NEW JERSEY DIVISION OF TAXATION
REGULATORY SERVICES BRANCH
TECHNICAL ADVISORY MEMORANDUM

TAM - 2011- 12 **ISSUED: 2-5-11**

TAX: CORPORATION BUSINESS TAX

TOPIC: SMALL BUSINESS JOBS ACT OF 2010

On September 27, 2010, President Obama signed into law the Small Business Jobs Act of 2010, or H.R. 5297(SBJA). The Act contains tax incentives for all businesses. Such incentives include expanded Section 179 expensing, an extension of bonus depreciation under Section 168(k), an enhanced Section 195 start-up deduction, and an exclusion of cell phones from Section 280F.

Section 2021 of the SBJA expands Internal Revenue Code (IRC) Section 179 to include certain improvements to real property, and increases the first year write off for business equipment under IRC Section 179 to $500,000 and raise the cap that triggers eligible expenditures that triggers phase-out to $2 million. Pursuant to P.L. 2002, c. 40, signed into law on July 2, 2002, New Jersey does not conform to the new deduction limit and phase-out in Section 179. The deduction limit and phase-out for New Jersey purposes are the same as the IRC Section 179 in effect on December 31, 2002. N.J.S.A. 54:10A-4(k)(13)(A). The deduction limit claimed as cost expense pursuant to Section 179 is $25,000; N.J.A.C. 18:7-5.2(a)1xxi. The only property that the Section 179 expensing would be allowed for is such property of the type that was allowed by IRC Section 179 on December 31, 2002. N.J.S.A. 54:10A-4(k)(13)(A). Therefore, New Jersey does not conform to Section 2021 of the SBJA relating to IRC Section 179. The adjustments to be made can be found in Schedule S Part II(B) of the New Jersey CBT-100 return.

Section 2022 of the SBJA restores the 50% bonus depreciation in IRC Section 168(k) and IRC Section 1400L retroactively to January 1, 2010 for property placed into service before December 31, 2010 or December 31, 2011 for certain kinds of property. Pursuant to P.L. 2002, c. 40, signed into law on July 2, 2002, New Jersey disallowed the use of Section 168(k) and Section 1400L bonus depreciation for privilege periods beginning January 1, 2002. N.J.S.A. 54:10A-4(k)(12)(A); N.J.A.C. 18:7-5.2(a)2iv. Property placed in service after September 10, 2001 will not receive the bonus depreciation treatment. The depreciation deduction allowed pursuant to Section 167 shall be determined according to the provisions of the IRC effect on December 31, 2001. Therefore, New Jersey does not conform to the provisions of Section 2022 in the SBJA related to bonus depreciation. The adjustments to be made can be found in Schedule S Part II(B) of the New Jersey CT-100 return.

For tax year 2010 only, Section 2031 on the SBJA increased the IRC Section 195 qualified trade or business start-up expenses from $5,000 to $10,000. The $10,000 deduction is reduced by the amount of total start-up costs that exceeds $60,000. For New Jersey Corporation Business Tax (CBT) purposes, entire net income is deemed prima facie to be equal in amount to the taxable income, before and net operating loss deduction and special deductions, which the taxpayer is required to report for federal tax purposes with the exclusion of certain specific items in N.J.S.A. 54:10A-4(k). New Jersey conforms to IRC Section 195 and therefore follows the expense allotments and limitations in Section 2031 of the SBA.

Section 2403 of the SBJA removed cell phones and other similar devices provided by an employer to an employee for business purposes, from IRC Section 280F beginning after December 31, 2009. This allows the fair market value of the personal use of such devices to be excluded from gross income, eliminates the strict substantiation requirements for the devices, and eliminates certain restrictions placed on depreciation deductions. For CBT purposes, entire net income is deemed to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report for federal tax purposes with the exclusion of certain specific items in N.J.S.A. 54:10A-4(k). Taxpayers must recalculate depreciation because bonus depreciation, the IRC Sec. 179 expense deduction, safe-harbor lease transactions, and depreciation for property placed in service prior to 1993 are among those items that are treated differently in accordance to N.J.S.A. 54:10A-4(k). Therefore, pursuant to Section 2043 of the SBJA, cell phones and similar devices are no longer listed property for New Jersey CBT purposes. Depreciation on cell phones is to be taken in such a manner allowed pursuant to N.J.S.A. 54:10A-4(k). The amount of the difference in depreciation is computed on Schedules S of the CBT-100 return.

Note that there were subsequent additional charges made by the Tax Relief Act of 2010 to IRC Section 168(k), IRC Section 1400L, and IRC Section 179. These will be addressed in a separate Advisory Memorandum.

Note: A Technical Advisory Memorandum (“TAM”) is an informational statement of the law, regulations, or Division policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions or changes in Division policies could affect the validity of the information presented in a TAM.