed property" for purposes of IRC Section 274. This change in classification should significantly reduce the substantiation rules and depreciation limits that apply for claiming related business expense deductions.

In conclusion, the recent changes in federal income tax law under the Act may have immediate and long-term impacts on business owners, including, without limitation, a reduction in overall tax liability and the ability to more favorably structure capital investments. If you would like more detailed information concerning any of these changes, please do not hesitate to contact us.

back to top