

## Business and Commercial Litigation Newsletter

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We are pleased to present the sixteenth edition of the Bernstein Shur Business and Commercial Litigation Newsletter. This month, we highlight news and links related to the recently enacted JOBS Act, the statute limitations for federal tax liabilities, and construction of “bad boy” provisions in non-recourse loan documents. We hope you enjoy the newsletter.

### In the News:

**President Obama signs the JOBS Act, which exempts startup companies from certain financial disclosure and governance requirements under the federal securities laws and provides a new form of financing for small companies.** On April 5, President Obama signed into law the Jumpstart Our Business Startups Act, which is intended to make it easier for startups and small businesses to raise funds. The act amends various provisions of the federal securities laws by, among other things, increasing the number of shareholders required to trigger the reporting requirements of the Securities Exchange Act. “Emerging growth companies” – defined as those whose initial public offering of common equity securities occurred after December 8, 2011 and having less than \$1 billion of total annual gross revenues during its last completed fiscal year – will enjoy significantly relaxed requirements concerning the detail required in their registration statements. Other important provisions of the JOBS Act include a relaxation of the general solicitation and general advertising prohibition, a new exemption for public offerings of securities in amounts that do not exceed \$50 million, and a “crowd funding” provision, which allows startups to raise money from an unlimited amount of non-accredited investors, a major change from the previous limit of 35. [Click here to see the SEC’s list of FAQs.](#)

**U.S. Supreme Court holds that the Internal Revenue Service cannot use an extended statute of limitations period of six years to pursue so-called “Son of Boss” tax shelters.** The normal statute of limitations for assessment of additional taxes due is three years, but it can be extended to six years where a taxpayer omits more than 25 percent of gross income. The tax shelters at issue in the case involved the creation of paper losses to offset real gains through the use of an inflated tax basis. The IRS argued that the overstatement of tax basis was equivalent to an omission of gross income, allowing it to extend the statute of limitations to six years. The High Court disagreed, holding that the six-year period applied only to cases where taxable amounts are actually *omitted* from a tax return. Concluding that an inflated tax basis was not an omitted “amount” of gross income, the court held that the normal three-year statute of limitations applied. [Learn more about the case at businessweek.com.](#) [Click here to read the Supreme Court’s opinion.](#)

**A Michigan appellate court upholds the use of so-called “bad-boy” clauses in non-recourse loan documents.** Typical non-recourse loan transactions allow for recourse only against the financed property, while shielding the personal wealth of borrowers. However, bad-boy clauses allow for recourse against personal assets if the borrower takes certain actions. Relying on such a clause, a Michigan trustee for bondholders sought recovery of not only the financed property but also the personal assets of the borrowers, a practice that was upheld on appeal. The reasoning of these Michigan courts is likely to spur debt holders in other states to pursue personal recoveries from landlords who lost their properties to foreclosure. [Read the full Wall Street Journal article.](#)



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