



2010 SMALL BUSINESS JOBS ACT  
CHANGES TO CODE SECTION 179 EXPENSING  
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Generally, when a business purchases property which has a useful life of more than a year, the cost of the equipment is depreciated over the useful life of the asset. Internal Revenue Code Section 179 is an exception to that rule which allows a business to immediately expense the property in the year of purchase.

*Qualified 179 Property.* Prior to the 2010 Small Business Jobs Act<sup>1</sup>, property which qualified under this exception included property which was tangible; which was section 1245 property (as defined in Section 1245(a)(3)); and which was acquired by purchase for use in the active conduct of a trade or business (i.e. machinery and equipment, furniture and fixtures, most storage facilities and single-purpose agricultural or horticultural structures). It also included computer software described in Section 197(e)(3)(A)(i) of to which Section 167 applied and which was placed in service in a taxable year beginning after 2002 and before 2011. The 2010 Small Business Jobs Act amended Section 179 of the Internal Revenue Code to allow the computer software eligible property currently allowed in the Code, to continue to be eligible through December 31, 2011. The new law also expanded the definition of qualified 179 property to include “qualified real property” which is defined as qualified leasehold property, qualified restaurant property, and qualified retail improvement property.

*Deduction and Limits.* Prior to the 2010 Small Business Jobs Act, the aggregate amount a taxpayer could deduct in any taxable year was set at \$250,000 for the taxable years beginning in 2010 and \$25,000 for taxable years beginning in 2011 and thereafter. The dollar limit was reduced by the amount by which the cost of qualifying property placed in service during the year exceeded \$800,000 in the case of taxable years beginning in 2010 and \$200,000 for taxable years beginning in 2011 and thereafter. Under the 2010 Small Business Jobs Act, now taxpayers can deduct up to \$500,000 in qualified 179 property for taxable years beginning in 2010 and 2011 and the phase-out of this deduction doesn’t start until a taxpayer has placed \$2 million worth of qualifying property into service. Also, under the new law, qualified real property is limited to the expensing of up to \$250,000 of the total cost of those properties.

The impact of this change is that businesses will be able to expense a greater amount in the year qualified property is placed into service, thus, helping to lower the tax bill in the year it is expensed under Section 17. Also, more businesses will be able to use this expensing method than before due to the increase in the phase-out limitations of this Section.

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<sup>1</sup> Small Business Jobs and Credit Act of 2010, H.R. 5297, Section 2021 (111th Congress, 2010).

## **2010 SMALL BUSINESS JOBS ACT CHANGES TO BONUS DEPRECIATION**

Bonus depreciation is an additional amount of deductible depreciation that is awarded above and beyond what would normally be available in a given year. It is taken right away, in the first year that the depreciable item is placed into service.

Prior to the 2010 Small Business Jobs Act<sup>1</sup>, there was a bonus depreciation deduction under Internal Revenue Code Section 168(k) for certain qualified property acquired in 2008 and 2009. This deduction allowed taxpayers to deduct 50% of the cost of an asset purchase in the year of purchase, with the remaining 50% to be depreciated under the normal depreciation rules. Qualified Property included property which (i) had a recovery period of 20 years or less, (ii) which was computer software for which a deduction was allowed under Section 167(a), (iii) was water utility property, or (iv) was qualified leasehold improvement property. Under the 2010 Small Business Jobs Act, the 50% bonus deduction is extended for such property purchased and placed into service before January 1, 2011.

Prior to the new law, the Section also allowed bonus depreciation in 2010 for qualified property which was acquired by taxpayers in 2008 and 2009 but not placed into service until 2010 to be allowed a 50% deduction, for transportation property or property which had a recovery period of at least 10 years. The new 2010 Small Business Jobs Act also extends this one additional year for such qualified property placed into service during 2011.

The impact of this change is that businesses will be able to expense a greater amount of depreciation in the year qualified property is placed into service, thus, helping to lower the tax bill in the year it is expensed under Section 168. Taxpayers only have until December 31, 2010 to acquire such property and to utilize the benefits of this change.

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<sup>1</sup> Small Business Jobs and Credit Act of 2010, H.R. 5297, Section 2022 (11th Congress, 2010).

