The Truth Behind the Small Business Jobs Act

By Melissa Seyer

President Barack Obama signs the Small Business Jobs Act on Sept. 27.

“[This Act] is important because small businesses provide most of the new jobs in this country,” Obama said. “They’re the part of the promise of America — the idea that if you’ve got a dream and you’re willing to work hard, you can succeed.” According to Congress, the Act is intended to promote job growth; provide access to capital, encourage investment, promote entrepreneurship and provide tax relief for small businesses. In looking at select provisions of the Act, it is apparent that it does increase access to capital and provide badly needed tax relief, but several of the provisions are so broad that many small businesses will be unable to take advantage of the benefits.

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For example, the capital gains rates regarding sales of qualified small business stock were amended to exclude $10 million of the gain from the sale of certain small business stock, provided the stock was separated on Sept. 27, 2010, before Jan. 1, 2013, and held for at least five years. In order to receive this benefit, an investor owning the stock must first pay capital gains tax on the sale of the stock and then file a claim for a refund. The Act also makes changes to the Small Business Credit Improvement, which provides for $10,000 in state grants to support small business lending programs. In addition, the Act authorizes the creation of a $30 billion small business lending fund to provide Treasury with the ability to temporarily carry certain equity and debt instruments from the lending fund. The funds are to be used to expand credit and meet the needs of small businesses.

The Act also provided increased access to capital. Lending limits on Small Business Administration (SBA) loans have been increased to $8.5 million for 7(a) loans, $5 million for 504 loans and $100,000 for microloans. The Act also creates the Small Business Credit Improvement, which provides for $10,000 in state grants to support small business lending programs. In addition, the Act authorizes the creation of a $30 billion small business lending fund to provide Treasury with the ability to temporarily carry certain equity and debt instruments from the lending fund. The funds are to be used to expand credit and meet the needs of small businesses.

Other provisions of the Act that are not as well known or have lower priority compared to the federal Act. There are also provisions in the Act intended to “reduce the tax gap” for small businesses but essentially require revenue generating provisions. For example, the Act increases penalties for failure to file returns for certain returns that are required under IRC Section 6722. The minimum penalty for corporates is $3,000 and $500 for individuals. The Act also revises the penalties under Section 6722 of the IRC for failure to provide complete correct statements to taxpayers. In addition, select rules regarding the right to issue revokes for federal tax liabilities owed by certain federal contractors have been revised. The Internal Revenue Service is no longer required to give a collective due process hearing to a federal contractor before it can issue a tax lien on certain “specified payments,” such as government payments, to a federal contractor who owes taxes.

While the Act was intended to provide badly needed relief to small businesses, many of the provisions are short-lived while others are actually designed to generate revenue rather than benefit small businesses. And the unfortunate truth is that many businesses will not have the opportunity to take advantage of the Act’s benefits before they expire.