

# Small Business Jobs Act of 2010 (H.R. 5297)

September 23, 2010

Special Report

## HIGHLIGHTS

- Extended Bonus Depreciation
- Increased Code Sec. 179 Expensing
- 100 Percent Exclusion For Qualified Business Stock
- Code Sec. 6707A Penalty Relief
- Enhanced Start-Up Deduction
- Retirement Savings Incentives
- Rental Expense Payment Information Reporting
- Increased Information Return Penalties
- And More

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## Congress Approves Small Business Bill with \$12 Billion in Tax Incentives

A package of enhanced business tax incentives, as part of a larger Small Business Jobs Act of 2010, H.R. 5297, passed the House on September 23, 2010 by a vote of 237 to 187. The Senate had approved the bill on September 16, 2010 by a vote of 61 to 38. President Obama is expected to sign the bill into law as soon as it reaches the White House.

The small business bill extends bonus depreciation, extends and doubles Code Sec. 179 expensing, provides for 100 percent gain exclusion for qualified small business stock, relaxes the S corp built-in gain conversion rules, extends the carryback period for eligible small business credits to five years, removes cell phones from listed property, enhances the deduction for start-up expenses, provides retroactive Code Sec. 6707A penalty relief, and allows a self-employment FICA tax deduction for 2010 health insurance costs.

Revenue raising provisions to help pay for these tax breaks include a huge first-time opportunity for active participants in 401(k) and other plans to roll over existing balances to a designated Roth account under the plan. Among the revenue provisions that will not be as well received by certain taxpayers are increased failure-to-file penalties on information returns, new information reporting for rental property expense payments, tightened U.S. sourcing on guarantee fees, streamlined tax levies on federal contractors, accelerated estimated tax payments by certain large corporations, and more.

**IMPACT.** *The tax title's "small business" label does not reflect its true scope; its provisions impact businesses of many sizes. Bonus depreciation is one provision*

*that is very valuable to larger businesses. The bill also includes some retirement savings incentives for individuals and other provisions impacting taxpayers beyond small businesses.*

**COMMENT.** *Despite a full plate of tax bills, such as the fate of expiring individual income tax rate cuts, capital gains/dividends tax rate reductions and the federal estate tax, the small business bill may be the last tax bill to pass Congress before the November elections. Many lawmakers are urging House and Senate leaders to recess early, possibly before October 1, so they can return to their home districts to campaign for re-election.*

**PLANNING NOTE.** *Like many recent tax bills, the small business bill provides incentives but does not make most of them permanent. Some have a very short lifespan. For example, enhanced Code Sec. 179 expensing is available for 2010 and 2011; bonus depreciation is generally available only through the end of 2010; and rollovers within 401(k) and other elective deferral plans to designated Roth accounts are entitled to a special two-year tax deferral only if done in 2010.*

## GENERAL BUSINESS INCENTIVES

The small business bill includes a familiar package of tax incentives designed to stimulate business investment and spending.

### Bonus Depreciation

The bill extends, through December 31, 2010, 50-percent first-year bonus deprecia-

tion, which had expired at the end of 2009. The extension is retroactive to January 1, 2010. The bill also extends, through 2011, the additional year of bonus depreciation allowed for property with a recovery period of 10 years or longer, and for transportation property (tangible personal property used to transport people or property).

**IMPACT.** *Bonus depreciation is not limited by the size of the business, unlike practical access to Code Sec. 179 "small business" expensing. The bonus depreciation provision is by far the most expensive single tax break in the bill, weighing in at \$5.4 billion over 10 years, but carrying an initial cost of \$29.5 billion in its first two years because of accelerated depreciation that would otherwise be deducted in later years. Bonus depreciation under the bill carries a very short window of opportunity --- qualifying equipment must be purchased and placed into service on or before December 31, 2010.*

**Long-term contracts.** The bill also decouples bonus depreciation from allocation of contract costs under the percentage of completion accounting method rules for assets with a depreciable life of seven years or less.

**IMPACT.** *This change permits contractors to benefit from bonus depreciation even if they do not complete their contracts within the same year.*

**Code Sec. 280F.** The limitation under Code Sec. 280F on the amount of depreciation deductions allowed with respect to certain passenger automobiles is increased in the first year by \$8,000 for automobiles that qualify and for which the taxpayer does not elect out of the additional first-year deduction. For 2010, therefore, maximum first-year depreciation for passenger automobiles is \$11,060.

