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EXTENDERS

Congress is still trying to find a way to extend various expired and expiring tax credits and deductions. While there is general agreement on what needs to be extended, the big problem has been finding revenue offsets acceptable to everybody. We could see a House vote on a deal that the two tax-writing committees' chairmen announced last week. But then again we might not. The deal was not warmly embraced.

The two extenders of broader small business interest are the renewal of the R&D Credit for this year and extension of the accelerated write off of improvements made by retailers to their stores.

The revenue offset of note is the one that forces principal S Corporation shareholders to characterize almost all of their income from the business as wages and pay the employment or self-employment tax on it. While we do not like the precedent the proposal sets, the provision under consideration has been narrowed considerably since the trial balloon was floated. The change now would only apply to certain *professional services* S

Corporations and then only those with 3 or fewer shareholders. If you are wondering if that means you, the definition is similar to one used in another Internal Revenue Code section but with a slight expansion to include these folks: investment advice or management, or brokerage services.

The proposal would apply to S Corporations providing services in the fields of health, law, lobbying, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, investment advice or management, or brokerage services.

Another revenue offset would require the investment community to pay income tax at ordinary rates instead of at capital gains rates on income they receive from some of their investment activity. It could have some secondary fall out for the small business community as venture capitalists enjoy the current tax treatment, but in the current economic environment we are more worried about tax increases on "main street" businesses.

HOUSE COMPETITION

Two weeks ago, the Weekly included a report that the House was

planning to take up a renewal of the COMPETES Act. In 2007, Congress passed and President Bush signed into law, The America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science (COMPETES) Act. COMPETES aims to maintain and strengthen our nation's global economic competitiveness by: improving science, technology, engineering and math (STEM) education, so that all students are prepared for the highly technical, high-paying jobs of the future; setting our basic research programs on a doubling path: the labs at the National Institute of Standards and Technology (NIST); National Science Foundation (NSF); and the Department of Energy's (DOE) Office of Science; and addressing the need for transformational energy technologies with the Advanced Research Projects Agency for Energy (ARPA-E), which is pursuing high-risk, high-reward energy technology development.

I wrote, "*Talk about a good idea that has gone nowhere as far as I can tell...Do not get me wrong, I thought the concept was great in 2007 and I still believe we need to step our efforts to improve science, technology, engineering and math*

(STEM) education, so that all students are prepared for the highly technical, high-paying jobs of the future...The problem is implementation and I do not see that yet."

I also wrote, "*Who could be against this bill? As far as I can tell, hardly any one was opposed to it back in 2007 and no is opposed to it this time.*"

Well, go figure. The House Republicans have forced the Democratic majority to pull the bill twice from the House calendar. The Republicans have decided to make the bill a poster child for demanding a smaller government and so far, they have the Democrats retreating on the length of the renewal and improve accountability.

HEXAVALENT CHROMIUM

OSHA has issued a direct final rule requiring employers to notify their workers of all hexavalent chromium exposures, effective June 15, 2010. The rule revises a provision in OSHA's Hexavalent Chromium standard that required workers be notified only when they experienced exposures exceeding the permissible exposure limit. Industrial uses of hexavalent chromium compounds include chromate pigments in dyes, paints, inks, and plastics; chromates added as anticorrosive agents to paints, primers, and other surface coatings; and chromic acid electroplated onto metal parts to provide a decorative or protective coating. Hexavalent chromium can also be formed when performing "hot work" such as welding on stainless steel or melting chromium metal. Occupational exposures to hexavalent chromium can occur among workers handling pigments, spray paints and coatings

containing chromates, operating chrome plating baths, and welding or cutting metals containing chromium, such as stainless steel.