## **2010 SMALL BUSINESS JOBS ACT CHANGES TO REPORTING REQUIREMENTS**

Under Internal Revenue Code Section 6041, all persons engaged in a trade or business and making payments in the course of such trade or business to another person of rent, salaries, wages, compensations, or other fixed or determinable gains, profits, and income of \$600 or more in any taxable year, shall submit an information return to the Internal Revenue Service setting forth the amount of such gains, profits and income and the name and address of the recipient of such payment. Under the 2010 Small Business Jobs Act<sup>1</sup>, the definition of persons engaged in a trade or business is expanded to include any person receiving rental income from real estate after December 31, 2010, but excludes individuals who are active members of the uniformed service or an employee of the intelligence community if rental income is derived from renting the principal resident on a temporary basis.

This new law effectively opens the information reporting requirements up to private individuals who own rental property. Beginning in 2011, all individuals who receive rental income, will be required to file information returns with the IRS for expenditures they make on that property valued over \$600 for the year and will be subject to penalties for failure to file such returns.

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<sup>1</sup> Small Business Jobs and Credit Act of 2010, H.R. 5297, Section 2101 (11th Congress, 2010).

**2010 SMALL BUSINESS JOBS ACT  
INCREASES IN IRS PENALTIES**

*Failure to File Penalties.* The 2010 Small Business Jobs Act<sup>1</sup> increases the failure to file an information return penalties as indicated below:

**Prior to 2010 Small Business Jobs Act**

	File within 30 Days of Required Filing Date	File Prior to August 1 of Calendar Year in which Required Filing Date Occurs	File after August 1 of Calendar Year in which Required Filing Date Occurs
Penalty per occurrence	\$15	\$30	\$50
Limit per Taxpayer per Calendar Year (Taxpayers with \$5 million or more in Gross Receipts)	\$75,000	\$150,000	\$250,000
Limit per Taxpayer per Calendar Year (Taxpayers with Less than \$5 million in Gross Receipts)	\$25,000	\$50,000	\$100,000

**After 2010 Small Business Jobs Act**

	File within 30 Days of Required Filing Date	File Prior to August 1 of Calendar Year in which Required Filing Date Occurs	File after August 1 of Calendar Year in which Required Filing Date Occurs
Penalty per occurrence	\$30	\$60	\$100
Limit per Taxpayer per Calendar Year (Taxpayers with \$5 million or more in Gross Receipts)	\$250,000	\$500,000	\$1,500,000
Limit per Taxpayer per Calendar Year (Taxpayers with Less than \$5 million in Gross Receipts)	\$75,000	\$150,000	\$250,000

<sup>1</sup> Small Business Jobs and Credit Act of 2010, H.R. 5297, Section 2102 (11th Congress, 2010).

The 2010 Small Business Jobs Act also increases the base penalty in cases of intentional disregard from \$100 to \$250 per occurrence.

*Failure to Furnish Correct Payee Statement Penalties.* Failure to furnish a payee statement on or before the date prescribed to the person to whom such statement is required to be furnished, and any failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information is subject to penalties under Internal Revenue Code Section 6722. Prior to the 2010 Small Business Jobs Act, the penalty for such failure was \$50 per occurrence with a limit of \$100,000 per taxpayer during any calendar year. The only other penalty that existed was a minimum of \$100 penalty per occurrence for an intentional disregard of the filing. Under the new law, a new structure of penalties exists as shown below:

**After 2010 Small Business Jobs Act**

	File within 30 Days of Required Filing Date	File Prior to August 1 of Calendar Year in which Required Filing Date Occurs	File after August 1 of Calendar Year in which Required Filing Date Occurs
Penalty per occurrence	\$30	\$60	\$100
Limit per Taxpayer per Calendar Year (Taxpayers with \$5 million or more in Gross Receipts)	\$250,000	\$500,000	\$1,500,000
Limit per Taxpayer per Calendar Year (Taxpayers with Less than \$5 million in Gross Receipts)	\$75,000	\$200,000	\$500,000

The new law also allows for an exception to the penalty for a limited number of failures per taxpayer in cases which the payee provided the payee statement but merely included incorrect information and correct such information prior to August 1 of the calendar year in which the required filing date occurs. The 2010 Small Business Jobs Act also increases the base penalty in cases of intentional disregard from \$100 to \$250 per occurrence.