

Small Business and Work Opportunity Tax Act of 2007

<i>Item</i>	<i>Effective Date</i>	<i>New Law</i>	<i>Prior Law</i>
Individual Tax Provisions			
Kiddie Tax— Age Extended for Certain Children	Tax years beginning after 5/25/07	<p>The kiddie tax is extended to include children age 18, or who are full-time students age 19-23, if their earned income is less than or equal to half of the amount of their support.</p> <p>👁 Observation: This provision primarily targets taxpayers who plan to take advantage of the lower tax rates (especially the 5% and 0% capital gains rates) by shifting income to their children through the transfer of income-generating and appreciated stocks, bonds, and other investments.</p>	The kiddie tax generally applied to children under the age of 18.
Spouses' Partnership	Tax years beginning after 2006	<p>A qualified joint venture conducted by a husband and wife who file a joint return is not treated as a partnership for tax purposes. Each spouse takes into account his or her respective share of the venture's items as if they were attributable to a trade or business conducted by the spouse as a sole proprietor. Thus, a Schedule C will generally be filed for each spouse.</p> <p>A qualified joint venture is one involving a trade or business if (1) the only members are a husband and wife, (2) both spouses materially participate and (3) both spouses elect to have this provision apply. Notwithstanding other self-employment rules, each spouse's share of income or loss is taken into account under the above rules when determining the spouse's net earnings from self-employment.</p>	No provision.
Business Tax Provisions			
Section 179 Amounts Increased and Extended	Tax years beginning after 2006 and before 2011	<p>For tax years beginning after 2006, the maximum annual Section 179 amount is \$125,000 and the qualifying property threshold amount is \$500,000. The \$125,000 and \$500,000 amounts will be indexed for inflation after 2007 and before 2011.</p> <p>In addition, the higher Section 179 amounts are extended for another year, to tax years beginning before 2011.</p>	For 2007, the maximum Section 179 deduction amount was \$112,000, and the qualifying property threshold amount was \$450,000, as adjusted for inflation. These higher Section 179 amounts and annual inflation adjustment to these amounts were scheduled to expire after 2009.
Section 179— Revoking an Election	Tax years beginning after 2006 and before 2011	A taxpayer's ability to revoke a Section 179 expense election, and any specification contained in the election, is extended for an additional year, to any tax year beginning before 2011.	A Section 179 election and any specification contained in the election could be revoked by a taxpayer for any tax year beginning after 2002 and before 2010.
Section 179— Computer Software	Tax years beginning after 2006 and before 2011	Off-the-shelf computer software is Section 179 property if it is placed in service in tax years beginning before 2011.	Off-the-shelf computer software placed in service in a tax year beginning after 2002 and before 2010 was eligible for Section 179 expensing.
FICA Tip Credit	Tips received for services performed after 2006	<p>The FICA tip credit is available for the employer's FICA taxes paid on tips that exceed the amount of tips that would have been treated as wages to meet minimum wage requirements applicable to the individual <i>as in effect on Jan. 1, 2007</i> (\$5.15 per hour).</p> <p>👁 Observation: This provision prevents the FICA tip credit from being reduced by the Act's increase of the minimum wage hourly rate to \$7.25.</p>	A general business credit (the "FICA tip credit") was allowed in an amount equal to an employer's FICA taxes paid on tips in excess of those treated as wages for purposes of meeting the minimum wage requirements.

