

September 27, 2010

Small Business Jobs and Credit Act of 2010 – A Sensiba San Filippo Summary

Today, President Obama signed the Small Business Jobs and Credit Act of 2010 (the "Act") to provide \$30 billion in small business lending and \$12 billion of favorable tax legislation - all designed to spur economic growth primarily through aid to small businesses, their owners and employees.

This Sensiba San Filippo Summary discusses the following tax changes which we believe to be the most significant in the Act; your Sensiba San Filippo Tax Partner would be happy to discuss these changes and their implications with you in more detail.

- Increase in Section 179 expenses; extension of benefits to real estate
- Extension of bonus depreciation rules; increase in first year depreciation deduction for automobiles, light trucks and vans
- Increase in deduction for start-up expenses
- Extension of carryback period for eligible general business credits
- 100% exclusion of gain relating to certain qualified small business stock
- Deduction of health insurance costs (for self-employment tax purposes) of self-employed taxpayers
- Permitting rollovers from certain qualified plans to a Roth IRA
- Reduction in recognition period for S corp built-in gain tax
- Removal of cell phones from "listed property"

Increase in Section 179 expenses; extension of benefits to real estate

Section 179 of the Internal Revenue Code allows a taxpayer to choose to treat the cost of certain property as an expense and deduct such cost in the year in which the property is placed in service instead of capitalizing the cost and then depreciating it over a number of years. For each of the years 2010 and 2011, the Act increases (i) the maximum Section 179 expense to \$500,000 (from \$250,000), and (ii) the "investment limitation" that begins the phase-out of the Section 179 benefit to \$2,000,000 (from \$800,000) (i.e., the Section 179 benefit is reduced dollar-for-dollar by the amount by which the cost of such property during a year exceeds the amount of the investment limitation, so for 2010 and 2011 the Section 179 deduction won't phase out completely until the cost of expensing eligible property exceeds \$2,500,000 – the \$2,000,000 phase-out plus the \$500,000 maximum Section 179 expense).



Small Business Jobs Act of 2010 – A Sensiba San Filippo Summary

September 27, 2010 - page 2 of 5

Increase in “Section 179” expenses; extension of benefits to real estate (cont.)

Generally, property that is eligible for expensing for Section 179 purposes is personal property (tangible or intangible) and other tangible property (other than a building or its structural components) used as an integral part of manufacturing, production, extraction, or the furnishing of transportation, communications, electrical energy, gas, water or other specified services. For each of the years 2010 and 2011, the Act for the first time allows Section 179 expensing to be used for real estate, up to a cost of \$250,000, specifically as to what is described in the Act (and defined in the Internal Revenue Code) as qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property.

Extension of bonus depreciation rules; increase in first year depreciation deduction for automobiles, light trucks and vans

The Act restores for 2010 (and, for certain long-lived property, for 2011 as well), a “bonus” depreciation deduction that can be claimed on 50% of the cost of certain types of property with respect to the first year in which such property is placed in service (following a reduction of such cost by the amount of any Section 179 deduction). The bonus depreciation benefit is only available for new property that is first used by the taxpayer. In general, the eligible property must be of a type that is depreciable over a period of 20 years or less and can include what is known as “qualified leasehold improvement property”, which consists of an improvement to an interior portion of nonresidential real property. The Act also increases for 2010 the first year depreciation deduction applicable to new automobiles to \$11,060 (from \$3,060) and to new light trucks or vans to \$11,160 (from \$3,160).

Increase in deduction for start-up expenses

For 2010, the Act increases to \$10,000 (from \$5,000) the deduction for start-up expenses, which are defined as expenses paid or incurred in connection with investigating or creating an active trade or business. The “phase-out” threshold for the deduction is also correspondingly increased to \$60,000 (from \$50,000).



Small Business Jobs Act of 2010 – A Sensiba San Filippo Summary

September 27, 2010 - page 3 of 5

Extension of carryback period for eligible general business credits

For 2010, unused eligible general business credits (such as R&D credits) are permitted to be carried back and applied against prior year income for up to five years, rather than limited to a carryback period of only one year. This benefit only applies to an “eligible small business”, which is a non-public corporation, a partnership or a sole proprietorship where the average annual gross receipts of the entity for the three taxable years prior to 2010 do not exceed \$50 million. Also only for 2010, unused business credits can be applied against any alternative minimum tax liability; taxpayers otherwise may generally only use their general business credits to offset their regular tax liability (and not their alternative minimum tax liability).

