

# The Truth Behind the Small Business Jobs Act

By Melissa Sayer

**O**n Sept. 27, President Barack Obama signed the Small Business Jobs Act of 2010. Many had high hopes that the Act would result in dramatic changes to the increasingly bleak landscape for small businesses. According to the president, “[This Act] is important because small businesses produce most of the new jobs in this country.... They are part of the promise of America — the idea that if you’ve got a dream and you’re willing to work hard, you can succeed.” According to Congress, the Act is intended to promote job growth, provide access to capital, encourage investment, promote entrepreneurship and provide tax relief for small businesses. In looking at select provisions of the Act, it is apparent that it does increase access to capital and provide badly needed tax relief, but several of the provisions are so short-lived that many businesses will be unable to take advantage of the benefits.



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For example, the capital gains rules regarding sales of qualified small business stock were amended to exclude 100 percent of the gain from the sale of certain small business stock, provided the stock was acquired after Sept. 27, 2010, but before Jan. 1, 2011 and held for at least five years. In order to receive this benefit, you need to have purchased the qualifying stock between Sep. 27 and Dec. 31. The holding period for avoiding built-in capital gains tax following

conversion of a C corporation to an S corporation is temporarily reduced from 10 years to five years under certain circumstances, provided the fifth year in the holding period is before the 2011 tax year. Because the timeframe for application is so limited, the provision does not allow for advance tax planning. But it does provide a benefit for corporations wanting to sell assets in 2011 if such assets were held for more than five years after the S election was effective.

In 2008 and 2009, Congress temporarily allowed businesses to accelerate depreciation of certain “qualified property” placed in service to allow for a first year deduction equal to 50 percent of the adjusted basis of the property. The Act preserved the 50 percent accelerated depreciation for property placed in service during 2010 (with some exceptions). In an effort to provide more deductions to small businesses, business owners are now permitted to deduct health insurance costs when calculating self-employment tax for 2010. However, this provision only applies for the first taxable year after Dec. 31, 2009. In addition to deductions for health care, the Act increases the allowable Section 179 expense write-off for certain “qualified property” used in the business to \$500,000 for the 2010 and 2011 tax years and now expands the definition of “qualified property” to include certain real property up to \$250,000.

**T**he Act also provides increased access to capital. Lending limits on Small Business Administration (SBA) loans have been extended to \$5 million for 7(a) loans, \$5.5 million for 504 loans and \$50,000 for microloans. The Act also creates the State Small Business Credit Initiative, which provides for \$1.5 billion in state grants to support small business lending programs. In addition, the Act authorizes the creation of a \$30 billion small business lending fund to provide the Treasury with the ability to purchase certain equity and debt instruments from eligible financial institutions with assets of less than \$10 billion. The lending fund contains performance based incentives designed to ensure that benefited banks lend to small businesses.

Other provisions provide tax benefits with fewer restrictions. For the taxable year beginning in 2010,



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President Barack Obama signs the Small Business Jobs Act on Sept. 27.

allowable deductions for start-up expenditures are increased from \$5,000 to \$10,000. Eligible businesses are now permitted to carryback general business credits for five years (instead of one year) and all types of general business credits can be used to offset Alternative Minimum Tax. Certain penalties and reporting requirements were changed in an effort to promote small business fairness. An amendment to Section 6707A of the Internal Revenue Code (IRC) changes the penalty for failure to properly disclose certain reportable transactions on a tax return to be proportionate to underlying tax savings such that the penalty is now equal to 75 percent of the tax benefit received. The penalty is subject to minimum and maximum amounts. Cell phones were removed from the definition of “listed property,” greatly simplifying deduction requirements for cell phone costs. In an effort to create parity among various government contracting programs, all contracting programs are now considered equal and one contracting program can no longer be given priority over another. Various programs such as Disabled Veterans, Women-Owned Businesses, or HUBZone 8(a) are now given equal priority when competing for federal contracts.

There are also provisions in the Act intended to “reduce the tax gap” for small businesses but are essentially revenue generating provisions. For example, the Act increases penalties for failure to timely file information returns that are required under IRC Section 6721. The minimum penalty for corporations is \$10,000 and \$5,000 for individuals. The Act also revises the penalties under Section 6722 of the IRC for failure to provide correct payee statements to taxpayers. In addition, select rules regarding the right to issue levies for federal tax liabilities owed by certain federal contractors have been revised. The Internal Revenue Service is no longer required to give a collection due process hearing to a federal contractor before it can issue a levy on certain “specified payments,” such as government payments, to a federal contractor who owes taxes.

While the Act was intended to provide badly needed relief to small businesses, many of the provisions are short-lived while others are actually designed to generate revenue rather than benefit small businesses. And the unfortunate truth is that many businesses will not have the opportunity to take advantage of the Act’s benefits before they expire.