

Small Business Jobs Act, Uncertain Tax Positions, and Federal Energy Grants

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

Summary of Small Business Jobs Act

- Increases Lending to Small Businesses.
- \$12 Billion in Tax Incentives.
 - General Business Incentives.
 - Small Business Provisions.
 - Incentives to Promote Saving.
- Revenue Raisers.
 - Information Reporting.
 - Failure-To-File Penalties.

Lending to Small Businesses

- Up to \$30 billion in investments to small financial institutions with incentives for lending to small businesses.
- Dividend rate banks pay is decreased as small business lending increases.
- \$1.5 billion in grants to support \$15 billion in small business lending through state programs.
- Funds allocated based on state employment data.

Lending to Small Businesses

- Expands access and lowers costs for Small Business Administration (SBA) loans.
 - Eliminates fees charged for SBA 7(a) and 504 loans for 2010;
 - Increases government guarantees on 7(a) loans from 75% to 90% for 2010;
 - Increases 7(a) loan limit from \$2M to \$5M; and
 - Increases 504 loan limit from \$1.5M to \$5.5M.

General Business Tax Incentives

- Bonus Depreciation Extended.
- 179 Thresholds Raised.
- S Corp Built-In Gain Period Reduced.
- Cell Phones Substantiation Loosened.
- First-Year Cap for Depreciation of Autos Increased.

Bonus Depreciation Extended

- 50% first year depreciation.
- Qualifying assets must be **purchased** and **placed in service** on or before 12/31/2010 (12/31/2011 for long recovery period and transportation property).
- Effective retroactively to 1/1/2010.

§ 179 Thresholds Raised

- Increases maximum deduction to \$500,000 and the investment limit to \$2M for 2010 and 2011.
- “Qualified real property” temporarily eligible.
 - Qualified leasehold improvements, qualified restaurant improvements, and qualified retail improvements.
 - Limited to \$250,000 in aggregate.
 - Limitations on carryover.

S Corp Built-In Gain Period Reduced

- Prior law: BIG taxed at highest corporate rates for sales of appreciated assets within 10-year period following conversion.
- New law:
 - 7-year period for dispositions in 2009 and 2010.
 - 5-year period for dispositions in 2011.

Cell Phone Usage Substantiation

- Cell phones are no longer “listed property”.
 - No longer subject to strict substantiation requirements.
 - Personal use of cell phone provided primarily for business purposes can be excluded from gross income.
- For tax years beginning after 12/31/09.

First-Year Cap for Depreciation of Autos Increased

- First-year automobile deduction cap increased by \$8,000.
 - From \$3,060 to \$11,060 for autos;
 - From \$3,160 to \$11,160 for light trucks or vans.
- Applies to new vehicles acquired and placed in service in 2010.

Small Business Tax Incentives

- General Business Credit.
- Exclusion of Gain on Qualified Small Business Stock.
- 6707A Penalty Relief.
- Start-Up Expense Deduction Thresholds Raised.
- Self-Employment Income Deductions.

General Business Credit

- Limited to “eligible small business”
 - Non-publicly traded corporation, partnership, or sole proprietorship;
 - Average annual gross receipts of \$50M or less for the prior three tax periods.
- 5-year carryback period.
- The *whole* credit can offset AMT.
- For tax years beginning after 12/31/2009.

Exclusion of Gain on Qualified Small Business Stock

- 100% exclusion of gain on sale of § 1202 stock acquired after 9/27/2010 and before 1/1/2011 held for more than 5 years.
 - Capped at greater of (1) 10x basis; or (2) \$10M.
- § 1202 stock:
 - Aggregate gross assets of \$50M or less; and
 - 80% of assets used in the active conduct of a qualified trade or business.
- Not an AMT preference item.

§ 6707A Penalty Relief

- Penalties for non-disclosure of tax shelters is **lower** of:
 - 75% of the resultant decrease in tax; or
 - Applicable cap amount.
 - Reportable transaction:
 - \$10,000 for individuals;
 - \$50,000 for other taxpayers.
 - Listed transaction
 - \$100,000 for individuals;
 - \$200,000 for other taxpayers.

