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THE SPECIAL ELECTION – IT WILL CHANGE OUR YEAR, EITHER WAY

On Tuesday, the voters of Massachusetts will select a new Senator to fill the seat of the late Senator Ted Kennedy (D-MA). As widely reported in the general media, it is close race. As any student of congressional politics knows, the ramifications all surround the Senate's filibuster rule which, for all practical purposes, has required the majority to obtain 60 votes to pass any major bill. Currently, the 58 Democrats and two Independents, at least on paper, give the majority the ability to invoke cloture.

If the majority loses a senator as a result of the election, there is the possibility they could play a hurry-up offense and pass the bill before the new Senator is sworn in. If they are forced to go that route, the bill will probably be the worst imaginable compromise from any perspective, but the liberals in the House are the ones who probably would have to hold their noses the longest and vote. Who would want to be known in Democratic circles as the person(s) who took down their only chance to get the nation on the road to national health care?

It is also theoretically possible for the House to just pass the Senate-passed version and send it on to the President.

If the majority loses the seat, they could go back to courting Senator Olympia Snowe (R-ME) for the sixtieth vote in the Senate on health care. This means the liberals in the House are still in the same boat, however, they could blame it on the Senate majority for "selling out." Furthermore, on all other legislative matters for the remainder of the year, folks like Snowe, and Senators Collins (R-ME) and George Voinovich (R-OH) would become incredibly popular again.

If the Democrats hold the Massachusetts seat, I think we are going to see panic attack legislative activity for the remainder of this year. With Senators Chris Dodd (D-CT) and Byron Dorgan (D-ND) already announcing their retirements and a pack of other Senators, including the Senate Majority Leader Harry Reid (D-NV), in tight races, one would have to be incredibly idealistic or naïve or both to think there is any chance they will have 60 votes in the Senate in 2011. I do not think it will even be close, so the "woo one over strategy" will not be an option next

year. If they hold the seat on Tuesday, I am sure there is going to be a lot of votes over the remainder of the year that are going to be based on the "do it for the party, this may be our last chance" theory of congressional politics.

DEBT CEILING (and Estate Tax Relief?)

The Senate will consider legislation this week to increase the federal government's debt ceiling to \$13.029 trillion, an increase of \$635 billion. The federal government can "only" borrow up to the amount authorized by Congress. The real story of the increase debate is the fate of two amendments. The House had previously voted to increase the debt ceiling.

Senate Majority Leader Harry Reid (D-NV) will apparently offer a version of a provision included in the House-passed bill to institute a statutory "pay-go" regime.

The other amendment is to establish a debt reduction commission. The idea is championed by Senators Kent Conrad (D-ND) and Judd Gregg (R-NH). The responsibility of the commission is to come up with debt reduction recommendations. Congress must

then vote on them, with only an “up or down” vote option with no modifications.

At this point, I do not know whether Senator Reid’s version of pay-go will resemble the House version. The general concept of statutory version requires “sequestration” as the enforcement mechanism. Under sequestration, the Office of Management and Budget keeps track of all the mandatory spending and tax actions taken, and if at the end of the year, it is not in balance or has a “positive” balance, across the board cuts are supposed to be implemented by agencies. (Congress and the President always managed to avoid a sequestration with some procedural moves.) I am not sure whether the Majority Leader has the votes for the amendment as a number of Democrats, including Senator Conrad, have objections.

Well, it is actually more complicated than that. If the Majority Leader were to offer an amendment identical to the House-passed version, it would allow for a waiver of the pay-go rule for four revenue losing items, including an estate tax freeze and a patch for the AMT (the other two were some of the expiring middle class tax cuts from 2001 and restoring physician payments cuts under Medicare.) It does not include the actual passage of those items, just “permission” for the waivers.

How strange a result would that be? If it were to pass, I believe the proponents of an estate tax freeze would still need the 60 votes to pass it, but at least they would not need the revenue. On the other hand, the addition of the four waivers was among the reasons Conrad and others objected to the House’s

statutory pay-go amendment in the first place.

Have the stories of the elderly wealthy pulling their plugs on themselves changed their minds? I know there was talk of a retroactive freeze but I thought it unlikely it could garner 60 votes with a revenue offset. Now if they remove the revenue offset requirement does reinstatement seem more appealing after the “taking advantage of the repeal” stories?

Would any Republicans vote for the retroactive freeze? I do not think so. The debt ceiling bill would only establish the “permission” for the waiver; it would not be the actual vehicle for the freeze. Still, maybe the majority does not go for the retroactive freeze since this could be done quickly after the debt ceiling increase is enacted; they would only lose a few weeks of estate tax revenue. It makes my head hurt to try to think about the permutations.

Maybe this is all idle speculation on my part, but I thought I should at least point out the theoretical possibility created by this debt ceiling situation. I guess we will just have to wait and see what the Majority Leader offers. On balance, I am thinking “not” but hardly anything has gone according to script in this Congress.

At this point, I am thinking the debt commission concept is going to get watered down to a level that it is rendered ineffective.

AMT

As I have been reporting, technically the Alternative Minimum Tax (AMT) income levels for 2010 have reverted to their 1960s’ levels. The 2009 AMT exemptions of \$70,950 for married couples and \$46,700 for unmarried filers have reverted in 2010 to the pre-2001 levels of \$45,000 and \$33,750, respectively.

Unlike the discussions regarding the various other expired deductions and credits and the estate tax at the end of 2009, there was no talk about renewing the “patch” that increased the income levels, temporarily, at which the AMT kicks in. There is a variety of reasons for this, but one of them is the belief you can wait up to the end of the year to renew the patch as there is not much tax planning that goes on during the year based on the AMT (as opposed to, for example, the R&D Credit which influences business decisions during the year) and as long as you do it before taxpayers start filling out their tax forms for 2010 in 2011, you are okay. In 2007, they dragged it out until December 26th.

The Congressional Budget Office (CBO) has released new numbers on the impact on taxpayers. The number of taxpayers affected by the AMT will increase from four million in calendar year 2009 to 27 million in 2010. Sixteen percent of all taxpayers—and 36 percent of married couples—will be affected by the AMT in 2010. Says the CBO, “If nothing is changed this year, one in six taxpayers will be affected by the AMT, paying on average an additional \$3,900 in tax, and nearly every married taxpayer with income between \$100,000 and \$500,000 will owe some alternative tax.”