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Work Opportunity Tax Credit (WOTC)—Extended 44 Months	Individuals who begin work for the employer before 9/1/2011	The WOTC is available for wages paid or incurred to a qualified individual who begins work for the employer before September 1, 2011.	The WOTC was not available for wages paid or incurred by an employer to an individual who began work for the employer after 2007.
WOTC—Designated Community Residents	Individuals who begin work for the employer after 5/25/07	The following changes are made to the WOTC targeted group referred to as <i>high-risk youths</i> : <ul style="list-style-type: none"> • Renamed <i>designated community residents</i>. • The worker cannot be age 40 or older on the hiring date. • The residency requirement is expanded to include rural renewal counties. 	An individual qualified as a <i>high-risk youth</i> for the WOTC if certified by a designated local agency as (1) meeting the residence requirement by living within an empowerment zone, enterprise community or renewal community and (2) having attained the age of 18 but under age 25 on the hiring date.
WOTC—Vocational Rehabilitation Referral	Individuals who begin work for the employer after 5/25/07	The definition of specified rehabilitation services for the vocational rehabilitation referral provision of the WOTC is expanded to include, as a third qualifying format, an individual work plan developed and implemented by an employment network under Social Security Act §1148(g) with respect to which the requirements of Social Security Act §1148(g) are met (i.e., a “Ticket to Work” plan).	For purposes of the WOTC targeted groups, a vocational rehabilitation referral included an individual from either of the following specified rehabilitation services: (1) an individualized written plan for employment under a state plan for vocational rehabilitation services approved under the Rehabilitation Act of ‘73 (a state plan) or (2) a vocational rehabilitation program for veterans under Title 38 USC, Chapter 38 (a veterans’ plan).
WOTC—Qualified Veterans	Individuals who begin work for the employer after 5/25/07	For purposes of the WOTC targeted groups, the definition of a <i>qualified veteran</i> is expanded to also include veterans (as defined in prior law) who are entitled to compensation for a service-connected disability and (1) hired within one year after being discharged or released from active duty in the U.S. Armed Forces or (2) have aggregate periods of unemployment during the 1-year period ending on the hiring date that equal or exceed six months (the compensation-for-disability requirement). For a qualified veteran who satisfies the compensation-for-disability requirement, the maximum wages eligible for the WOTC is \$12,000, so the maximum WOTC is \$4,800 (40% × \$12,000).	One of the targeted groups for the WOTC was <i>qualified veterans</i> , who are defined as veterans meeting a Food Stamp requirement and an active duty requirement. The maximum WOTC available with respect to a qualified veteran was \$2,400 (40% of up to \$6,000 of qualified first-year wages).
WOTC and FICA Tip Credit—AMT offset	WOTCs and FICA tip credits for tax years after 2006	The list of specified credits that can offset alternative minimum tax (AMT) is expanded to include the FICA tip credit and the WOTC. In addition, the limits on the general business credit apply separately to these credits.	Unless they are specified credits, the general business credits, including the WOTC and FICA tip credit, could not offset a taxpayer’s AMT liability. Instead, they were only available to the extent that regular tax exceeded the tentative minimum tax.
ESBT—Interest Expense on Debt Used to Acquire S Corporation Stock	Tax years beginning after 2006	Interest expense paid or accrued by an Electing Small Business Trust (ESBT) on debt incurred to acquire S corporation stock is taken into account in determining the income of the S portion of an ESBT and therefore, it is deducted when determining the taxable income of the S portion of the ESBT.	Interest paid by an ESBT to buy S corporation stock was allocated to the S portion of the ESBT but was not deductible when determining the taxable income of the S portion.

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S Corporations— Sale of Interest in QSub	Tax years beginning after 2006	<p>If a qualified Subchapter S subsidiary (QSub) fails to meet the 100% ownership requirement because its stock is sold by its S corporation parent, the stock sale will be treated as if it were:</p> <ul style="list-style-type: none"> • a sale of an undivided interest in the QSub's assets (based on a percentage of the stock sold), • followed by a tax-free Section 351 acquisition by such a corporation of all of its assets (and the assumption by the corporation of all of its liabilities). <p>👁 Observation: This limits the gain that the S corporation shareholders take into account on sales of more-than-20% interests in QSubs to the gain on the percentage sold, rather than the gain on 100% of the QSub stock.</p>	When a QSub lost its qualification, it was treated as a new corporation that acquired all of its assets and assumed all of its liabilities from the S corporation parent in exchange for the QSub's stock immediately before losing qualification. Under general tax principles, if the deemed transfer from the S corporation to the newly formed corporation did not qualify as a tax-free transfer, it was a fully taxable transfer. Generally, to be tax-free, the S corporation would have to own at least 80% of the QSub's stock after the deemed transfer. Thus, a sale of more than 20% of a QSub's stock resulted in tax as if all of the QSub's assets had been sold.
S Corporations— Passive Investment Income	Tax years beginning after 5/25/07	Same as prior law except gains on sales of stock and securities are no longer passive investment income. When computing the percentage of gross receipts from passive investment income, receipts from selling stock and securities are counted only to the extent of gains on those sales.	When an S corporation has C corporation E&P, it is subject to corporate level tax on net passive income and possible loss of S Corporation status when passive investment income exceeds 25% of its gross receipts. Generally, passive investment income included gross receipts derived from royalties, rents, dividends, interest, annuities and sales or exchanges of stock or securities (to the extent of gains).
GO Zone— Extension of Increased Section 179 Expensing	Tax years beginning after 5/25/07	The increased expensing amount for property used substantially in one or more specified portions of the Gulf Opportunity (GO) Zone is extended to property placed in service before 2009. The specified portions of the GO Zone include the Louisiana parishes of Calcasieu, Cameron, Orleans, Plaquemines, St. Bernard, St. Tammany and Washington and the Mississippi counties of Hancock, Harrison, Jackson, Pearl River and Stone.	For qualified Section 179 GO Zone property acquired on or after 8/28/05, and placed in service before 2008, the maximum Section 179 amount the taxpayer can claim for the year is increased by the lesser of \$100,000 or the cost of qualified Section 179 GO Zone property.
IRS-Related Provisions			
IRS Levy to Collect Federal Payroll Taxes	Levies issued after 9/21/07	The rules requiring notice and an opportunity for a Collection Due Process hearing (CDP hearing) before a levy don't apply to <i>disqualified employment tax levies</i> . The taxpayer, however, must be given the opportunity for a post-levy CDP hearing within a reasonable time period after the levy. A <i>disqualified employment tax levy</i> is defined as any levy to collect employment taxes for any tax period if the person subject to the levy (or a predecessor) requested a hearing for unpaid employment taxes arising in the most recent 2-year period before the beginning of the tax period for which the levy is served.	Subject to exceptions, IRS could not levy against a person's property or right to property unless it notified the person in writing of his or her right to a hearing before the levy (i.e., a pre-levy CDP hearing).