### Code Sec. 179 Expensing

Eligible taxpayers may elect to claim a Code Sec. 179 expense deduction on the purchase

price of qualified Code Sec. 179 property. Under current law, the maximum deduction for tax years beginning in 2010 is \$250,000. The dollar limit is reduced by the amount by which the cost of qualifying property placed in service during the tax year exceeds \$800,000. For 2011, the expensing limit had been scheduled to revert to prior levels of \$25,000 and \$200,000, respectively, both not indexed for inflation.

The bill increases the maximum deduction to \$500,000 and the investment limit to \$2 million for tax years beginning in 2010 and 2011.

"The tax title's 'small business' label does not reflect its true scope as its provisions impact businesses of all sizes."

**IMPACT.** *The bill's increase in the qualifying property cap from \$800,000 to \$2 million effectively increases the availability of Code Sec. 179 expensing to many more businesses. Under the bill, the Code Sec. 179 expensing deduction would not phase out completely until the cost of eligible property exceeds \$2.5 million. Perhaps even more important, however, the nontax provisions in H.R. 5297 will serve to open up the credit markets needed by small businesses to find the capital to buy equipment that qualifies for either enhanced Code Sec. 179 expensing or bonus depreciation under the bill.*

**Qualified real property.** The bill also temporarily expands the definition of qualified Code Sec. 179 property to include qualified real property, which is defined as qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property. However, taxpayers are limited to expensing up to \$250,000 of the total cost of these properties. The bill provides

that the dollar cap would apply to the aggregate cost of qualified real property. Further, the bill provides for limitations on the carryover of qualified real property deductions.

**COMMENT.** *A taxpayer may elect to exclude real property from the definition of Code Sec. 179 property. That election might prove useful to certain taxpayers if the regular \$2 million eligible property cap is otherwise close to being reached.*

**COMMENT.** *The bill continues to treat computer software as qualified Code Sec. 179 property that is subject to full Code Sec. 179 expensing otherwise reserved for tangible personal property.*

**COMMENT.** *President Obama had proposed to end what has become the frequent extensions of increased Code Sec. 179 expensing by permanently raising the expensing amount to \$125,000 and the phase-out threshold to \$500,000 for tax years beginning after 2010 (both amounts indexed for inflation). Now that Code Sec. 179 expensing has been raised for 2011 as well as 2010, it is unlikely that Congress will act on a permanent extension of increased Code Sec. 179 expensing before next year.*

### S Corp Built-In Gain Period

A C corporation that converts to an S corporation generally must hold any appreciated assets for 10 years following the conversion or, if disposed of earlier, pay tax on the appreciation at the highest corporate level rate (currently 35 percent). The American Recovery and Reinvestment Act of 2009 (2009 Recovery Act) temporarily shortened the usual 10-year holding period to seven years for dispositions in tax years beginning in 2009 and 2010. H.R. 5297 further shortens the holding period to five years in the case of dispositions in any tax year beginning in 2011, if the fifth year in the recognition period precedes the tax year beginning in 2011.

**IMPACT.** *The built-in gains tax prevents C corporations from avoiding corporate level tax on the disposition of appreciated*

assets it acquired while a C corporation by first converting to S corporation status. The bill offers S corporations more flexibility in shedding historic C corporation assets that either no longer suit business needs or can provide additional capital through their sale to better assure the S corporation's survival during the economic downturn.

**COMMENT.** The five-year period in the bill refers to five calendar years from the first day of the first tax year for which the corporation was an S corporation.

## Cell Phones

The bill removes cell phones and similar personal communication devices from their current classification as listed property under Code Sec. 280F, thereby lifting the strict substantiation requirements of use and the additional limits placed on depreciation deductions. In addition, the provision enables the fair market value of personal use of a cell phone or other similar device provided to an employee predominantly for business purposes to be excluded from gross income.

**IMPACT.** This "listed property" designation was imposed on cell phones when they were novel, expensive, and not widely owned. Today, not only are cell phones widely available and used, but also necessary for doing business. IRS Commissioner Douglas Shulman announced in January 2010 that the IRS would call a temporary halt to enforcing strict substantiation on cell phone use until Congress makes good on its leadership's promise to pass remedial legislation. The bill's relief applies to tax years beginning after December 31, 2009.

## SMALL BUSINESS PROVISIONS

The bill targets a variety of tax incentives exclusively to small businesses, including extended carryback for the general business credit, enhanced AMT offset, and relief from Code Sec. 6707A penalties.

