SMALL BUSINESS LEGISLATIVE COUNCIL

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ON THE RUN

It appears Congress will recess for campaigning at the end of this week. I cannot recall a Congress leaving with so much unfinished business. The leadership has said for the longest time there will be a "lame duck" session of this Congress after the election but the assumption was funding the government and deficit reduction would be the principal items for discussion. Instead there are dozens of other potential issues. Whether any decisions on these issues can be made during that lame duck is anybody's guess until after the election. I have run out of ways to try to explain what happened to this Congress.

Congress will pass a "continuing resolution" this week that will fund the government for the new fiscal year that begins at the end of this week. The CR will fund the government until Congress returns for the lame duck session.

What a mess. The list of expiring or expired tax relief provisions is stunning. There could be some votes "for show" this week on some of the them in one or the other chamber, but nothing that would lead to passage.

I do not know what to tell you about the Form 1099 situation. I keep thinking Congress will pull a last minute rabbit out of the hat but I have not seen any sign of one. If Congress does not act this week, we will push for action during the lame duck. If we are not successful, the issue will surely be one of our top priorities in 2011.

Other pending tax issues include:

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) created a new 10-percent regular income tax bracket for a portion of taxable income that was previously taxed at 15 percent. EGTRRA also reduced the other regular income tax rates. The regular income tax rates of 28 percent, 31 percent, 36 percent and 39.6 percent were reduced to 25 percent, 28 percent, 33 percent, and 35 percent, respectively. Other items, including a child care credit, family and education expenses deductions, and marriage rate penalty relief, will also expire at the end of the year. The top marginal rate has been the big concern for small business. The reduced capital gains rate and the reduced dividends tax rate expire at the end of the year.

Until the end of this year, the maximum rate of tax on the adjusted net capital gain of an individual is 15 percent. Any adjusted net capital gain which otherwise would be taxed at a 10- or 15-percent rate is taxed at a zero rate. Starting next year, the maximum rate of tax on the net adjusted capital gain of an individual will be 20 percent. Any adjusted net capital gain which otherwise would be taxed at the 15-percent rate will be taxed at a 10-percent rate.

Until the end of this year, an individual's qualified dividend income is taxed at the same rates that apply to net capital gain. Thus, an individual's qualified dividend income is taxed at rates of zero and 15 percent. For taxable years beginning after 2010, dividends received by an individual are taxed at ordinary income tax rates.

The estate tax is currently repealed. It returns in 2011 with a top marginal rate of 55 percent and an individual exemption of $1 million.

The temporary increases in the income thresholds at which the Alternative Minimum Tax (AMT) is applied have already expired, and if Congress does not act, the AMT will apply at lower starting income levels for the current tax year.

SMALL BUSINESS JOBS BILL

The President will sign the "Small Business Jobs Bill" today. As we have reported, it includes good news, bad news and no-news.

The bad news is that the law has INCREASED the penalties for inadvertent filing errors related to Forms 1099, the tax information reporting form. The no-news is that Congress did not repeal the provision that INCREASED the number of Forms 1099 that small businesses have to file for vendors of goods or services.

The good news highlights include:

Increase of Section 179 Expensing and Expansion to Certain Real Property

Under current law, taxpayers may elect to write off the costs of certain tangible personal property that is purchased for use in the active conduct of a trade or business in the year of acquisition, in lieu of recovering these costs over time through depreciation. For the taxable year beginning in 2010, taxpayers may write off up to $250,000 of these capital expenditures subject to a phase-out once these capital expenditures exceed $800,000. This bill would increase the thresholds to $500,000 and $2,000,000 for the taxable years beginning in 2010 and 2011. At the end of 2011, the amounts would revert to $25,000 and $200,000, respectively. Within the temporary higher thresholds, the bill would allow taxpayers to expense up to $250,000 of the cost of qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property.

Extension of Bonus Depreciation

Businesses are allowed to recover the cost of capital expenditures over time according to a depreciation schedule. Congress temporarily allowed businesses to recover the costs of certain capital expenditures made in 2008 and 2009 more quickly than under ordinary depreciation schedules by permitting those businesses to immediately write off 50 percent of the cost of depreciable property placed in service in those years. This bill extends the additional, first-year 50 percent depreciation for qualifying property purchased and placed in service in 2010.

Deductibility of Health Insurance for the Purposes of Calculating Self-Employment Tax

Under current law, business owners are not permitted to deduct the cost of health insurance for themselves and their family members for purposes of calculating self-employment tax. This provision would allow business owners to deduct the cost of health insurance incurred in 2010 for themselves and their family members in the calculation of their 2010 self-employment tax.

Modification of the Section 6707A Penalty

The bill revises section 6707A of the Internal Revenue Code to make the penalty for failing to disclose a reportable transaction proportionate to the underlying tax savings. The penalty for failure to disclose reportable transactions to the IRS would be set at 75 percent of the tax benefit received. Reportable transactions are defined as investments in transactions that the IRS has identified as listed tax shelters or that have characteristics of tax shelters, including large losses or confidentiality agreements. The minimum penalty under this bill is $10,000 for corporations and $5,000 for individuals, and the maximum penalty is $200,000 for corporations and $100,000 for individuals. (A tip of the hat to SBLC Chair Paula Calimafde who brought this to the attention of SBLC long before anybody else had heard of this problem.

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The Weekly will go into "as needed" status if Congress goes home. It will resume upon Congress' return.