



SBLC WEEKLY

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BACK IN THE GAME

Issues on our watch list as Congress returns, include more so-called “jobs” bills, climate change, patent reform and financial institutions regulatory reform. Taking the latter issue first, while the impact on small business’ favorite lenders is probably the most obvious concern, any business that touches consumer credit has a slightly higher stake in the outcome than other small businesses. Right now, agencies from the Federal Reserve to the Federal Trade Commission handle various aspects of the regulatory duties associated with consumer credit. The House passed a bill late last year that included a separate consumer protection agency to consolidate those functions. The version approved on party lines by the Senate Banking Committee would pull most of those functions under the umbrella of the Federal Reserve. There is a counterproposal by the minority party bouncing around to create an independent consumer credit regulatory agency, albeit with a different structure than the House version. Senate floor consideration could occur soon.

With respect to patent reform, there has been an effort under way to overhaul the patent system for at

least two Congresses. There appears to be momentum in the Senate on a compromise so the issue could see some floor time soon. Two decades ago there was a clear small business position on patent policy. While some say it remains true today, I am less certain that it is true. The current reform effort pits certain types of big businesses against other big businesses and has a lot to do with how damages are calculated and the ability of businesses to challenge patents after they have been granted. The bill would also change the U.S. system from “first to invent” to “first to file.” Most of the world uses the “first to file” rule. The advantage of “first to file” is that it adds certainty. There is no protracted dispute about who thought of it first, if the “first to file” system is used. Nevertheless, if there is one aspect of the legislation that probably puts small business at a disadvantage, it is that change. If you have a stable of patent lawyers in-house, getting to the patent office is a matter of routine. However, looking at other aspects of the bill, the legislation might eliminate some of the “gotcha” type patent infringement letters that many small businesses receive, and so it is not an easy call as to whether passage

would be a plus or minus for small business.

We could see some movement on climate change legislation in the Senate. A bi-partisan group is working on an alternative to the sweeping cap and trade bill adopted by the House last year. The most significant aspect of the discussions is that it would divide solutions into stationary source and mobile source solutions. In the case of mobile sources, there is talk of establishing a “carbon” tax that would tax the fuels (think natural gas, oil, and coal) that mobile sources convert to a contributor to greenhouse gas. The proposal would modify the cap and trade concept for stationary sources, putting manufacturers on a slower track to compliance than power producers.

W-11

The recently enacted Hiring Incentives to Restore Employment (HIRE) Act created two new tax benefits designed to encourage employers to hire and retain new workers. Employers that hire unemployed workers this year (after February 3, 2010, and before January 1, 2011) may qualify for a 6.2-percent payroll tax “forgiveness” of the employer’s

share of social security tax on wages paid to these workers after March 18. Employers would still be liable for the Hospital Insurance (HI) Trust portion of the tax. Employers must still withhold the employee's 6.2-percent share of Social Security taxes, as well as the HI and income taxes. In addition, for each unemployed worker retained for at least a year, businesses may claim a new hire retention credit of up to \$1,000 per worker when they file their 2011 income tax returns. New hires filling existing positions also qualify but only if the workers they are replacing left voluntarily or for cause. Family members and other relatives do not qualify for either of these tax incentives. Qualified employees must certify by a signed affidavit, under penalties of perjury, that they have not been employed for more than 40 hours during the 60-day period ending on the date they started employment.

Employers will take the forgiveness as a credit on their Form 941 quarterly payroll tax report. The Internal Revenue Service (IRS) has revised the form.

The IRS has issued a new form, the W-11, that a new worker can use to certify that if an employer hires him/her, the new worker meets the "previously unemployed" criteria for the temporary jobs tax forgiveness. The employee is not required to use the W-11 form. Call it a "peace of mind" option. Employers and employees can use their own version. The form is not filed with the IRS. The employer keeps it. The form can be found at <http://www.irs.gov/pub/irs-pdf/fw11.pdf>.

The IRS has a weird system for its website addresses. For the moment, you can find additional information about the forgiveness and retention credit at: <http://www.irs.gov/businesses/small/article/0,,id=220745,00.html>

HEALTH CARE TAX CREDIT – THE OFFICIAL WORD

The Internal Revenue Service (IRS) is hard at work on the first of many assignments it will have under our new health care system. As reported in the last Weekly, there is a tax credit for small employers that provide health care benefits to their employees, IF the small business meet the definition under the law and fulfills other qualification requirements. A lot of small businesses are not going to qualify because of the average payroll limits that top out at \$25,000.

I am not going to go through the painful explanation again. At this point, it is time to turn it over to the IRS since they are going to have the last word anyway. Here are two more of those weird website addresses:

<http://www.irs.gov/newsroom/article/0,,id=220809,00.html> and <http://www.irs.gov/newsroom/article/0,,id=220839,00.html>

SOONER THAN LATER

Everybody has lots of questions about the health care reform laws. While in our instant information society we want instant answers, we, and the federal and state governments, have some time to sort out many of the details. I am still sticking with the SBLC Special Summary as being as good as it gets for the moment, as an explanation.

However, there are some aspects of the new law such as the health care credit for small business that take effect now by the end of this year. A number of them do not require actions by small employers and we do not know yet how much they are going to cost you.

What I am talking about are the insurance market reforms. Insurers will have to make these changes to the plans they offer. Your existing group plan will change whether you like it or not, want it or not, and the fact you choose to provide coverage is not a relevant factor.

IF a plan currently provides coverage for dependent children, there are two changes that will be made: pre-existing conditions for children under 19 will be eliminated (eventually for every potential insured) and the age definition of a dependent adult child is increased to 26 years old.

The law eliminates lifetime dollar limits this year, and starting this year restricts annual dollar limits (eventually they are eliminated too). "Recessions," which are cancellations of coverage, must be eliminated.