### Extended Carryback Of General Business Credit

The bill extends the carryback period for eligible small business credits to five years. Eligible small business credits are the sum of the general business credits determined for the tax year with respect to an eligible small business. The extended carryback provision is effective for credits determined in the taxpayer's first tax year beginning after December 31, 2009.

**IMPACT.** An eligible small business for purposes of the enhanced general business credit is a corporation whose stock is not publicly traded, a partnership or a sole proprietorship. Additionally, the average annual gross receipts of the corporation, partnership, or sole proprietorship for the prior three tax year periods cannot exceed \$50 million.

**AMT offset.** Under the bill, an eligible small business credit may offset both regular and AMT liability.

### Qualified Small Business Stock

The 2009 Recovery Act temporarily increased the Code Sec. 1202 percentage exclusion for qualified small business stock sold by an individual from 50 percent to 75 percent for stock acquired after February 17, 2009 and before January 1, 2011, and held for more than five years. The bill raises the exclusion to 100 percent for gain on stock acquired after the date of enactment of the bill and before January 1, 2011. Under the bill, the excluded gain will not count as an AMT preference item but the five-year holding period continues to apply.

**IMPACT.** With both the income tax and capital gains rates anticipated to rise in the future, the benefits of an investment in Section 1202 stock become even more substantial as acquired shares are sold in 2015 or later under the five-year holding period rule. Since stock is the key to this benefit, the corporate form of doing business may have a leg up on unincorporated entities in this regard.

**PLANNING NOTE.** To be eligible for the exclusion both prior to and under the bill, the individual must generally acquire the small business stock at its original issue (directly or through an underwriter) for money, for property other than stock, or as compensation for services. When the stock is issued, the aggregate gross assets of the issuing corporation may not exceed \$50 million. In addition, the corporation also must use at least 80 percent of the value of its assets in the active conduct of one or more qualified trades or businesses. The stock or eligible replacement must be held for at least five years.

**COMMENT.** Under Code Sec. 1202 limitations already in place, the amount of gain eligible for the 100 percent exclusion by an individual with respect to any corporation is capped at the greater of (1) 10 times the taxpayer's basis in the stock or (2) \$10 million.

### Code Sec. 6707A Penalty Relief

Taxpayers failing to disclose participation in certain tax shelters are liable for penalties under Code Sec. 6707A. For certain violations, those penalties had netted minimum dollar amounts that, in practice, were draconian to certain small businesses as compared to any claimed tax benefits.

The bill provides a general rule that 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. Regardless of the amount determined under the general rule, the bill specifies that the penalty may not exceed certain maximum amounts (\$10,000 for an individual taxpayer failing to disclose a reportable transaction; \$50,000 for all other taxpayers, \$100,000 for an individual taxpayer failing to disclose a listed transaction; and \$200,000 for all other taxpayers). The bill also provides a minimum penalty of \$5,000 for an individual taxpayer failing to disclose a reportable transaction or



a listed transaction. The minimum penalty for all other taxpayers would be \$10,000.

The relief in the bill applies to Code Sec. 6707A penalties assessed after December 31, 2006.

**IMPACT.** *The change is intended to ameliorate the impact of the penalty on small businesses. At Congressional hearings, small business owners told lawmakers of penalty assessments that vastly exceeded the tax benefits of the transactions, many of which, the small business owners testified, they did not know were tax shelters.*

**IMPACT.** *The retroactive effective date opens up refund opportunities on penalties that the IRS has not otherwise held in abeyance pending this much-anticipated law change. The IRS temporarily stopped collecting Code Sec. 6707A penalties for undisclosed tax shelter transactions starting in June 2009 and extended its forbearance several times. Its latest collections moratorium had officially ended on June 1, 2010.*

**COMMENT.** *A reportable transaction is one that the IRS has determined requires disclosure because it has a potential for tax evasion. A listed transaction is a reportable transaction specifically identified by the IRS as an improper tax avoidance transaction.*

## Start-Up Expense Deduction

Taxpayers have generally been able to deduct up to \$5,000 in qualified trade or business start-up expenses. The \$5,000 deduction is reduced (but not below zero) by the amount of the taxpayer's total start-up costs that exceed \$50,000. The bill raises the deduction limit to \$10,000 and increases the phaseout threshold to \$60,000 for one year, 2010.