§ 6707A Penalty Relief (cont'd)

- But there is also a minimum penalty amount:
 - \$5,000 for individuals;
 - \$10,000 for other taxpayers.

Start-Up Expense Deduction Thresholds Raised

- Deduction limit temporarily raised to \$10,000 (from \$5,000).
- Phaseout threshold temporarily raised to \$60,000 (from \$50,000).
- Only for 2010.

Self-Employment Income

- Health insurance costs paid for self-insured individual and immediate family is temporarily deductible for self-employment tax purposes.
- Only applies to the first tax year beginning after 12/31/09.

Incentives to Promote Saving

- 457(b) Plan Deferrals.
- Rollovers to Roth Accounts.

457(b) Plan Deferrals

- 457(b) plan participants will be able to contribute deferred amounts to designated Roth accounts.
- Effective in 2011.

Rollovers to Roth Accounts

- 401(k), 403(b) and 457(b) plan participants can rollover into designated Roth accounts.
- Taxable except for after-tax contributions.
- For 2010 rollovers, income included in equal amounts in 2011 and 2012.
- Effective for distributions after 9/27/10.

Revenue Raisers

- Information Reporting on Rental Property Expense Payments.
- Failure-To-File Penalties on Information Returns Increased.

Information Reporting on Rental Property Expense Payments

- Real property lessors will be required to report payments of \$600 or more made for rental property expenses.
- Effective for payments made after 12/31/10.
- Exceptions:
 - Temporary rental of principal residence;
 - Rental income not in excess of TBD amount;
 - If reporting creates a hardship.

Failure-To-File Penalties on Information Returns Increased

- Substantial increase to failure-to-file penalties for information returns.
 - First-tier (≤ 30 days late): \$30 (from \$15) with calendar year cap of \$250k (from \$75k).
 - Second-tier (> 30 days, but before Aug. 1): increases from \$30 to \$60; calendar year cap increases from \$150k to \$500k.
 - Third-tier (Aug. 1 or later): increases from \$50 to \$100; calendar year cap increases from \$250K to \$1M.

Reporting of Uncertain Tax Positions (“UTPs”)

Uncertain Tax Positions

- FIN 48.
- Uncertain tax positions (“UTPs”) must be reported in 2010.
 - For now, only applies to large corporations.
- Schedule UTP
 - Original draft released 4/19/2010 (Ann. 2010-30).
 - Final draft released 9/24/2010 (Ann. 2010-75 and 2010-76).

Schedule UTP

- 5-year phase-in.
 - 2010 – corps with total assets of \$100M or more;
 - 2012 – corps with total assets of \$50M or more;
 - 2014 – corps with total assets of \$10M or more.
- IRS to decide whether to include other taxpayers (passthroughs and tax-exempts) from 2011 on.

Schedule UTP (cont'd)

- No reporting of maximum tax adjustment.
 - Rank positions based on reserve recorded; and
 - Designate positions that exceed 10% of reserve.
- Description of rationale and nature or uncertainty not required.
 - Concise description of tax position, including relevant facts.

Schedule UTP (cont'd)

- No reporting of administrative practice tax positions.
- Consistency between Sch. UTP and financial statement reserve reporting.
 - Immaterial positions under financial accounting standards need not be reported; and
 - Sufficiently certain positions for which no reserve is required need not be reported.

Schedule UTP (cont'd)

- Coordination with other forms.
 - Disclosure of a position on Sch. UTP will be treated as if also disclosed on a Form 8275 or 8275-R.
 - For transactions other than reportable transactions, disclosure on Sch. UTP will be treated as satisfying IRC § 6662(i) disclosure requirements (regarding noneconomic substance transactions).

Schedule UTP (cont'd)

SCHEDULE UTP (Form 1120)

Department of the Treasury
Internal Revenue Service

Uncertain Tax Position Statement

▶ File with Form 1120, 1120-F, 1120-L, or 1120-PC.
▶ See separate instructions.

