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PRESENTS...

A COURSE by TED PERKINS  
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**The Small Business Jobs Act of 2010**



**CPE CREDIT - 1.0 Hour of Non-Interactive Self-Study**  
**PENNSYLVANIA CLE CREDIT - 1.0 Hour of Online CLE**  
**FIELD OF STUDY - Taxation - Non-Interactive Self Study**  
**PROGRAM LEVEL - Basic**  
**PREREQUISITE - None**  
**ADVANCE PREPARATION REQUIRED - None**



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## **Course Summary**

This course will provide an overview of the Small Business Jobs Act of 2010, recently passed into law.

## **Your Instructor**

Edward L. Perkins, BA, JD, LLM (TAX), CPA

## **Course Content**

The Practice Units are as follows:

- Unit One - Highlights
- Unit Two - General Business Incentives
- Unit Three - Small Business Incentives
- Unit Four - Promoting Retirement Savings
- Unit Five - Revenue Raisers
- Unit Six - Non-Tax Provisions

## **Learning Objective**

This Course consists of six practice Units and one Quizzer. You must view the Units in full prior to moving forward, and upon completion of the final Unit will be tested on the materials discussed therein.

## **Obtaining Course Credit**

At the end of the main presentation, after you will have completed the Course Material, you will be given an opportunity to take the Quizzer. If your score is less than 70%, you may retake the Quizzer as many times as you like until you answer at least 70% of the Questions correctly. In order to receive your Certificate of Completion and your Credit, you must complete the Quizzer and answer 70% of the Questions correctly.

## I. HIGHLIGHTS

- A. On September 27, 2010, President Barack Obama signed the Small Business Jobs Act of 2010 (the Act) into law creating a number of tax cuts for small businesses and up to \$14 billion in federally funded loans aimed at stimulating job creation.
- B. Highlights include the following:
- *Extended Bonus Depreciation*
  - *Increased Code Sec. 179 Expensing*
  - *100% Exclusion For Qualified Business Stock*
  - *Code Sec. 6707A Penalty Relief*
  - *Enhanced Start-Up Deductions*
  - *Retirement Savings Incentives*
  - *Rental Expense Payment Reporting*
  - *Increased Information Return Penalties .... and more*

## II. GENERAL BUSINESS INCENTIVES

- A. Bonus Depreciation.
1. Prior Law.
    - a. A 50% bonus first-year depreciation deduction is allowed for qualifying MACRS property acquired after December 31 2007, and placed in service before January 1, 2010.
    - b. Qualifying Property is only available for new property which is depreciable under MACRS and has a recovery period of 20 years or less, certain off the shelf computer property, or is qualified leasehold improvement property.
    - c. The full bonus depreciation was not available to projects using the percentage of completion method.
    - d. The 50% first year bonus depreciation had expired at the end of 2009.
  2. Jobs Act Change.
    - a. The Act extends 50 percent bonus depreciation through December 2010, retroactive to January 1, 2010.

- b. The Act also extends bonus depreciation through 2011 for property with a recovery period of 10 years and more and for “transportation property”.
- c. And finally under the Act bonus depreciation is not considered a contract costs under the percentage of completion accounting method for certain qualified property described in Sec. 168(k)(2) (generally property having recovery period of 7 years or less).

B. Code Sec. 179 Expensing.

1. Prior Law

- a. An expense deduction is provided for taxpayers who elect to treat the cost of qualifying property (“179 Property”) as an expense rather than a capital expenditure.
- b. As amended by the Economic Stimulus Act of 2008 and the American Recovery and Reinvestment Tax Act of 2009 (the “Recovery Act”), the maximum Code Sec. 179 deduction was \$250,000, for tax years beginning in 2008 and 2009, and \$125,000, for tax year beginning in 2010. The maximum Code Sec. 179 deduction is reduced to \$25,000, for tax years beginning in 2011.
- c. The maximum Code Sec. 179 deduction is reduced dollar for dollar by the cost of qualified property placed into service over an investment limitation.
- d. The investment limit on Section 179 was \$800,000 for tax years beginning in 2008 and 2009, \$500,000, for tax years beginning in 2010, and \$200,000, thereafter.

