



SBLC WEEKLY

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STILL HOLDING

Most of the pending tax legislation, ranging from the extenders bill to estate tax relief, is still bottled up in back room discussions over revenue offsets. Still on the very short list of offsets for any or all of the pending bills is the S Corporation shareholder income as wages recharacterization. We are still hopeful estate tax relief and the direct expensing allowance permanency issues will be somewhere in the mix.

The consumer financial products and services protection aspect of the Senate version of financial institutions' regulatory reform remains pretty much in the same form as it started out. The overall debate will probably enter its final phase in the Senate this week. Next stop will be a conference committee to reconcile the Senate bill with the House-passed version.

The majority is trying to get a budget resolution shaped up. The jury is still out on whether they will pass one. The main non-political significance of a failure to pass one is that they cannot use budget reconciliation as a maneuver to avoid 60 vote requirements in the Senate down the road. A budget

resolution is just an internal congressional guidance document. It does not require a presidential signature.

NON-SBA SMALL BUSINESS LENDING INITIATIVE

At the moment there has been no substantive progress on any effort to provide help to small businesses that are still having trouble finding working capital and inventory financing loans. You may recall that the President had proposed using "left-over" Troubled Asset Relief Program (TARP) funds. The House Committee on Financial Services is scheduled to hold a hearing on the proposal on Tuesday.

The President originally proposed a new \$30 billion Small Business Lending Fund (SBLF). Under the proposal, the SBLF would support lending among community and smaller banks with assets under \$10 billion. Banks with less than \$1 billion in assets would be eligible to receive capital investments up to 5 percent of their risk-weighted assets. Banks between \$1 billion and \$10 billion in assets would be eligible to receive capital investments up to 3 percent of their risk-weighted assets.

The theory is the proposed design of the new program would provide an incentive for smaller banks to increase small business lending – as their lending increases, the dividend rate payable to Treasury gets reduced, to as low as 1 percent for banks that increase lending by 10 percent from a baseline set in 2009.

Since the original announcement, the Administration has indicated that SBLF would be separate and distinct from TARP and participating banks would not be subject to TARP conditions. As the Administration has acknowledged, *"Previous TARP programs may have seen reduced participation as a result of several factors, including certain statutory restrictions. Smaller institutions, in particular, have struggled with the executive compensation restrictions that are the same for all institutions, regardless of size. Moreover, after conducting extensive consultation, our view is that even if we removed some of the restrictions described above, many lenders would decline to participate due to a belief that a 'stigma' is associated with the TARP program. This belief – as well as fear that by virtue of being a TARP recipient, an institution could be subject to retroactive disadvantages, such as exclusion*

from future Congressional tax relief available to non-TARP recipients – would likely have the impact of discouraging participation in the program even if the lender might otherwise have taken part.”

Legislation is required to set up the separate SBLF program. I expect that the House Committee on Financial Services will move to mark up a bill shortly after the hearing and I expect House approval at some point in the near future. Getting the Senate to focus on this is a different story.

FORM 1099

As a result of a new law signed this year, beginning with payments made in 2012 every business will be required to issue to any vendor of services OR property to which the business has paid more than \$600 a year for those services or property, an information reporting form known as Form 1099. The Form 1099 must also be sent to the Internal Revenue Service. In addition to issuing the forms, a business will have to get Taxpayer Identification Numbers (TINs) from all of those vendors and withhold payments to any such vendor until it receives the TIN. Penalties apply if you fail to issue the Forms 1099.

Under the existing law, businesses issue the Form 1099 only to individuals who provide services to a business. The new law makes two changes: the Form 1099 must be issued to corporations of all sizes and shapes as well as to individuals AND a Form 1099 must also be issued to individuals and corporations that provide property to a business.

The payments that are included under this are not only those made directly by check but also those made by other means such as credit cards, for example. Think about the airlines, hotels, rental cars, and restaurants that appear on your credit card bill. You might not think of them as vendors of goods and services, but that is what they are. Also, if you are in the business of selling or distributing goods, all of your suppliers of products are also vendors under the new law. (Under existing law there are regulations that provide narrow exceptions for some types of vendors (telegrams, telephone, freight, storage) and some individual vendors that accept payment from you by credit card and meet qualifications set forth by the IRS. Even if some regulatory exceptions are carried over under the new law, you will still be the one responsible and liable for issuing the information report and it will not be easy.) And Congress is considering doubling the penalties.

And, of course, any business that pays you more than \$600 will be sending you a Form 1099.

Representative Daniel Lungren (R-CA) has introduced legislation to repeal the requirement. The bill is H.R. 5141, The Small Business Paperwork Mandate Elimination Act.

If you want to send emails to your Senators and Representative, go to www.stopform1099.org.

But do not stop there, call your Senators and Representative (202-224-3121) and deliver the message you will find at www.stopform1099.org.