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FORM 1099 EXPANSION REPEAL IN SIGHT - FOR REAL - NO APRIL FOOL'S JOKE

The relentless pressure of the small business community may have finally forced the Senate majority to throw in the towel on the Form 1099 repeal. A vote on H.R. 4 is scheduled for the Senate floor on Tuesday, April 5th.

The Senate has been debating the merits of a Small Business Innovation Research program and Small Business Technology Transfer program reauthorization bill. One of many amendments pending was Senator Mike Johanns' (R-NE) amendment to repeal the Form 1099 expansion. Essentially his amendment was the same as H.R. 4, the House-passed repeal of the Form 1099 expansion. The Democrats were planning to offer a "killer" second degree amendment to the Johanns' amendment. If the second degree amendment was adopted, the majority's argument was that it would be proof that the repeal proponents did not have enough votes to pass H.R. 4 as is, if it were to be brought up on its own.

(H.R. 4 as passed by the House includes both the repeal of the Form 1099 expansion included in the health care reform law, as well as

the provision added by a second law to require "incidental" rental property owners to issue Forms 1099 to the vendors they use that provide services (and eventually goods) for the rental property. The offset for both is the provision to recapture the excess health care insurance premium assistance advanced to individuals and families based on estimates, later to be determined to be more than what they qualified for, under the new health care system when it goes into effect.)

The SBIR/STTR program reauthorization bill debate has been stuck in first gear all week. The Senate had become bogged down in an off camera debate over whether a host of amendments ranging from the Form 1099 expansion repeal to a shutdown of the Environmental Protection Agency, should be allowed. At the same time, a discussion over the fate of another continuing resolution to fund the government for the current fiscal year, debate regarding our policy regarding Libya, as well as the funeral for Geraldine Ferraro all diverted the Senate's attention from the pending business.

After days of quorum calls (in a quorum call, the Senate is not doing

anything. On CSPAN, they play the classical music and staffers mill about), just before ending business for the week, Senate Majority Leader Harry Reid (D-NV) announced a unanimous consent agreement for action next week.

The good news is forget about the repeal amendment to the pending small business bill. ***H.R.4 itself will be brought to the floor on Tuesday!*** Senator Robert Menendez (D-NJ) will be allowed to offer what one might term a "killer" or "poison bill" amendment to H.R. 4.

Taking the simple and good scenario first, if the killer amendment fails, the Senate would proceed immediately to passage of H.R. 4, as passed by the House, and the next stop would be the President's desk, if the Senate votes to approve it.

On the other hand, if the killer amendment is approved, lots of scenarios, none of them good, are possible. The bill as amended and if passed, could go back to the House for consideration of the newly revised version or be considered by a conference committee. Or the proponents of repeal might not let the newly

amended version pass the Senate. In such a case negotiations begin on a new offset.

Both the Menendez amendment and the final passage of H.R. 4, as is, or amended, will require sixty votes. We view that as good news as we think it will be a lot tougher to find the sixty votes for the killer amendment.

Needless to say, the top priority is to defeat the Menendez amendment.

(The killer amendment would require the government to study whether the excess premium assistance recapture would do harm to the new health care system (premiums would increase or the number of uninsured would increase), and if the study determined the offset would do harm, the offset would be disallowed but the Form 1099 expansion would be remain.)

What does a unanimous consent agreement look like?

H.R. 4 (ORDER NO. 16)

1.—*Ordered*, That at 11 a.m. on Tuesday, April 5, 2011, the Senate proceed to the immediate consideration of H.R. 4, an act to repeal the expansion of information reporting requirements for payments of \$600 or more to corporations, and for other purposes; provided, that the only amendment in order be an amendment to be offered by the Senator from New Jersey (Mr. Menendez); provided further, that there be up to 60 minutes of debate equally divided between the two Leaders or their designees, prior to a vote in relation to the Menendez amendment; further, that the Menendez amendment not be divisible and that no amendments be in order to the amendment prior to the vote; further, that upon disposition of the amendment, the bill be read a third time and the Senate proceed to a vote on passage of the bill, as amended, if amended; further, that the amendment and bill be subject to a 60 vote threshold; further, that the motions to reconsider be considered made and laid upon the table with no intervening action or debate. (Mar.31, 2011.)