2. Jobs Act Change.

- a. For tax years beginning in 2010 and 2011, the expense amount is increased to \$500,000 and the investment limit is increased to \$2 million.
- b. Qualified property temporarily includes certain qualified real property (qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property generally as defined under Section 168) but with a lower expense amount of \$250,000.

- c. For tax years beginning after 2011, the expense amount and investment limit will revert back to \$25,000 and \$200,000 respectively.

C. Shortened S Corporation Built-In Gain Period.

1. Prior Law.

- a. Code Sec. 1374 provides for a corporate level tax on the gain realized by S Corporations (“built-in-gain”) that dispose of assets that appreciated during the years the corporation was a C Corporation.
- b. The recognition period for tax years other than 2009 and 2010 was 10 years beginning on the date the corporation is an S Corporation.
- c. This recognition period was reduced to 7 years for tax years beginning in 2009, or 2010, by the Recovery Act.

2. Jobs Act Change.

The Act shortens the recognition period to five years in the case of dispositions of property in tax years beginning in 2011.

D. Cell Phones.

1. Prior Law.

- a. Cell phones were included in the category of “listed property” (i.e., items obtained for use in a business but which lend themselves easily to personal use) and thus were subjected to strict substantiation rules.
- b. Personal use of business provided cell phones was subject to gross income for personal use.
- c. In January 2010, the IRS called a temporary halt to enforcing strict substantiation on cell phone use.

2. Jobs Act Change.

- a. Cell phones have been removed as “listed property”.
- b. Cell phones are no longer subject to strict substantiation, limits on depreciation or possible gross income.

- c. The fair market value of personal use of a cell phone is excluded from gross income.

### **III. SMALL BUSINESS INCENTIVES**

#### **A. Extended Carry-back of General Business Credit.**

##### **1. Prior Law.**

- a. The general business credit is a limited nonrefundable credit against income tax that is claimed after all other nonrefundable credits.
- b. When the credit exceeds the tax liability limitation the excess or unused amount may be carried back one year and forward 20 years.

##### **2. Jobs Act Change.**

- a. For the first tax year of the taxpayer beginning after December 31, 2009, “eligible small businesses” can carry back unused general business credits for five years.
- b. An “eligible small business” is a corporation whose stock is not publically traded, a partnership or a sole proprietorship with gross receipts for the prior three tax years not in excess of \$50 million dollars.
- c. The Act also allows an eligible small business credit to offset both regular tax and AMT.

#### **B. Qualified Small Business Stock.**

##### **1. Prior Law.**

- a. Code Sec. 1202 provided for 50% exclusion from gross income for gain from sale of “Qualified Small Business Stock” (“QSBS”) held for more than 5 years.
- b. Any remaining 1202 capital gain was placed into a 28% capital gain category.
- c. The effective tax rate was 14% and not very attractive after capital gains was lowered from 28% to 15%.

- d. In order to qualify, QSBS must meet a number of conditions (e.g., it must be stock of a corporation that has gross assets not in excess of \$50 million, and the corporation must meet active business requirements).
- e. The exclusion was increased from 50% to 75% from February 17, 2009 to January 1, 2011 by the Recovery Act – making the effective tax rate 7% (much more attractive considering the 15% rate for capital gains).

2. Jobs Act Change.

- a. The Act created 100% exclusion on gain realized on the sale of QSBS acquired from the date of enactment and before January 1, 2011.
- b. The excluded gain will not count as an AMT preference item under 57(a).

C. Code Sec. 6707A Penalty Relief.

1. Prior Law.

- a. Under Code Sec. 6707A - taxpayers failing to disclose participation in “reportable transactions” and “listed transactions” are liable for penalties.
- b. At times the penalties had minimum dollar amounts that were exceedingly unfair to certain small businesses considering the tax benefit.
- c. A “reportable transaction” is a transaction which has been determined by the IRS to have the potential for tax avoidance or evasion.
- d. The IRS has issued regulations that define reportable transactions, and define five categories of reportable transactions.
  - (1) listed transactions;
  - (2) confidential transactions;
  - (3) transactions with contractual protection;

- (4) loss transactions; and
- (5) transactions of interest.

