

Small Business Jobs Act

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Although the worst of the “Great Recession” appears to be over for most of the country, uncertainty and sluggishness still permeate the business environment. Regardless of technicalities economists point to when claiming the recession is over, high unemployment is keeping a damper on confidence. Although a decline in input costs has certainly helped many businesses in our area, we are not immune to troubles exacerbated by other pressures, such as heightened regulation (how about inane air quality rules!)

These are some of the purported reasons that caused Congress to pass and the President to sign on September 27, the 2010 Small Business Jobs Act. Of course, the impact on November elections was certainly on legislators’ minds as well. Regardless of motivations, the legislation contains important provisions that will benefit businesses throughout our region.

Like beauty, the definition of “Small Business” is in the eye of the beholder. The Act raises thresholds for many existing incentives, which allows more businesses to take advantage of tax breaks. A few examples even include companies with revenues up to \$50 million.

While a number of the changes are income tax related, the Act contains many non-tax provisions that are equally important.

Small Business Lending

Restricted access to credit ignited the recession and has been the bane of small and medium sized businesses ever since. For over a half century, the government has sponsored small business loans through the

SBA (Small Business Administration) loan program. The program works by reducing risk for banks by guaranteeing a portion of the loans made through the program. The new Act increases the government guarantee from 75 percent of the loan balance, up to 90 percent. This greatly reduces risk for participating banks, making the loan program available to more potential borrowers.

The Act also raised the maximum size for two of the SBA’s loan programs, increasing the flexible 7(a) program maximum lending amount from \$2 million to \$5 million, and the 504 long-term manufacturing-related maximum lending amount from \$4 million to \$5.5 million. In order to provide greater access to working capital loans, the Act also increased the maximum loan size for SBA Express loans from \$350,000 to \$1 million.

Add these increased lending limits to the reduced fees and other incentives enacted earlier, and the result is a recipe for a tremendous increase in the number and amount of loans available through the SBA. According to the White House, this should allow businesses to purchase new inventory,



thus creating new jobs. Clearly, an expanded SBA program is great news for businesses that don’t have the sterling financial statements required by many commercial banks these days.

Equally encouraging, California applied for and won \$168.8 million from the federal government, under the State Small Business Credit Initiative, which is part of the Small Business Jobs Act. The state is required to leverage this money at a ratio of ten to one into approximately \$1.7 billion in total loans. Under the program, private lenders can make loans of \$500 to \$1.5 million to small business that cannot otherwise qualify. A number of participating lenders use these

funds for the Heavy Duty On-Road Truck Loan Program, sponsored by the California Capital Access Program (CalCAP), to help truck owners required to replace or modify diesel motors. For details, visit http://www.treasurer.ca.gov/cpcfahvy_dut_dsl_trk_pgrm.asp. Participating lenders can be found at http://treasurer.ca.gov/cpcfahvy_dut_dsl_trk_pgrm.asp.

TAX BREAKS AND INCENTIVES

Small Business Expensing

Much of the new Act is devoted to income tax incentives for small business. One of the most popular and well understood small business tax incentives is the immediate expensing of newly purchased fixed assets, know also as “Sec. 179 expensing”, or “rapid depreciation.” Before the new Act, a small business could expense up to \$250,000 in a given year, although the limit was scheduled to decrease to \$25,000 in 2011.

Qualifying property generally consists of machinery and equipment. Most tangible personal property qualifies. Prior, the \$250,000 maximum was reduced for each dollar of assets purchased that exceeded \$800,000. Now the maximum first year write-off in 2010 and 2011 is doubled to \$500,000, and the phased-in reductions are not triggered until total fixed asset purchases reach \$2 million. The increased thresholds will mean that many businesses previously considered too large to benefit will now be “small businesses” that qualify for this incentive.

One of the most unique provisions in the Act is the qualification of certain leasehold improvements, restaurant property, and retail improvement property for the expensing election. This property would normally be written-off over an extended period, generally anywhere from five to 39 years. The maximum amount eligible is \$250,000, out of the \$500,000 total first-year deduction allowed.

The Act also continues the “bonus”

depreciation through 2010. Under this provision, which had expired at the end of 2009, 50 percent of the purchase cost of qualifying new property can be deducted in 2010. This provision sunsets on December 31, 2010. Bonus depreciation is available to all businesses, large or “small.”

The enhanced first-year write-offs are a particular boon to businesses that have already purchased equipment during 2010, since no further outlay is necessary to take advantage of these deductions. How’s that for win-win?

Expanded Use of Business Tax Credits

For 2010 only, a new business can carry back unused business tax credits five years, instead of the normal one year. Also, the Alternative Minimum Tax limitations are removed. These provisions are applicable to businesses with average annual gross receipts of \$50 million or less, providing yet another expanded definition of a “small business.”

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Exclusion of Gain from the Sale of Qualified Small Business Stock

The tax law encourages investment in small businesses by eliminating a portion of the tax gain on the sale of small business stock. The new Act increases the exclusion from 50 percent of the gain to 75 percent, when that stock is acquired between February 17, 2009 and December 31, 2011, and increases the exclusion to 100 percent for stock acquired between September 27, 2010 and December 31, 2010. The small business stock must meet certain criteria to qualify for the exclusion—such as gross receipts under \$50 million and a holding period of five of more

years. The Act also eliminates the negative amortization effects that could arise under the prior law.

Partial Relief from S Corporation “Built-In Gains” Tax

S corporations have a distinct advantage over regular corporations for many small businesses due to a variety of friendly characteristics, such as avoidance of payroll taxes on distributions and beneficial pass-through taxation, which eliminates a great portion of the dreaded double-tax of many regular corporations. Although the tax law does allow existing regular corporations to convert to S corporation status, the cost of doing so is the nasty “built-in gains” tax. Put in very simple terms, a corporation converting to an S corporation must wait ten years before the double taxation can be avoided when selling off assets—or selling off the entire business for that matter. Under the new Act, the period of time corporations must wait to avoid double-taxation drops from ten to five years for certain qualifying companies. Unfortunately, only corporations who previously made the conversion to S status can benefit from these new provisions. If your business converted in the past few years, you should discuss the new provisions with your tax advisor right away.

Even though corporations making the S corporation conversion now won’t benefit from the new provision, business owners thinking of selling their incorporated businesses should still definitely consider the advantages of converting to an S corporation.

Overview

The combination of high unemployment and an important election season motivated Congress and the White House to substantially enhance incentives for small business. For businesses that meet the various qualifications, these provisions can provide real help when they need it most. **CG**