**IMPACT.** *Start-up expenses are costs related to creating an active trade or business, or investigating the creation or acquisition of an active trade or business. They are costs not directly related to capi-*

*tal or equipment and have been generally relegated to amortization above the current \$5,000 deductible amount. The increase in the deduction amount is intended to allow entrepreneurs to recover more small business start-up expenses up-front, increasing cash flow and the ability to hire more workers.*

## Self-Employment Income

A self-employed individual can take a deduction for health insurance costs paid for the individual and his or her immediate family for income tax purposes. However, in determining the self-employment income subject to self-employment taxes, the self-employed individual cannot deduct any health insurance costs. Under the bill, the deduction for income tax purposes for the cost of health insurance is allowed in calculating net earnings from self-employment for purposes of self-employment taxes. The provision only applies to the self-employed taxpayer's first tax year beginning after December 31, 2009.

**COMMENT.** *The health insurance business deduction for self-employed individuals was implemented in 1987 and subsequently made permanent. This equalized the treatment of health insurance costs that an employer pays for employees and for self-employed individuals. However, health insurance costs did not reduce wages subject to self-employment taxes. Employees must take health insurance costs as an itemized deduction, but get the benefit of having pre-tax premium contributions reduce the amount of wages subject to FICA. The bill reduces the burden on self-employed individuals.*

**COMMENT.** *The Joint Committee on Taxation noted that it is intended that earned income within the meaning of Code Sec. 401(c)(2) be computed without regards to the deduction for health insurance. Thus, earned income for purposes of the limitation applicable to the health insurance deduction is computed without regard to this deduction.*

## PROMOTING RETIREMENT SAVINGS

The small business bill gives taxpayers a greater number of options for their retirement plan dollars. Two provisions facilitate contributions to designated Roth accounts. A third provision expands the options for nonqualified annuity contracts.

**IMPACT.** *Although these are taxpayer-friendly provisions, they are treated as revenue raisers because they would encourage up-front distributions that are taxable.*

### 457(b) Plan Deferrals

Beginning in 2011, the bill authorizes eligible state and local government 457(b) plans (but not plans of nonprofit organizations) to allow participants to contribute deferred amounts to designated Roth accounts. A similar provision already applies to 401(k) and 403(b) plans and will take effect in 2011 for the federal Thrift Savings Plan.

**IMPACT.** *Contributions to Roth accounts are after-tax, but earnings accumulate tax-free and can be distributed tax-free if contributions are held for five years and certain other requirements are met.*

### 401(k) Rollovers To Roth Accounts

The bill authorizes 401(k), 403(b) and 457(b) governmental plans to allow participants to roll over pre-tax account balances into a designated Roth account within their plans. The rollover will be taxable, except for any after-tax contributions. The provision takes effect immediately upon enactment. If an amount is rolled over in 2010, the amount is included ratably in income in equal amounts over 2011 and 2012, unless the taxpayer elects otherwise.

**IMPACT.** *The ability to report income from the 2010 rollover in 2011 and 2012 echoes existing rules for converting a tradi-*

*tional IRA to a Roth IRA in 2010. Plans and taxpayers may need to move quickly if this provision passes. First, the plan must be amended to permit these roll-overs. Then, participants must act before year-end if they want to take advantage of either the two-year deferral into 2011 or 2012 or lower tax rates in 2010 if Congress does not extend the 2001 individual marginal income tax rate reductions.*

**IMPACT.** *Especially with 401(k) balances still reeling from stock market declines, conversion to Roth accounts now --- while the income to be recognized on those balances upon conversion is still low --- will make immediate conversions highly popular. One drawback, for many taxpayers, however, will be finding the cash to pay the income tax on the conversion. If withdrawn from the plan, a 10 percent early withdrawal penalty in addition to income tax may be incurred on that amount.*

**COMMENT.** *The JCT explained that it is intended that the IRS will provide employers with a remedial amendment period to allow employers to offer this option for distributions during 2010 and then have adequate time to amend their plans.*

## Annuitization

The bill allows an owner of a nonqualified annuity 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. The annuitization period must be for 10 years or more, or for the lives of one or more individuals. Amounts remaining with the contract would continue to accumulate earnings on a tax-deferred basis. The provision would apply to amounts received in tax years beginning after December 31, 2010.