2. Jobs Act Change.

- a. Under the new general Section 6707A rule, a participant in a “reportable transaction” that fails to disclose the transaction is subject to a penalty equal to 75 percent of the decrease in tax shown on the return as a result of the transaction or which would have resulted if the transaction was respected for federal tax purposes.
- b. The Act establishes new maximum penalty amounts:
  - (1) \$10,000 for an individual taxpayer failing to disclose a reportable transaction; \$50,000 for all other taxpayers; and
  - (2) \$100,000 for an individual taxpayer failing to disclose a listed transaction; and \$200,000 for all other taxpayers.
- c. The new minimum penalty is :
  - (1) \$5,000 for an individual taxpayer failing to disclose a reportable transaction or a listed transaction.
  - (2) The new minimum penalty for all other taxpayers is \$10,000.
- d. The changes to Code Sec. 6707A apply to penalties assessed after December 31, 2006.

D. Start-Up Expense Deduction.

1. Prior Law.

- a. Under the Code Sec. 195, individuals and businesses are permitted to deduct \$5,000 of “start-up expenses”, and the balance can be amortized over a period of 180 months.
- b. The \$5,000 start up deduction was reduced by the excess of total start-up costs over \$50,000.
- c. This is a default election and the taxpayer must opt out.

2. Jobs Act Change.

- a. The Jobs Act doubles the amount that can be written off for 2010 to \$10,000 and increases the phase-out threshold from \$50,000 to \$60,000.
- b. The increased deduction is temporary and only applies to tax years beginning in 2010.

E. Self Employment Income.

1. Prior Law.

- a. The self-employed could not deduct cost of health insurance before calculating the employment tax.
- b. As a result, the self-employed health insurance costs were subject to the sum of 12.4% for Social Security (on first \$106,800 of net earnings) and 2.9% for Medicare (no limit).

2. Jobs Act Change.

The new law allows business owners to deduct health insurance costs incurred in 2010 for themselves and their family members in calculating their 2010 self-employment tax.

## **IV. PROMOTING RETIREMENT SAVINGS**

A. 457(b) Plan Deferrals.

1. Prior Law.

Under the pre-Act law, only 402A(e)(1), 401(k) and 403(b) plan participants were allowed to contribute to Roth accounts.

2. Jobs Act Change.

Beginning in 2011, the Jobs Act allows participants in state and local government 457(b) plans (but not of nonprofit organizations) to contribute deferred amounts to designated Roth accounts.

B. 401(k) Rollovers to Roth Accounts.

1. Prior Law.

In the past only traditional IRAs or older retirement accounts were allowed to convert to Roth IRA.

2. Jobs Act Change.

- a. Under Section 402A, participants in 401(k), 403(b) and 457(b) plans are now allowed to roll over the pre-tax account balances into designated Roth accounts within their plans.
- b. The amount of the rollover will be includible in taxable income except to the extent it is the return of after-tax contributions.
- c. This is effective for distributions after date of enactment and for amounts rolled over in 2010, the amount is included ratably in income in equal amounts over 2011 and 2012, unless the taxpayer elects otherwise.

C. Annuitization.

1. Prior Law.

- a. Section 72 did not have a provision allowing partial annuitization by owners of nonqualified annuity contracts.
- b. A nonqualified annuity contract is an annuity contract held outside of a qualified retirement plan or an individual retirement account.

2. Jobs Act Change.

- a. The Jobs Act permits holders of nonqualified annuities to elect to receive part of the contract in the form of a stream of annuity payments.
- b. The annuitization period must be for 10 years or more, or for the lives of one or more individuals.
- c. Amounts remaining with the contract will continue to accumulate earnings on a tax-deferred basis.
- d. The provision applies to amounts received in tax years beginning after December 31, 2010.

## V. REVENUE RAISERS

### A. Information Reporting On Rental Property Expense Payments.

#### 1. Prior Law.

Section 6041 requires information reporting for certain trade or business payments of \$600 or more in the course of that trade or business.

#### 2. Jobs Act Change.

a. The Act adds qualified individuals receiving rental income from real property to Section 6041 and requires them to file information returns with the IRS and to service providers reporting payments of \$600 or more during the year for rental property expenses.

b. There are exceptions to the requirement (as will be determined by the IRS) including:

- (1) Hardship;
- (2) De minimus rental income;
- (3) Temporary rental of primary residence.