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Preparer Penalties—Tougher and Broader	Returns prepared after 5/25/07	<p>The following rules apply to the return preparer penalty provisions:</p> <ol style="list-style-type: none"> 1) The penalty for any part of a tax liability understatement due to an <i>unreasonable position</i> will be the greater of (1) \$1,000 or (2) 50% of the income derived (or to be derived) by the preparer for preparing the return. A position is considered <i>unreasonable</i> if (1) the preparer knew (or reasonably should have known) of the position, (2) there was not a reasonable belief that the position would more likely than not be sustained on its merits and (3) the position was not disclosed or there was no reasonable basis for the position. 2) The penalty for any part of the tax liability understatement due to <i>willful or reckless conduct</i>, will be the greater of (1) \$5,000 or (2) 50% of the income derived (or to be derived) by the preparer for preparing the return or claim. <i>Willful or reckless conduct</i> is defined as conduct by the tax return preparer which is (1) a willful attempt to understate the tax liability on the return or claim or (2) a reckless or intentional disregard of rules or regulations. 3) The penalty provisions apply to all tax preparers, including preparers of income, estate, gift, employment and excise tax and exempt organization returns. 	<p>An income tax return preparer was liable for a \$250 penalty if all of the following applied: (1) any part of the tax understatement shown on the return or claim was due to a position for which there wasn't a realistic possibility of being sustained on its merits, (2) the preparer knew (or reasonably should have known) of this position and (3) the position wasn't disclosed as provided in the substantial-understatement-of-income-tax-penalty disclosure rules or the position was frivolous.</p>
Penalty for Erroneous Refund Claims	Any claim filed or submitted after 5/25/07	<p>If a claim for refund or credit for income tax (other than a claim for refund or credit relating to the earned income credit) is made for an <i>excessive amount</i>, the person making the claim is liable for a penalty equal to 20% of the excessive amount (unless a reasonable basis exists). An <i>excessive amount</i> is defined as the amount by which the person's claim for refund or credit for any tax year exceeds the amount of the claim allowable under the Code for that tax year.</p>	<p>No provision.</p>
Penalty for Bad Checks and Money Orders—Higher Minimum	Checks or money orders received after 5/25/07	<p>Same as prior law but for bad checks or money orders that are less than \$1,250, the minimum penalty is \$25 or the amount of the check or money order, whichever is less.</p>	<p>If a check or money order was used to pay any amount due under the Code and the amount wasn't duly paid on presentation, the person tendering the bad check or money order was subject to a penalty equal to 2% of the amount of the check or money order, subject to a good faith and reasonable cause exception. If the bad check or money order was for less than \$750, the penalty was \$15 or the amount of the check or money order, whichever was less.</p>

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Interest and Penalties—IRS Notification Period Increased	IRS notices provided after 11/25/07	Same as prior law but the 18 month period is increased to 36 months.	If an individual filed an income tax return for a tax year on or before the return due date (including extensions), the IRS had to suspend interest and penalties with respect to any failure relating to that return (with certain exceptions) if it didn't provide a notice to the taxpayer specifically stating his liability and the basis for it before the close of the 18-month period beginning on the later of (a) the date the return was filed, or (b) the due date of the return (without regard to extensions).
IRS User Fees	Requests made after 5/25/07	The rule providing that no user fees be charged for requests made after Sept. 30, 2014 is repealed. Thus, the IRS user fee program is now permanent.	User fees the IRS charges for issuing letter rulings, determination letters, information letters and other responses to taxpayers' questions concerning their tax status or the tax status of a particular transaction applied only to requests made through Sept. 30, 2014, after which the user fee program expired.