100% exclusion of gain relating to certain qualified small business stock

With respect to qualified small business stock (“QSBS”), which is stock issued by a C-corporation where the tax basis of the gross assets of the business on the date of issuance is not in excess of \$50 million (and the company also meets a number of other requirements), the Act:

- (i) increases to 100% (from 75%) the exclusion from federal tax of any capital gain (subject to favorable limitations described below), and
- (ii) eliminates the characterization of the excluded gain as a tax preference item for alternative minimum tax purposes with respect to the sale of QSBS issued between the date of the Act’s enactment (September 27, 2010) through December 31, 2010 (i.e., the benefit is available with respect to QSBS issued only during this 96-day period).

That is, at the date of the ultimate sale of the QSBS, assuming the QSBS shares are held at least for more than 5 years and the various qualifications for QSBS status are met, there is no federal tax on gain (with a limit to the taxpayer, per investee corporation, of the greater of \$10 million in the aggregate relative to the corporation’s QSBS sold by the taxpayer in all years or 10 times the basis of the QSBS sold by the taxpayer during the taxable year) from the sale of such shares that are issued during the remainder of 2010.



Small Business Jobs Act of 2010 – A Sensiba San Filippo Summary

September 27, 2010 - page 4 of 5

[Deduction of health insurance costs \(for self-employment tax purposes\) of self-employed taxpayers](#)

For 2010, the Act permits individuals subject to self-employment tax to deduct for self-employment tax calculation purposes the health insurance costs of the individual and the individual's family members; current law does not allow for such a deduction.

[Permitting rollovers from certain qualified plans to a Roth IRA](#)

Beginning on the date of enactment of the Act (September 27, 2010), participants in 401(k), 403(b) and governmental 457(b) plans are permitted to roll their pre-tax account balances into a Roth IRA account. The amount of any such rollover is includable in taxable income (except to the extent it is the return of after-tax contributions). If the rollover is made in 2010, the participant may elect to pay the tax in 2011 and 2012.

[Reduction in recognition period for S-corp built-in gain tax](#)

In circumstances where a C-corporation converts to S-corporation status, the S-corporation is taxed at 35% on all gains that were considered in place (i.e., "built-in") at the time of the conversion if such gains are recognized during the ten-year period after the conversion (the "recognition period"). Under rules previously in place, relative to 2009 and 2010, no tax is imposed on the net unrecognized built-in gain of the S corporation if the seventh tax year in the "recognition period" occurs prior to the 2009 and 2010 tax years. Under the Act, the holding period of assets subject to the tax on built-in gain is shortened to 5 years if the 5th taxable year in the holding period precedes the taxable year beginning in 2011.

[Removal of cell phones from "listed property"](#)

The Act removes cell phones from the definition of "listed property" under the Internal Revenue Code so that their cost can be deducted or depreciated like other business property, without substantial recordkeeping requirements, assuming greater than 50% business use.



Small Business Jobs Act of 2010 – A Sensiba San Filippo Summary

September 27, 2010 - page 5 of 5

Sensiba San Filippo Commentary:

Today's enactment of the Small Business Jobs and Credit Act of 2010 will provide benefits to a number of our clients as described above. However, as indicated in the descriptions of the pertinent provisions, nearly all of the benefits are available only in 2010, 2011 or, in one case, the remainder of 2010. In other words, it is important for clients to promptly become informed relative to the short-lived benefits of the provisions and, in a number of cases, to act promptly to receive any such benefits.

It should also be noted that the descriptions of the Act's provisions are only general in nature. Your Sensiba San Filippo tax partners are available to discuss the all-important details of any of these provisions with you, or contact us at info@ssfillp.com.

Sensiba San Filippo Tax Partner Contacts:

John Volk
jvolk@ssfillp.com
650.358.9000

Greg Brown
gbrown@ssfillp.com
408.286.7780

Bill Norwalk
bnorwalk@ssfillp.com
925.271.8700

Gary Price
gprice@ssfillp.com
408.286.7780

John Sensiba
jsensiba@ssfillp.com
925.271.8700

Bill Gisvold
bgisvold@ssfillp.com
408.286.7780

Patty Chantler
pchantler@ssfillp.com
408.776.8900

Wynne Meredith
wmeredith@ssfillp.com
408.286.7780

