



SBLC WEEKLY

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EXTENDERS

The Senate may (or then again, it may not) take up H.R. 4213, American Jobs and Closing Tax Loopholes Ac., this week. The House passed H.R. 4213 just before the Memorial Day recess by the narrowest of margins. The bill extends various expiring and expired tax relief provisions and does a bunch of other things too.

The extenders range from the research and development credit to the accelerated depreciation for store improvements to energy efficient credits. The total package adds up to over \$110 billion and at least \$50 billion of that is not offset with tax increases elsewhere.

Of the amount that is offset, the one offset provision we are not happy about is the one that requires professional services S Corporation shareholders to treat all of the income from the business as wages and thus subject it to employment taxes. The offset that is giving the Senate the most heartburn is the “carried interest” provision that would require those in the investment community to treat the proceeds of some transactions as regular income rather than income subject to the usually lower capital

gains tax (one does not find many in investment community paying at the lower income tax brackets, even after the meltdown). If the Senate does not deal with the extenders this week, it is primarily because the leaders cannot get the sixty votes for the offsets, although there are some holding out for other reasons. If the Senate does tinker with the bill, it must go back to the House, and it is doubtful the House can produce the same votes for another version of the bill.

DANGER WILL ROBINSON, DANGER

Back in December, 2009, the Environment Protection Agency (EPA) issued an “endangerment finding” under the Clean Air Act. Said the EPA, “After a thorough examination of the scientific evidence and careful consideration of public comments, the U.S. Environmental Protection Agency (EPA) announced that greenhouse gases (GHGs) threaten the public health and welfare of the American people. EPA also finds that GHG emissions from on-road vehicles contribute to that threat.”

Since the finding has been issued, the EPA has proposed regulatory

measures that are “justified” by the endangerment finding.

To say the least, the decision to use this approach is controversial. Senator Lisa Murkowski (R-AK) and others are attempting to invalidate the finding. Senator Murkowski is attempting to use the Congressional Review Act (CRA) to do so. SBLC members are familiar with the CRA because we helped use it to overturn the Clinton Administration’s Ergonomics Rule at the beginning of the Bush Administration. The challenge facing Senator Murkowski is that the CRA requires passage of the resolution by both chambers of Congress and signature by the President. In 2001, the stars and moons aligned for such a move. It does not look like the karma is in place this time around.

The Senate will vote on Senate Joint Resolution 26, a resolution of disapproval, on June 10th under a deal Senator Murkowski was able to strike with Senate Majority Leader Harry Reid (D-NV). Her effort has attracted bi-partisan interest, and under the CRA, “only” 51 votes are needed to pass it in the Senate. Even if the Senate passes it, there is no way the House and President would agree.