The proposed rule got caught up in litigation for several years. On February 28, 2006, OSHA published a final rule for Occupational Exposure to Hexavalent Chromium (Cr (VI)). The Public Citizen Health Research Group and other parties petitioned for review of the standard in the United States Court of Appeals for the Third Circuit. The Third Circuit remanded the employee notification requirements in the standard's exposure determination provisions for further consideration. More specifically, the court directed the Agency to either provide an explanation for its decision to limit employee notification requirements to circumstances in which Cr(VI) exposures exceed the permissible exposure limit (PEL) or take other appropriate action with respect to that paragraph of the standard. After reviewing the rulemaking record on this issue, and reconsidering the provision in question, *OSHA has decided to revise the notification requirements, by means of this direct final rule, to require employers to notify employees of the results of ALL exposure determinations.*

If hexavalent chromium is present in your workplace, this is a significant change. For more information, go to <https://www.osha.gov/SLTC/hexavalentchromium/index.html>

NON-SBA LENDING

Last week's Weekly included an update on the status of a proposal made President Obama earlier this year to create a new \$30 billion

lending fund for small businesses. During the week, the House Financial Services Committee approved H.R. 5297, the Small Business Lending Fund (SBLF) Act. The bill will establish a \$30 billion fund to boost lending to small businesses. Under the proposal, the SBLF would support lending among community and smaller banks with assets under \$10 billion. The theory is the new program will provide an incentive for smaller banks to increase small business lending – as their lending increases, the dividend rate or interest 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.

WHAT'S IN THE EXTENDER BILL, ANYWAY?

Regular readers of the Weekly know I cannot help myself on this point. What does \$200 billion buy you in Washington today? There is only one way to convey the magnitude of what folks casually talk about, even if I think the some of the extensions are needed, and that is to show it (by the way, as you will see it is not all about taxes):

1. Extension of Build America Bonds.
2. Exempt-facility bonds for sewage and water supply facilities.
3. Extension of exemption from alternative minimum tax treatment for certain tax-exempt bonds.
4. Extension and additional allocations of recovery zone bond authority.
5. Allowance of new markets tax credit against alternative minimum tax.
6. Extension of tax-exempt eligibility for loans guaranteed by Federal home loan banks.
7. Extension of temporary small issuer rules for allocation of tax-exempt interest expense by financial institutions.
8. Alternative motor vehicle credit for new qualified hybrid motor vehicles other than passenger automobiles and light trucks.
9. Incentives for biodiesel and renewable diesel.
10. Credit for electricity produced at certain open-loop biomass facilities.

