



The American Jobs Creation Act of 2004

November 2004

The American Jobs Creation Act of 2004 was recently signed into law. It is a complex tax bill that brings with it a host of tax changes that affect both businesses and individuals.

Highlights of the Provisions Relating to Businesses

- When fully phased in, eligible domestic manufacturers will be able to deduct 9% of the lesser of their qualified production activities income or their taxable income. The deduction phases in -- it's a 3% deduction in 2005 and 2006, a 6% deduction from 2007 through 2009, and a 9% deduction in 2010 and thereafter.
- The Section 179 election to expense certain depreciable business assets has been extended for two additional years (through taxable years beginning before 2008).
- For transactions after 2004, the Extraterritorial Income Act tax regime is repealed, and transition rules are provided for parties bound by existing contracts. Foreign corporations that have elected to be treated as U.S. corporations pursuant to the ETI provisions may revoke their elections, generally without the recognition of gain or loss.
- For taxable years beginning after December 31, 2008, the Act provides an election

to change the method under which the interest expense of domestic taxpayers is allocated and apportioned between domestic and foreign sources.

- For S corporations, beginning after December 31, 2004, the Act allows members from up to six generations of a family to elect to be treated as one shareholder for purposes of counting shareholders. In addition, S corporations will be allowed to have up to 100 shareholders (old limit was 75).
- Beginning on January 1, 2005, the IRS is authorized to provide relief in the case of certain invalid qualified subchapter S subsidiary elections and inadvertent terminations of S elections.
- For bonds issued after September 30, 2009, the Act decreases the amount of prior capital expenditures which are taken into account in determining whether a purported qualified small issue bond satisfies the \$10 million limitation.
- The portion of the cost of a sport utility vehicle (having a gross vehicle weight between 6,000 and 14,000 pounds) that may be expensed has been reduced from \$100,000 to \$25,000. Pick-up trucks and delivery vans are excluded from the definition of SUV.



Tax Group

Archer & Greiner's Tax Group comprises attorneys from the firm's Corporate and Litigation Departments.

Members of the Group have experience in a full array of issues facing taxpayers today - from business issues to employee benefits and executive compensation to trust, estate and wealth transfer planning.

Group Members

Gordon F. Moore, II Esquire (Chair)

L. Gerald Rigby, Esquire

Frances A. McElhill, Esquire

Peter Fascia, Esquire

Ryan J. Lehrfeld, Esquire

The American Jobs Creation Act contains a number of provisions relating to executive compensation and employee benefits. Those are the subject of a separate, forthcoming Client Alert. If you would like further information on the Act or on how our firm can assist you in addressing tax issues, please contact Gordon F. Moore, II Esquire at 856-354-3087.

- Certain leasehold improvements and restaurant property placed in service after October 22, 2004 and prior to 2006 are now classified as fifteen-year property (straight line method) for depreciation purposes.
- The Act provides an exclusion from the duty to withhold social security taxes on the transfer of shares of stock, after October 22, 2004, pursuant to the exercise of an incentive stock option or under employee stock purchase plans.
- If a partnership transfers a capital or profits interest to a creditor in satisfaction of a partnership debt, the partnership is now required to recognize cancellation of indebtedness income equal to the excess of the amount of the debt over the fair market value of the partnership interest transferred to the creditor.
- Affirmative reporting requirements are imposed with respect to taxable mergers and asset acquisitions by corporations.
- The Act provides for consistency in the deductibility and amortization of start-up and organizational expenses.

Highlights of the Provisions Relating to Individuals

- Effective after December 31, 2003, and before January 1, 2006, the Act gives individuals who itemize deductions a choice of deducting either their state and local income taxes or their

state and local sales taxes (useful in states without income taxes).

- The Act not only imposes stiff penalties on taxpayers who do not report all required information with respect to reportable transactions or listed transactions, but increases the substantial understatement penalty from 20% to 30% for actual understatements of tax related to those transactions.
- The Act extends the statute of limitations for the assessment and collection of taxes for taxpayers who fail to disclose information which is required to be shown on a return with respect to a listed transaction.
- The confidentiality privilege between a tax practitioner and a taxpayer no longer applies to written communications concerning the taxpayer's participation in a tax shelter.
- Deductions for charitable contributions of intellectual property are now limited to the lesser of a taxpayer's basis in the property or its fair market value. Additional charitable contribution deductions with respect to the contributed intellectual property are allowed in the year of contribution and subsequent years equal to a specified percentage of the income received or accrued by the donee with respect to the property, and donees must now file information returns reflecting the income attributable to that property (and provide copies of same to the donor).
- After December 31, 2004, the charitable contribution deduction for the donation of a motor vehicle, boat or airplane with a claimed value in excess of \$500 will be limited to the gross proceeds received by the charitable organization on its sale of the donated property, and the donee must provide a written certification with respect to the gift.
- The Act imposes increased donor reporting and substantiation requirements for contributions of certain non-cash property - descriptions of the property and appraisals are now required to be filed with the return, depending on the amount of the claimed deduction.
- Individuals now face a civil penalty of up to \$10,000 (\$100,000 if willfulness is involved) if they fail to report their interests in foreign financial accounts.
- The Act allows an above-the-line deduction for attorney's fees and court costs incurred in connection with a recovery under an unlawful discrimination claim, effective for judgments and settlements occurring after October 22, 2004.
- The Act provides that the \$250,000 exclusion (\$500,000 for joint filers) of gain from the sale of a principal residence does not apply if the residence was acquired in a like-kind exchange within the prior five years.