TAX BREAKS GOING FAST:
WHAT CAN YOU DO IN 2010 TO TAKE ADVANTAGE OF THE TAX BENEFITS OF THE SMALL BUSINESS JOBS ACT?

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On September 27, 2010, President Obama signed the Small Business Jobs Act of 2010 (the "Act"). As indicated by the title, the purpose of the Act is to spur investment and other economic activity. To encourage businesses and individuals to spend money now, the Act contains certain provisions that only apply to expenses made before the end of the year.

Although not all of the tax provisions are limited to 2010, many of the tax benefit provisions are temporary and expire in 2011 at the latest. To offset the tax cuts, the Act also includes a number of revenue raising provisions. Unlike the cuts, the revenue raising provisions are permanent.

Because of the limited availability of some of the tax benefits, it is important to know which benefits will only be available if you act this year.

Tax Benefits For Expenses Incurred Before The End of the Year

- **Tax Benefits for Investing In a Business In 2010 –** If you have been considering making an investment, these provisions may encourage you to do so.
    - If you purchase stock in a corporation whose gross assets do not exceed $50M, you may be able to sell the stock without paying any taxes on the gain. In order to qualify for the exclusion, you must buy the stock between September 28 and December 31, 2010 and hold onto it for at least 5 years. Also, no amount of the gain will be included in your income for Alternative Minimum Tax purposes (AMT). If you wait until January 1, 2011 to buy the stock, only 50% of the gain will be eligible for the exclusion. Plus, a percentage of the excluded amount will be included in your income for AMT.
    - Up to $10,000 of start-up expenses that you incur in starting a business in 2010 may be deducted. The deduction phases-out if your expenses exceed $60,000. The remaining start-up expenses get amortized over 15 years. If you wait until 2011, you will only be able to deduct $5,000 of start-up expenses in the year the business starts and the phase-out will begin at $50,000.
- **Tax Benefits for Spending Money On Your Business In 2010 –** By spending money on eligible expenses in 2010, you may be able to get refunds for prior years.

    - A corporation, partnership or a sole proprietorship that has average annual gross receipts of $50M or less may carry back its 2010 general business credits up to 5 years and carry them forward up to 24 years. The credits may also be used to offset AMT. Without the benefit of the Act, credits may only be carried back 1 year and carried forward 20 years.

- **Tax Benefits for Buying Depreciable Business Property In 2010 –** These provisions accelerate deductions for depreciable property.

    - You may elect to deduct up to $500,000 of the cost of acquiring depreciable property in 2010 and 2011, subject to a phase-out if you purchase $2,000,000 or more of depreciable property. In 2012, the amount of depreciable property that can be deducted is reduced to $25,000 and the phase out threshold is $200,000.

    - The Act expanded the types of property that can be expensed to include certain types of real property. The costs of acquiring qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property may be deducted by the taxpayer up to $250,000 in 2010 and 2011.

    - You may accelerate the depreciation of 50% of qualified property that you place in service in 2010. Originally, the 50% bonus depreciation expired at the end of 2009.

- **Tax Benefits for Buying Health Insurance in 2010 if you are Self-Employed**

    - If you are self-employed, you will be able to deduct the costs of health insurance from your income that is subject to self-employment tax. The health insurance costs are already fully deductable for income tax purposes. The rate of tax for self-employment taxes in 2010 is 15.3% on income up to $106,800 and 2.9% on income over $106,800. The deduction is available for health insurance purchased for spouses, dependents and children who are under 27.

<u>Other Key Provisions</u>

- **No BIG in 2011 on the sale of Stock in an S Corporation if the BIG asset has been held for 5 years since conversion or acquisition –** If you sell stock in an S corporation in 2011 that has assets that are subject to built-in-gain taxes, the recapture period for imposing the tax is limited to 5 years. If you sell stock in the S corporation after 2011, the recapture period is 10 years.

- **Cell phones and other similar telecommunication property are no longer subject to enhanced substantiation and recordkeeping rules for deduction and depreciation purposes.**

- **Recipients of rental income will be required to report payments of over $600 to service providers on Forms 1099, with limited exceptions.** In the past, if the receipt of rental income was a passive activity it was not considered a trade or business that required the taxpayer to report payments made to service providers.

If you are interested in learning more about these and other tax provisions in the Act, please contact Jessica R. Lubar (jlubar@rosenbergmartin.com 410-727-6600) or any attorney in our tax group:

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