

THE O. BERK COMPANY FAMILY BUSINESS FORUM

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TAX ASPECTS OF THE SMALL BUSINESS JOBS ACT OF 2010

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I. Small Business Jobs Act of 2010 (the “Act”)

The Small Business Jobs Act of 2010 became law on September 27, 2010.

II. 100% Exclusion of Small Business Capital Gains

- There is a 100% exclusion from tax on gains from qualified small business stock bought before January 1, 2011.
- To qualify for the 100% exclusion, the stock purchased must be qualified small business (“QSB”) stock.
- This is stock acquired on original issue from a domestic C corporation with gross assets of less than \$50 million, with at least 80% of the value of the assets used in an active trade or business, which is held for 5 years.
- The Act eliminates the AMT preference item attributable to the sale.

III. Built-In Gains Tax

- Generally, when a company converts from a C corporation to an S corporation, it must retain its assets for at least 10 years or pay a 35 percent tax on the built-in-gains that occurred before the company made the conversion.
- The 2009 Recovery Act reduced the holding period to 7 years for assets sold in 2009 and 2010.
- The Act reduces the period to 5 years for an asset sold in the 2011 tax year.

IV. Conversion of 401(k), 403(b) and Governmental 457(b) Plans to Roth Accounts

- The Act allows the conversion of 401(k), 403(b) and governmental 457(b) plans to Roth accounts.

- Unlike a Traditional IRA to Roth IRA conversion, the Act does not provide for recharacterization for a 401(k) to Roth 401(k) conversion.
- ERISA provides certain creditor protection for qualified plans but not IRAs. New Jersey state law does afford protections from creditors for IRAs.

V. Partial Annuitization of Annuity Contracts Allowed

The Act allows an owner of a nonqualified annuity, endowment or life insurance contract to split up the contract, by taking a portion of the benefits as a separate stream of annuity payments while leaving the balance of the contract untouched.

VI. Cell Phones

The Act removes cell phones and similar equipment from the definition of "listed property." Cell phones are no longer subject to the onerous substantiation requirements and special depreciation rules for listed property.

VII. Deduction for Health Insurance Costs

The Act permits self-employed business owners to deduct their family's health insurance expenses from their self-employment tax income in 2010.

VIII. Depreciation

- For 2010 and 2011, the Act increases the first year write-off for business equipment from \$250,000 to \$500,000.
- Up to \$250,000 of the \$500,000 can be taken for leasehold improvements to property.
- The Act extended the 50-percent bonus depreciation allowance for an additional year.

IX. General Business Credit Changes

In 2010, businesses with less than \$50 million in gross receipts would be able to carry back general business credits to offset tax liabilities for five years, and can apply these credits against the AMT.

X. Reporting of Rental Property Expenses

Taxpayers who receive rental income from leasing rental property will be required to file information returns with the IRS and with service providers to report payments of \$600 or more to a service provider in any tax year beginning with 2011.