The Bankler Report

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INTRODUCTION

On October 22, 2004, President Bush signed the American Jobs Creation Act of 2004 into law (date of enactment). Its purpose was to bring the U.S. into compliance with the World Trade Organization's interpretation of various international trade agreements. The law exceeds 600 pages. The following is a summary of the provisions that may impact clients and business associates of Steven Bankler.

BUSINESS PROVISIONS

Incentive for U.S. Production Activities

The new law provides a new deduction equal to the lesser of (1) a percentage of the qualified production activities income (QPAI) of the taxpayer for the tax year, or (2) the taxpayer's taxable income for the year. The eligible percentage of QPAI would be calculated as follows:

Percentage of QPAI	Tax Years
3%	2005 through 2006
6%	2007 through 2009
9%	2010

Generally, QPAI would be equal to the excess (if any) of the taxpayer's domestic production gross receipts for such tax year over the sum of (1) the cost of goods sold that are allocable to such receipts; (2) other deductions, expenses or losses directly allocable to such receipts; and (3) a ratable share of other deductions, expenses and losses that are not directly allocable to such receipts and expenses.

Domestic production gross receipts generally would include the gross receipts of the taxpayer, which are derived from:

- Any lease, rental, license, sale, exchange or other disposition of:
  - Qualifying production property, which was manufactured, produced, grown or extracted in whole or in significant part by the taxpayer within the U.S.;
  - Any qualified film produced by the taxpayer;
  - 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 in the U.S.
- Qualifying production property would include:
  - Tangible personal property
  - Computer software
  - Certain sound recordings.

The deduction would not be available to the extent that it exceeds 50% of the wages paid by the taxpayer during the year. Domestic production gross receipts would NOT include the gross receipts of the taxpayer derived from:

- The sale of food and beverages prepared by the taxpayer at a retail establishment, or
- The transmission or distribution of electricity, natural gas or potable water.

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Expensing of Business Assets
Prior law increased the dollar limitations that a business could expense in the acquisition of certain business assets (§ 179) from $25,000 to $100,000 for the years 2003-2005. This law extends that provision to assets placed in service through 2007.

Expansion of Limitation on Depreciation of Certain Passenger Automobiles
Prior law allowed vehicles to be included as qualifying property (see Expensing of Business Assets above) if the gross vehicle weight was over 6,000 pounds. This law limits the deduction for any SUV to $25,000. SUVs subject to this limitation would be those rated at more than 6,000 pounds and not more than 14,000 pounds gross vehicle weight (effective date of enactment).

Leasehold Improvements
This law reduces qualified leasehold improvements from a 39-year recovery period to a 15-year straight line recovery period (effective date of enactment and before 2006).

Restaurant Property
This law reduces qualified restaurant property from a 39-year recovery period to a 15-year straight line recovery period (effective date of enactment and before 2006).

Amortization of Start-up Expenses
Rather than capitalize and amortize start-up expenses over a 60-month period, the new law now allows a taxpayer to expense up to $5,000 of these expenses in the year the business begins (effective date of enactment).

Denial of Installment Sale Treatment for All Readily Tradable Debt
The new law denies the use of installment sale treatment when readily tradable debt is utilized.

"S" Corporations
- The number of eligible shareholders is increased from 75 to 100.
- Members of a family are now treated as a single shareholder.
- Transfers of suspended losses incident to divorce.
- The IRS can now issue Regulations regarding the filing of information returns for Qualified Subchapter S Subsidiaries.

PROVISIONS AFFECTING INDIVIDUAL TAXPAYERS, CHARITABLE CONTRIBUTIONS, ETC.

Sales Taxes
Sales taxes are deductible in 2004 and 2005. For taxpayers in states that have an income tax, they must choose either to deduct the income tax or the state sales taxes.

Civil Rights Tax Relief
The new law permits a deduction from gross income for attorney's fees and court costs incurred in connection with an action involving certain claims of unlawful discrimination (effective date of enactment).

Donations of Motor Vehicles, Boats and Airplanes
The law allows a charitable contribution deduction for donations of motor vehicles, boats and airplanes only if additional documentation is provided by the donee organization and this documentation is generally included with the return. In the event the donee organization sells the vehicle without significant intervening use or material improvement, the law now limits the amount of the deduction to the gross proceeds from the sale of the vehicle. In addition, the law imposes additional reporting requirements by the donor.

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TAX SHELTER, PRACTICE AND PROCEDURES

In light of all of the publicity concerning tax shelters, Congress overreacted in making various changes to the reporting and disclosure requirements. These changes would include:

Penalty for Failure to Disclose a Reportable Transaction

The law now includes a penalty of $10,000 for individuals and $50,000 for other taxpayers for failing to disclose a reportable transaction. The penalty for failing to disclose a listed transaction is generally $100,000 for individuals and $200,000 for other taxpayers. However, due to the definitions of "tax shelters," many ordinary and common transactions could be included.

New Accuracy-Related Penalty for Understatements Concerning Reportable Transactions

The law would now impose a 20% penalty on "reportable transaction understatements." If the transaction was not adequately disclosed, the penalty could be increased to 30%.

Tax Shelter Exception to Confidentiality Privileges Relating to Taxpayer Communications

Basically any communication regarding tax shelters is not protected communication. Basic tax planning (use of LLC, nontaxable like-kind exchanges, etc.) techniques could now be included in the definition of a "tax shelter."

Extend Statute of Limitations for Unreported Transactions

If a taxpayer fails to include on a tax return any required information on a listed transaction, the law would extend the statute of limitations for a tax assessment to one year after the earlier of (1) the date the required information is furnished to the Treasury Secretary, or (2) the date the material advisor satisfies a list maintenance request by the Treasury Secretary regarding the transaction.

Material Advisors

- Must disclose (register) a reportable transaction.
- Must keep and maintain an investor list.

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