OMB No. 1545-0123

2010

Name of entity as shown on page 1 of tax return

EIN of entity

This Part I, Schedule UTP (Form 1120) is page _____ of _____ Part I pages.

Part I **Uncertain Tax Positions for the Current Tax Year.** See instructions for how to complete columns (a) through (f). Enter, in Part III, a description for each uncertain tax position (UTP).

Check this box if the corporation was unable to obtain information from related parties sufficient to determine whether a tax position is a UTP (see instructions) ▶

(a) UTP No.	(b) Primary IRC Section (e.g., "61", "108", etc.)			(c) Timing Codes (check if Permanent, Temporary, or both)		(d) Pass-Through Entity EIN	(e) Major Tax Position	(f) Ranking of Tax Position
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				<input type="checkbox"/>	<input type="checkbox"/>	-	<input type="checkbox"/>	

Schedule UTP (cont'd)

Schedule UTP (Form 1120) 2010

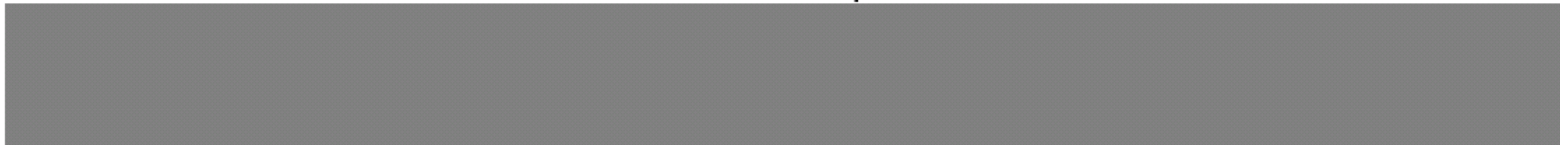
Page **2**

Name of entity as shown on page 1 of tax return

EIN of entity

This Part II, Schedule UTP (Form 1120) is page [redacted] of [redacted] Part II pages.

Part II **Uncertain Tax Positions for Prior Tax Years. Do not complete for 2010.**



(a) UTP No.	(b) Primary IRC Section (e.g., "61", "108", etc.)	(c) Timing Codes (check if Permanent, Temporary, or both)	(d) Pass-Through Entity EIN	(e) Major Tax Position	(f) Ranking of Tax Position	(g) Year of Tax Position
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Cash In Lieu of Energy Property Credits (section 1603 of ARRA)



Federal Credit for Specified Energy Property

- For specified energy property, the IRC grants a credit of 30% of the basis of property placed in service – generally nonrefundable credit BUT:
- Treasury will **pay cash** in lieu of credits (“ARRA section 1603” program)
 - Can apply after construction is done; payment 60 days thereafter
 - Federal law allows the grant amount to be assigned to a lender
- There is a deadline



Dec. 31, 2010 Deadline

- **Deadline:** Must start construction in 2010
 - Physical construction begun, OR
 - 5% of total project cost has been spent (“safe harbor rule”)



Safe Harbor Rule

- Money spent on preliminary work (permitting, design, surveying, etc.) *does not count*
- Maybe you can't start physical construction, but you can buy solar panels
 - Payment to the panel manufacturer counts if:
 - You receive delivery,
 - You assume risk of loss, or
 - You reasonably expect to receive delivery in 3.5 months
 - It might not count if you can return the panels for a full refund without penalty



Safe Harbor Rule

- Note that the 5% is judged via 20-20 hindsight
 - Example: \$1 million contract; \$50K is spent in Dec. 2010 to buy panels
 - March 2011: Change order adding \$100,000 to the contract
 - Contract price is now \$1.1 million, and the 5% safe harbor is not met!



Accountants' Certification Requirement

- Required for any ARRA §1603 grant application with a project cost of \$500K or greater
 - If project cost is \$500K but grant amount < \$1M an “Agreed Upon Procedures Report” is required
 - If grant amount is \$1M or more (for PV, project cost > \$3.3M) an attestation (“audit”) is required
- Required irrespective of who applies for the ARRA §1603 grant (i.e., AOA, or investor group under PPA)

Questions?

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