**COMMENT.** *A nonqualified annuity contract is an annuity contract held outside of a qualified retirement plan or an individual retirement account.*

## REVENUE RAISERS

In addition to the \$6.6 billion raised by the retirement-friendly provisions (discussed above), the small business bill offsets the price tag for its \$12 billion in tax relief with some not-so-friendly changes in the name of reducing the tax gap and closing unintended "loopholes."

### Information Reporting On Rental Property Expense Payments

The bill requires qualified individuals receiving rental income from real property to file information returns with the IRS and to service providers reporting payments of \$600 or more during the year for rental property expenses. The new information reporting requirement applies to payments made after December 31, 2010.

**IMPACT.** *Expanded information reporting is a popular revenue raiser in Congress and predictions are that reporting obligations, and their related compliance costs, will more than quadruple for taxpayers if Congress continues on its present course. Reliance by Congress on increased information reporting to provide "quick and easy" revenue offsets worries many tax practitioners and the National Tax-*

*payer Advocate. However, the IRS has promised to remove duplicative reporting where possible.*

**Exceptions.** The bill includes exceptions to the rental property expense reporting requirement, such as exceptions for individuals who can show that the reporting requirement creates a hardship and any individual who receives rental income of not more than a minimal amount (both as will be determined by the IRS). The bill also provides for an exception for members of the military or employees of the intelligence community who rent their principal residence on a temporary basis.

### Higher Failure-To-File Penalties On Information Returns

The bill substantially increases the penalties for failing to timely file information returns with the IRS:

- First-tier penalties (filing an information return after the filing deadline but not more than 30 days after the due date) would increase from \$15 to \$30. The calendar year maximum would increase from \$75,000 to \$250,000.
- Second-tier penalties (filing an information return more than 30 days after it is due but before August 1) would in-

## H.R. 5297: ESTIMATED REVENUE EFFECTS\*

|                           | FY 2011 - 2020 | FY 2011 & 2012  |
|---------------------------|----------------|-----------------|
| Bonus Depreciation        | -\$5.4 billion | -\$29.5 billion |
| Code Sec. 179 Expensing   | -\$2.2 billion | -\$12.7 billion |
| General Business Credit   | -\$1.0 billion | -\$2.4 billion  |
| Small Business Stock      | -\$518 million | -\$2.0 million  |
| Cell Phones               | -\$410 million | -\$54 million   |
| Start-Up Deduction        | -\$230 million | -\$343 million  |
| 6707A Penalty Relief      | -\$176 million | -\$106 million  |
| Cellulosic Biofuel Credit | +\$1.8 billion | +\$1.2 billion  |
| Retirement Savings        | +\$6.6 billion | +\$809 million  |

\* Source: Joint Committee on Taxation, September 16, 2010

crease from \$30 to \$60, and the calendar year maximum would increase from \$150,000 to \$500,000.

- Third-tier penalties (for failing to file before August 1) would increase from \$50 to \$100, and the calendar year maximum would increase from \$250,000 to \$1.5 million.

Penalties for failing to file information returns to payees would similarly increase.

**IMPACT.** *The enhanced penalties would apply to information returns required to be filed on or after January 1, 2011.*

**Intentional failures.** The minimum penalty for each intentional failure-to-file would increase from \$100 to \$250.

**Small filers.** For qualified small filers with average gross receipts of not more than \$5 million, the calendar year maximum would 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.

**COMMENT.** *The dollar amounts in the bill would be adjusted for inflation for each fifth calendar year beginning after 2012.*

## U.S. Sourcing On Guarantees

The bill clarifies the income sourcing rules for guarantee fees. The bill amends Code Sec. 861 to clearly treat amounts received for guarantees of indebtedness as U.S. source income if paid by a U.S. person or by a foreign person where effectively connected to the conduct of trade or business in the U.S.

**IMPACT.** *The bill prospectively overturns the U.S. Tax Court's decision in Container Corp., 134 TC No. 5, CCH Dec. 58,131, holding that, since the guarantee fees were treated as payments for services, the foreign parent was not subject to U.S. tax on them. The bill, rather, treats them as interest payments, whose source is determined by the position of the payor.*

## Levies

Under the bill, the IRS may issue levies before a collection due process (CDP) hearing in cases involving certain federal contractors. The provision applies to levies issued after the date of enactment.