11. Extension and modification of credit for steel industry fuel.
12. Credit for producing fuel from coke or coke gas.
13. New energy efficient home credit.
14. Excise tax credits and outlay payments for alternative fuel and alternative fuel mixtures.
15. Special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities.
16. Suspension of limitation on percentage depletion for oil and gas from marginal wells.
17. Direct payment of energy efficient appliances tax credit.
18. Modification of standards for windows, doors, and skylights with respect to the credit for nonbusiness energy property.
19. Deduction for certain expenses of elementary and secondary school teachers.
20. Additional standard deduction for State and local real property taxes.
21. Deduction of State and local sales taxes.
22. Contributions of capital gain real property made for conservation purposes.
23. Above-the-line deduction for qualified tuition and related expenses.
24. Tax-free distributions from individual retirement plans for charitable purposes.
25. Look-thru of certain regulated investment company stock in determining gross estate of nonresidents.
26. Election for direct payment of low-income housing credit for 2010.
27. Research credit.
28. Indian employment tax credit.
29. New markets tax credit.
30. Railroad track maintenance credit.
31. Mine rescue team training credit.
32. Employer wage credit for employees who are active duty members of the uniformed services.
33. 5-year depreciation for farming business machinery and equipment.
34. 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements.
35. 7-year recovery period for motorsports entertainment complexes.
36. Accelerated depreciation for business property on an Indian reservation.
37. Enhanced charitable deduction for contributions of food inventory.
38. Enhanced charitable deduction for contributions of book inventories to public schools.
39. Enhanced charitable deduction for corporate contributions of computer inventory for educational purposes.
40. Election to expense mine safety equipment.
41. Special expensing rules for certain film and television productions.
42. Expensing of environmental remediation costs.
43. Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.
44. Modification of tax treatment of certain payments to controlling exempt organizations.
45. Exclusion of gain or loss on sale or exchange of certain brownfield sites from unrelated business income.
46. Timber REIT modernization.
47. Treatment of certain dividends of regulated investment companies.
48. RIC qualified investment entity treatment under FIRPTA.
49. Exceptions for active financing income.
50. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company rules.
51. Basis adjustment to stock of S corps making charitable contributions of property.
52. Empowerment zone tax incentives.
53. Tax incentives for investment in the District of Columbia.
54. Renewal community tax incentives.
55. Temporary increase in limit on cover over of rum excise taxes to Puerto Rico and the Virgin Islands.
56. Payment to American Samoa in lieu of extension of economic development credit.
57. Election to temporarily utilize unused AMT credits determined by domestic investment.
58. Study of extended tax expenditures.
59. Waiver of certain mortgage revenue bond requirements.
60. Losses attributable to federally declared disasters.
61. Special depreciation allowance for qualified disaster property.
62. Net operating losses attributable to federally declared disasters.
63. Expensing of qualified disaster expenses.
64. NEW YORK LIBERTY ZONE Special depreciation allowance for nonresidential and residential real property.
65. NEW YORK LIBERTY ZONE Tax-exempt bond financing.
66. GO ZONE. Increase in rehabilitation credit.
67. GO ZONE Work opportunity tax credit with respect to certain individuals affected by Hurricane Katrina for employers inside disaster areas.
68. GO ZONE Extension of low-income housing credit rules for buildings in GO zones.
69. Extended period for single-employer defined benefit plans to amortize certain shortfall amortization bases.
70. Application of extended amortization period to plans subject to prior law funding rules.
71. Suspension of certain funding level limitations.
72. Lookback for credit balance rule.
73. Information reporting in pension funding
74. Rollover of amounts received in airline carrier bankruptcy.
75. MULTI-EMPLOYER PLANS Optional use of 30-year amortization periods.
76. Optional longer recovery periods for multiemployer plans in endangered or critical status.
77. MULTI-EMPLOYER PLANS Modification of certain amortization extensions under prior law.
78. MULTI-EMPLOYER PLANS Alternative default schedule for plans in endangered or critical status.
79. MULTI-EMPLOYER PLANS Transition rule for certifications of plan status.
80. Extension of unemployment insurance provisions.
81. Coordination of emergency unemployment compensation with regular compensation.
82. Extension of the Emergency Contingency Fund.
83. Extension of premium assistance for COBRA benefits.
84. Extension of section 508 reclassifications.
85. Repeal of delay of RUG-IV.
86. Limitation on reasonable costs payments for certain clinical diagnostic laboratory tests furnished to hospital patients in certain rural areas.
87. Funding for claims reprocessing.
88. Extension of ARRA increase in FMAP.
89. Medicaid and CHIP technical corrections.
90. Addition of inpatient drug discount program to 340B drug discount program.
91. Continued inclusion of orphan drugs in definition of covered outpatient drugs with respect to children's hospitals under the 340B drug discount program.
92. Conforming amendment related to waiver of coinsurance for preventive services.
93. Establish a CMS-IRS data match to identify fraudulent providers.
94. Clarification of effective date of part B special enrollment period for disabled TRICARE beneficiaries.
95. Medicare sustainable growth rate reform.
96. Adjustment to Medicare payment localities.
97. Clarification of 3-day payment window.
98. Extension of national flood insurance program.
99. Allocation of geothermal receipts.
100. Small business loan guarantee enhancement extensions.
101. Emergency agricultural disaster assistance.
102. Summer employment for youth.
103. Housing Trust Fund.
104. The Individual Indian Money Account Litigation Settlement Act of 2010.
105. Appropriation of funds for final settlement of claims from In re Black Farmers Discrimination Litigation.
106. Expansion of eligibility for concurrent receipt of military retired pay and veterans' disability compensation to include all chapter 61 disability retirees regardless of disability rating percentage or years of service.
107. Extension of use of 2009 poverty guidelines.
108. Refunds disregarded in the administration of Federal programs and federally assisted programs.
109. State court improvement program.
110. Qualifying timber contract options.
111. Extension and flexibility for certain allocated surface transportation programs.
112. Community College and Career Training Grant Program.
113. Extensions of duty suspensions on cotton shirting fabrics and related provisions.
114. Modification of Wool Apparel Manufacturers Trust Fund.
115. Department of Commerce Study.
116. ARRA planning and reporting