

December 2004

The tax attorneys at Lindabury provide a full complement of services in virtually all types of tax matters for individuals, partnerships, family businesses including privately-held corporations, charitable organizations, and publicly-owned corporations.

The firm's practice includes tax planning, as well as representation before the Internal Revenue Service, Federal and State tax courts, county boards of taxation, and various other state and local tax authorities.

New Jersey Office
P. O. Box 2369
53 Cardinal Drive
Westfield, NJ 07091
908-233-6800
Fax 908-233-5078
info@lindabury.com

New York Office
Suite 2300
26 Broadway
New York, NY 10004
212-742-3390
Fax 212-269-5016
info@lindabury.com

www.lindabury.com

FIFTIETH ANNIVERSARY

1954  2004

Key Provisions of the American Jobs Creation Act of 2004

By Robert S. Schwartz

The American Jobs Creation Act of 2004 (October 22, 2004) makes significant changes to U.S. federal tax laws. While some of these changes increase the tax burden to taxpayers, most provide tax decreases. We briefly discuss a few of the Act's provisions below. As with any significant changes in the tax code, we recommend you consult your tax attorney or accountant to learn more about how these changes might affect you or your business.

1. **A qualified production income deduction is allowed for qualified production activities undertaken in the U.S.** The deduction equals the amount in excess of the taxpayer's "domestic production gross receipts" less the sum of the cost of goods sold allocable to such gross receipts; other deductions, expenses or losses directly allocable to such gross receipts, plus a ratable portion of other deductions, expenses and losses not directly allocable to such gross receipts.

"Domestic production gross receipts" means gross receipts that are derived from any lease, rental, license, sale, exchange or other disposition of "qualifying production property" (tangible personal property, any computer software and any sound recordings) that has been manufactured, produced, grown or extracted by the taxpayer in whole or in significant part within the U.S. It also includes any "qualified film"; electricity, natural gas, or potable water produced by the taxpayer in the U.S.; construction performed in the U.S.; or engineering or architectural services performed in the U.S. for construction projects located in the U.S. **over (➡)**



Robert S. Schwartz provides advice and counsel to companies, organizations and individuals regarding corporate, business and tax matters. He is currently the Chair of the Tax Section of the New Jersey State Bar Association. He can be reached at rschwartz@lindabury.com.



- Deduction is available to all taxpayers, including proprietorships, C or S corporations, partnerships, limited liability companies and cooperatives.
 - Deduction amounts: 3% in 2005, 2006; 6% in 2007-2009; 9% thereafter.
 - Deduction is limited to 50% of the W-2 wages of the employer for the taxable year.
 - Deduction is also allowed for purposes of the alternative minimum tax (“AMT”).
2. **More non-publicly traded corporations qualify as S corporations.** For example, the maximum number of eligible shareholders has increased from 75 to 100, and family members will now be treated as one shareholder.
 3. **Small businesses can continue to deduct approximately \$100,000 per year** of the cost of purchasing qualifying depreciable property placed in service through December 31, 2007.
 4. **Congress has adopted stricter rules for the deferral of income from executive deferred compensation plans.**
 - Effective for amounts deferred on or after January 1, 2005, all amounts deferred under a deferred compensation plan are includible in gross income, on a current basis, to the extent they are not subject to substantial risk of forfeiture (as defined by IRC 83), unless new specific requirements are met.
 - Transfers of funding assets to foreign trusts as part of deferred compensation arrangements result in those assets becoming taxable to the participants.
 - The new requirements do not apply to plans or arrangements that comply with the tax law prior to the change and that are not “materially modified” after October 3, 2004 with respect to amounts deferred before January 1, 2005.
 5. **The U.S. shareholder of a controlled foreign corporation may elect to deduct 85% of a one-time, extraordinary cash dividend** paid by its controlled foreign corporations and reinvested in the U.S. pursuant to a written plan.
 6. **Individuals may deduct attorney fees and court costs paid in connection with their lawsuits for discrimination**, employment related wrongs and other enumerated lawsuit varieties not involving physical injury or death, but the deduction claimed for these expenses paid may not exceed the settlement or judgment amount included in gross income for the year of the deduction. The deduction is not an AMT preference item.
 7. **Foreign tax credit rules have been changed to alleviate tax complexities for U.S. companies doing business overseas.** For example, foreign tax credit baskets will be reduced from nine to two in 2006 and foreign tax credits may now offset 100% (up from 90%) of the AMT.
 8. **Taxpayers can deposit cash with the IRS in order to stop accrual of tax underpayment interest** while disputing in good faith with the IRS with respect to an unassessed taxes imposed by subtitle A (income taxes), subtitle B (gift and estate tax), Chapter 41 (taxes on prohibited lobbying), Chapter 42 (foundation punitive taxes), Chapter 43 (qualified plan punitive taxes) and Chapter 44 (REIT and RIC excise taxes).
 9. **Private collection agencies may now be used by the IRS.** These agencies must enter into collection contracts with the IRS that incorporate the limitations of Fair Debt Collection Practices Act and the Internal Revenue Code affecting collection activities.

The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Bob Schwartz at rschwartz@lindabury.com.