**IMPACT.** *When a levy would be issued before a CDP hearing, it is anticipated that a taxpayer will have the opportunity to be heard at a CDP hearing within a reasonable time after the levy.*

## Cellulosic Biofuel Producer Credit

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. 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. The bill excludes crude tall oil and other corrosive fuels from the cellulosic biofuel producer credit, effective for fuels sold or used on or after January 1, 2010.

**COMMENT.** *Crude tall oil, like black liquor, is a waste product of paper manufacturing.*

## Corporate Estimated Tax Payments

The Hiring Incentives to Restore Employment (HIRE) Act, enacted by Congress in March 2010, increases the estimated tax payments required to be made by corporations with assets of \$1 billion or more in July, August or September 2015 to 121.5 percent of the payment otherwise due. The next required installment is proportionately reduced to reflect the increase. The small business bill raises the percentage under the HIRE Act by 36 points.

**COMMENT.** *On July 27, 2010, President Obama signed H.J. Res. 83, which increases the percentage under the HIRE Act by 0.25 percentage points.*

## PENDING TAX LEGISLATION

### INDIVIDUAL TAX RATE REDUCTIONS

After December 31, 2010, reduced individual income tax rates are scheduled to revert to their pre-2001 levels, with the top rate rising to 39.6 percent. President Obama wants to permanently extend all of the individual rate cuts except for the top two rates. A growing number of lawmakers are calling for a temporary extension, for one or two years, of all the sunseting tax cuts. *For more details about the expiring tax incentives, see the CCH Tax Briefing: Sunsetting Benefits of the Economic Growth and Tax Relief Reconciliation Act of 2001 on CCH's IntelliConnect.*

### TAX EXTENDERS

A package of tax extenders (H.R. 4213), which passed the House earlier this year, has languished in the Senate. Sen. Max Baucus, D-Montana, recently introduced a new tax extenders bill. Baucus' bill would extend a host of popular but temporary tax incentives, such as the state and local sale tax deduction, the teachers' classroom expense deduction, and the higher education tuition deduction, through the end of 2010. Baucus' bill excludes a controversial revenue raiser: the imposition of self-employment taxes on certain shareholders in S corps.

The individual tax rate reductions and tax extenders are not the only tax items on Congress' Fall agenda. The list includes:

### COMPLETE COVERAGE OF SMALL BUSINESS JOBS ACT

For more in-depth analysis of the new tax law, see *CCH's 2010 Small Business Jobs Act: Law, Explanation and Analysis*. The publication is the most comprehensive and practical guidance available to explain the provisions of these enhanced small business tax incentives. The *Law, Explanation and Analysis* is located on CCH's IntelliConnect under Federal Tax, Federal Tax Legislation.

- The federal estate tax;
- Reduced capital gains/dividends tax rates;
- An AMT "patch;"
- Worker classification reform;
- More international tax reforms;
- Energy tax incentives; and
- National disaster relief.

## WHITE HOUSE BUSINESS TAX PROPOSALS

President Obama has proposed allowing qualified businesses to immediately write-off 100 percent of new investments in equipment made through the end of 2011. Generally, current rules provide for a longer period, three to 20 years. The president has also proposed to make permanent the research tax credit, which expired at the end of 2009. Under the president's pro-

posals, the simplified research credit would increase to 17 percent.

**IMPACT.** *Under the president's proposal, qualified taxpayers would be able to immediately write-off business expenses in the first year, enabling taxpayers to lower their taxable income by the full amount of qualified investments.*

**COMMENT.** *President Obama proposed to offset the estimated \$180 billion cost of his proposals by unspecified closings of tax loopholes. The \$180 billion cost means the proposals are unlikely to gain much traction in Congress.*

## INFORMATION REPORTING

The House and Senate have considered but rejected legislation to repeal expand-

ed business information reporting under the Patient Protection and Affordable Care Act (PPACA). Under the PPACA, businesses, charities and state and local governments will file an information return for all payments aggregating \$600 or more in a calendar year to a single provider of goods or services (with some exceptions for tax-exempt payees), for payments made after 2011. The PPACA also repeals the long-standing reporting exception for payments to a corporation, also effective for payments made after 2011.

**COMMENT.** *Stand-alone legislation (S. 3783) to exempt very small businesses and raise the filing threshold to \$5,000 has been introduced in the Senate but is unlikely to be taken up before the November elections.*

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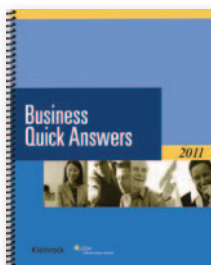


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