



# *SBLC WEEKLY*

## SPECIAL EDITION

April 5, 2011

Volume XIII, Issue 15

### *1099 To 1600*

The bill to repeal the now infamous Form 1099 information reporting expansion is on its way to 1600 Pennsylvania Avenue. The Senate passed H.R.4, the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act, by a 87 to 12 margin, without changing anything in the House-passed bill. So it is now up to the President to decide whether to sign the bill or veto it. Sixty votes were needed for approval.

Prior to passage, the Senate rejected a “poison pill” amendment that, if adopted, would have prevented the bill from being sent to the President’s desk as the next step. Sixty votes were needed for approval for the amendment, and the vote was 41 in favor and 58 opposed.

While the Administration has not officially indicated what the President will do, the President has repeatedly said the expansion should be repealed. The open question is whether the President can accept the revenue offset that is part of the bill. The offset alters the formula for recapturing excessive health care insurance premium

assistance that is advanced based on estimates to individuals and families with incomes up to 400 percent above the family poverty level, if the later official calculations determine the amount should have been lower.

It will be very difficult for the President to veto this repeal bill.

Special tips of the hat go to Representative Dan Lungren (R-CA) and Senator Mike Johanns (R-NE) would have been the leading advocates for repeal.

The bill repeals the Form 1099 expansion including in the health care reform law and an additional expansion adopted as part of another law last year.

#### *Background*

Under existing tax law, a business taxpayer making payments to a service provider (the “payee” in IRS language) aggregating to \$600 or more for services in the course of a trade or business in a year is required to send an information return to the IRS (and to the service provider-payee) setting forth the amount, as well as name and address of the recipient of the payment (generally on IRS Form

1099). Under the law, the business taxpayer is not required to issue a Form 1099 to a corporation that provides services to it.

The new health care reform law made two changes. The first is to require businesses to issue the Forms 1099 to corporations as well as all persons in a trade or business. The second is to expand significantly the scope by requiring the issuance for payments made to “property” providers as well as service providers. The changes were to take effect for payments made after December 31, 2011.

The theory behind the expansion was that when third parties report a business’ income to the IRS, compliance increases dramatically. At the time of passage of the expansion, the Joint Committee on Taxation had estimated it would raise \$17.1 billion over ten years. The provision has nothing to do with health care reform, it was added to the legislation solely as a revenue offset.

However for most businesses the challenge was going to be obtaining tax identification numbers from essentially all of their vendors and issuing the Forms 1099. Ironically, the businesses issuing the Forms

1099 are subject to penalties for failing to file timely and/or correct Forms 1099.

H.R. 4 also repeals a second expansion of the Form 1099 requirement. The other expansion of the Form 1099 requirement was added by the Small Business Jobs Act in September, 2010. Under prior law, recipients of rental income from real estate who are not otherwise considered to be engaged in a trade or business of renting property were not subject to the same information reporting requirements as taxpayers who are considered to be engaged in a trade or business. The expansion requires these "incidental" rental income recipients making payments of \$600 or more to service providers that provide services for the rental property to issue Form 1099s to those service providers (e.g. cleaning service, maintenance). (This incidental landlord expansion is in effect this year. So the incidental landlord expansion applies as the law now exists, to issue Forms 1099 to unincorporated service providers only. But next year, if the general repeal did not happen, incidental landlords would be issuing Forms 1099 for service and goods and to corporations too.)