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**2010 SMALL BUSINESS JOBS ACT
FOR CLOSELY HELD BUSINESSES**

The recently enacted Small Business Jobs Act of 2010 is a mixed-bag, but there are likely to be some changes which impact you now. The act was signed into law on Monday, September 27, 2010.

The act is an assorted collection of various miscellaneous tax deductions, small business loan changes, offset tax increases, and other provisions intended to benefit closely held businesses of a variety of sizes. Some of the provisions are retrospective for the 2010 tax year.

Rather than summarize the full act, this newsletter focuses on those provisions which are more likely to affect a typical closely held businesses. To categorize the medley of the act's provisions, this newsletter is organized by the type of impacted business activity: (1) financing, (2) equipment and start-up purchasing, (3) selling assets or stock, (4) benefit planning, and (5) owning and operating real estate.

The Closely Held Business Team attorneys at Harrang Long Gary Rudnick are committed to serving the needs of business owners in a responsive and proactive manner. They understand the challenges and the opportunities provided by the law in today's business climate, and are focused on the advancement of each client's success in business.

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Financing

Changes to SBA Loans. SBA guaranteed loans are more attractive to lenders and businesses. The act increases the loan limits for 7(a) loans, the most common and basic loans guaranteed by the Small Business administration. SBA 504 guaranteed loan limits, for fixed asset loans, are increased to \$5.5 million, and microloans are increased to \$50,000. Through December 31, 2010, the amount guaranteed for 7(a) and 504 loans is increased to 90%, and borrower fees are eliminated. This may pave the way for a business or project to obtain previously unavailable financing.

Funding to Regional Banks. The Department of Treasury is authorized to purchase preferred stock and other debt instruments from certain depositories, banks, savings and loan, and community development loan funds with less than \$10 billion in assets. The cost of funds to the financial institution is reduced to as low as 1% if small business lending by the financial institution is increased. It remains to be seen how many banks will harness this program.

Equipment and Start-up Costs

Increased Bonus Depreciation for Equipment Purchases. The effective cost of certain depreciable property, such as new equipment, is reduced for tax year 2010 and 2011, encouraging equipment and software upgrades. "Bonus" depreciation of 50% of the cost of certain depreciable property is reinstated for tax year 2010 and is extended to some long-term contracts. Bonus depreciation had previously expired and is set to expire after tax year 2010.

Increased Section 179 Expensing. Businesses can elect to expense the costs of certain machinery, equipment, and software. The limit on expenses subject to deduction is increased from \$250,000 to \$500,000, and the reduction in that limit occurs when the investment exceeds \$2,000,000, instead of \$800,000 under prior law. Like with bonus depreciation, this provision reduces the cost of acquiring certain new property and applies only to tax year 2010 (except for some computer software for tax year 2011).

Increased Start-Up Cost Deductions. Qualified start-up expenses may be deducted. The amount that can be deducted for tax year 2010 is increased to \$10,000, reduced according to a phase-out schedule when start-up costs exceed \$60,000, decreasing the cost of starting-up a new business in tax year 2010. The former deductible amount was \$5,000, phased out at \$50,000. The more favorable structure is currently available only for tax year 2010.

Cell Phone Deductions. Cellular phones are "delisted" so that the cost can be deducted and depreciated like other business property without the recordkeeping requirements associated with listed business property.

Stock and Assets

Incentive to Purchase Stock in Certain C Corporations. The amount of capital gain subject to tax is reduced for some stock sales, providing an incentive to purchase stock in a qualifying business. Specifically, 75% of the gain from the sale of stock is excluded, if the stock is purchased after February 17, 2009 and before January 1, 2011, is held for five years, and is of a subchapter C corporation under the Internal Revenue Code whose assets do not exceed \$50 million and that meets other active business requirements. The amount of excluded gain from a sale of such stock under the new act is increased to 100%. Because this applies only to C corporations, the incentive is not available to a wide range of other business entities.

Incentive to Transfer Assets out of Converted C-to-S Corporation. The holding period required to be exempted from the 35% built-in gains tax is reduced, encouraging the immediate transfer of assets out of corporations that were previously converted from a C corporation to an S corporation. Previously, gain on certain assets held in a converted corporation had to be held for 10 years to avoid the built-in gains tax. This time period had already been reduced for tax years 2009 and 2010 to 7 years, if the 7th year of the holding period was before tax year 2009 or 2010, respectively. The act further reduces this to 5 years.

Benefit Planning

Health Insurance Costs Deductible for Owner-Employees. The act permits the cost of health insurance to be deducted for the purposes of calculating self-employment taxes for tax year 2010. This deduction was previously not permitted and effectively reduces taxes for most self-employed business operators.

Ability to Convert to Roth Accounts. Retirement plans can be amended to permit rollovers from 401(k), 403(b), and governmental 457(b) accounts into Roth accounts; governmental 457(b) plans can now also include Roth accounts. This can be attractive for individuals who anticipate being in a higher tax bracket in the future, as distributions from Roth accounts are generally tax-free in the future, with the trade-off of having to make contributions now on an after-tax basis and having to pay tax on the rollover amount. For rollovers made in 2010, an election can be made to pay the tax in 2011 and 2012.

Real Estate

Increased Tax Deductions for Capital Improvements. More capital expenditure costs can be written off immediately, providing an incentive to make tenant improvements and improvements to restaurant and retail properties. For 2010 and 2011, up to \$250,000 in capital expenditures can be deducted instead of depreciated, phased-out once the capital expenditures exceed \$800,000. The former amount subject to deduction was \$25,000, phased out at \$200,000. This encourages the acceleration of these kinds of projects.

Increased Burden of Tax Reporting for Rental Property Expenses. To offset tax benefits in the act, landlords are now required to file information returns with the IRS and service providers for certain rental property expenses in excess of \$600. The penalties for failing to file information tax returns are increased, but some landlords can be exempted from this requirement. This provision increases the reporting and recordkeeping costs for owners of rental properties.

Required Tax Disclaimer And Additional Tax And Professional Advice

Because of the variables associated with each of these new laws, you should consult with advisors to determine whether you can capitalize on these opportunities. Indeed, Internal Revenue Code Circular 230 requires us to disclose that this is not a reliance opinion. This is not intended or written by us to be used, and it cannot be used by you, for the purpose of avoiding penalties that may be imposed on you or another taxpayer, and you should consult directly with your tax and accounting professionals.

Our attorneys have experience in all of these areas. If you have questions about the 2010 Small Business Jobs Act or how it may apply to your circumstances, please do not hesitate to contact our closely held business attorneys John T. Witherspoon, Randall L. Duncan, David D. Denecke, or Jonathan D. Mishkin, and we would be pleased to help.



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