### B. Higher Failure to File Penalties on Information Returns.

#### 1. Prior Law

Previously under Section 6721, the penalties for late filing of certain information returns (including Form 1098, Form 1099, Form 5498, Form 8027, Form 8300, and Form W-2) were tiered as follows:

a. First-tier penalties (filing an information return after the filing deadline but not more than 30 days after the due date) were \$15 with a calendar year maximum of \$75,000.

b. Second-tier penalties (filing an information return more than 30 days after it is due but before August 1) were \$30 with a calendar year maximum of \$150,000.

- c. Third-tier penalties (for failing to file before August 1) were \$50 with a calendar year maximum of \$250,000.

## 2. Jobs Act Change

- a. The Act substantially increases the penalties for failing to timely file information returns with the IRS:
  - (1) First-tier penalties (filing an information return after the filing deadline but not more than 30 days after the due date) increase from \$15 to \$30. The calendar year maximum will increase from \$75,000 to \$250,000.
  - (2) Second-tier penalties (filing an information return more than 30 days after it is due but before August 1) will increase from \$30 to \$60, and the calendar year maximum will increase from \$150,000 to \$500,000.
  - (3) Third-tier penalties (for failing to file before August 1) will increase from \$50 to \$100, and the calendar year maximum will increase from \$250,000 to \$1.5 million.
- b. Penalties for failing to file information returns to payees similarly increase.
  - (1) The minimum penalty for each intentional failure-to-file will increase from \$100 to \$250.
  - (2) For qualified small filers with average gross receipts of not more than \$5 million, the calendar year maximum will increase from \$25,000 to \$75,000 for the first-tier penalty, from \$50,000 to \$200,000 for the second-tier penalty, and from \$100,000 to \$500,000 for the third tier penalty.

## C. U.S. Sourcing On Guarantees.

### 1. Prior Law.

The source rules for guarantee fees were unclear and possibly not subject to withholding tax when paid to foreign persons.

### 2. Jobs Act Change.

- a. The Act amends Section 861 regarding amounts received directly or indirectly for guarantees of indebtedness of a U.S. resident or foreign person with related “effectively connected” trade or business.
- b. The payments are now clearly U.S. source income after the date of enactment.
- c. As a result, these payments will generally be subject to U.S. withholding tax.

D. Levies.

1. Prior Law.

Section 6330 provides for notice and opportunity for hearing before an IRS levy is made

2. Jobs Act Change.

- a. The new law creates an exception that allows the IRS to issue levies before a collection due process (CDP) hearing in cases involving certain federal contractors.
- b. The provision applies to levies issued after September 27, 2010.

E. Cellulosic Biofuel Producer Credit.

1. Prior Law.

- a. The cellulosic biofuel producer credit rewards qualified taxpayers with a \$1.01 per gallon nonrefundable income tax credit for the production of qualified cellulosic biofuel.
- b. The health care reform package (the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act) excluded so called “black liquor” from the cellulosic biofuel producer credit.

2. Jobs Act Change.

- a. The new law excludes crude tall oil and other corrosive fuels from the cellulosic biofuel producer credit, effective

retroactively for fuels sold or used on or after January 1, 2010.

- b. Crude tall oil, like black liquor, is a waste product of paper manufacturing.

F. Corporate Estimated Tax Payments.

1. Prior Law.

The March 2010 HIRE Act had previously raised the estimated tax to 121.5% for July, August, or September of 2015.

2. Jobs Act Change.

Estimated taxes for large corporations (those with assets of not less than \$1 billion) otherwise due for July, August, or September of 2015, would be increased by 36%.

## **VI. NON-TAX PROVISIONS**

A. A New \$30 Billion Small Business Fund.

The Act establishes a new \$30 billion Small Business Lending Fund which – by providing capital to small banks with incentives to increase small business lending – could support several multiples of that amount in new credit.

B. An Initiative to Strengthen Innovative State Small Business Programs – Supporting Over \$15 Billion in Lending.

The Act provides at least \$15 billion in small business lending through a new State Small Business Credit Initiative, strengthening state and small business programs that leverage private sector lenders to extend additional credit – many of which have been forced to cut back due to budget cuts.

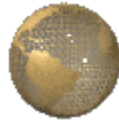
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