



Small Business Jobs and Credit Act of 2010

After several failed attempts to arrive at a consensus, Congress finally passed the *Small Business Jobs and Credit Act*. This vital new legislation, which President Obama signed on September 27, 2010, provides various loan support provisions and tax incentives targeted to small business owners.

More Stimulus for Job Creation

The *Small Business Jobs and Credit Act* aims to create as many as 500,000 jobs through a \$30 billion fund that will provide local community banks with capital to lend small business owners. The idea is to provide capital to start-up businesses and small enterprises that want to expand and hire new workers. Currently, large banks generally are not lending to small businesses, which create many of America's jobs.

The law includes SBA lending provisions to:

- Boost the Small Business Administration (SBA) maximum amount available to help start a business or help cover short-term capital requirements.
- Increase to 90 percent from 75 percent the amount of the loans that the SBA will guarantee. If a small business owner defaults, the bank that lent the money would take a maximum hit of 10 percent. This is aimed at encouraging local banks to lend to businesses that may be in trouble.
- Extend the elimination of SBA fees charged to originate loans.

To help ensure that the money helps generate employment, the program will be overseen by Congress, the U.S. Accountability Office and the Inspector General.

Even if a business appears small, it may not qualify for the loans. The definition of a small business is determined by annual sales, number of employees and the company's industry. To see if an enterprise qualifies, click [here](#) to go to the SBA's table of standards.

While most business organizations applauded the new law, some are criticizing it. Critics argue the money will go to more mature businesses that aren't hiring rather than start ups and enterprises that want to grow. They note that while the law gives access to capital, it doesn't require banks to lend and in the current economic climate, many small businesses don't want to borrow or hire.

Here are several key tax-related provisions of the new law:

Enhanced Section 179 depreciation deductions: Under Section 179 of the Internal Revenue Code, a business can currently deduct the cost of qualified property placed in service during the year, within an annual limit. Prior to the new law, the limit for 2010 was \$250,000, although the maximum deduction was subject to a phase-out for annual purchases above \$800,000. The new law increases the maximum deduction to \$500,000 for 2010 and 2011 with a phase-out threshold of \$2 million. Eligible assets include computers, office equipment, and furniture. Certain real estate improvement costs now qualify for Section 179 deductions of up to \$250,000.

"Bonus depreciation" is back: The new law also restores the bonus depreciation tax break, which expired after 2009. A business may claim a deduction equal to 50 percent of the cost of qualified assets, which include vehicles. (An additional year of bonus depreciation through 2011 is allowed for property with a cost recovery period of ten years or longer and certain transportation property.)

Note: There is a tax-saving opportunity for businesses that are able to take advantage of both the Section 179 deduction and 50 percent first-year bonus depreciation. These two breaks can be combined to offset a large part, or perhaps all, of a company's major acquisitions for the year. While larger businesses may be ineligible for the Section 179 deduction, 50 percent first-year bonus depreciation is available to any business regardless of size.

S corporation disposition rules are eased: After a C corporation converts to S corporation status, it may be liable for the "built-in gains" (BIG) tax if it sells or otherwise disposes of appreciated property within a specified time period. The normal recognition period of ten years was shortened to seven years for dispositions in tax years beginning in 2009 and 2010. The new law reduces this period still further to only five years for dispositions in tax years beginning in 2011.

Start-up expense deductions increase: Prior to the new law, a taxpayer could deduct up to \$5,000 of qualified business start-up expenditures for new ventures just getting off the ground. The maximum \$5,000 deduction was phased out for expenses over \$50,000. The new law doubles the maximum deduction for 2010 to \$10,000 with a \$60,000 phase-out threshold. Note that these figures are scheduled to revert to their prior amounts in 2011.

Restrictions on business credits removed: With limited exceptions, general business credits cannot be used to offset a taxpayer's alternative minimum tax (AMT) liability. The new law removes this restriction for "eligible small businesses." To qualify, average annual gross receipts of a non-public corporation, partnership or small proprietorship for the prior three years can't exceed \$50 million. In addition, beginning in 2010, an eligible small business may carry back general business credits for five years instead of one year.

Qualified small business stock gets better tax treatment: Assuming certain requirements are met, an investor in "qualified small business stock" may exclude part of the gain from the sale of the stock after a five-year holding period. Normally, the tax exclusion is 50 percent for QSBS which is taxed at the 28 percent rate, but the 2009 stimulus law increased the exclusion to 75 percent for acquisitions after February 17, 2009 and before January 1, 2011. Now the new law allows a 100 percent exclusion for acquisitions from the date of enactment through December 31, 2010.

Cell phone recordkeeping is less burdensome: Previously, cell phones were treated as "listed property" for tax purposes, therefore triggering the same strict substantiation rules that apply to business use of vehicles. In other words, in order to claim deductions, you had to track your business and personal use. The new law removes these requirements for cell phones and similar communication devices and treats employer-provided devices as tax-free fringe benefits.

Self-employed taxpayers get a break on health insurance costs: A self-employed individual must pay self-employment tax comparable to the Social Security tax paid on employee wages. For 2010, eligible self-employed people can deduct health insurance premiums from the self-employment income subject to employment tax. This tax break is a limited one-year window of opportunity.

Contributions to Roth accounts are made easier for some taxpayers: Roth IRAs provide tax-free treatment for qualified distributions. Beginning in 2011, participants in state and local government-operated 457 plans (other than employees of nonprofits) can contribute deferred amounts to designated Roth accounts. Participants in 401(k) and 403(b) plans already have this ability. Also, participants in 401(k), 403(b) and 457 plans can roll over account balances to a Roth, subject to tax on pre-tax contributions and earnings. This provision takes effect on the date of enactment. For rollovers in 2010, you can opt to have the taxable income split between 2011 and 2012.

Small business owners and individuals may want to take action before the end of the year based on these significant new law changes. Consult with your tax adviser about your situation.

Revenue-Raisers: How Did Congress Pay for the New Law?

To offset the cost of the tax incentives in the *Small Business Jobs Act*, the new law imposes several revenue-raisers, including:

- New information reporting requirements on rental real estate activities for annual payments of \$600 or more made after December 31, 2010. In other words, landlords will have to file 1099 forms for service providers, such as plumbers, painters and landscapers.
- Increased failure-to-file penalties on information returns.
- Allowing levies to be issued against federal contractors prior to a collections due process hearing.

- Treatment of debt guarantees by certain foreign entities as U.S. source income.
- Increased estimated tax penalties in 2015 for large corporations.