



SMALL BUSINESS
LEGISLATIVE
COUNCIL

SBLC WEEKLY

Via E-mail
November 1, 2010

Volume XII, Issue 31

PREDICTIONS

The House will be controlled by the Republicans by 221-214 margin. The Democrats will retain control of the Senate with 51 Democrats and two Independents in the majority. That's my prediction and I am sticking with it.

I have two Senate races that I go back and forth on. At various times this year, I have thought there is no way Senate Majority Leader Harry Reid (D-NV) is going to be re-elected. At various times I have thought there is no way Senator Russ Feingold (D-WI) will not be re-elected. I felt if Feingold lost, (and he has been trailing,) the Republicans might run the table and capture control of the Senate. I am not feeling that way today even with a Feingold loss. Reid might even pull a rabbit out of his hat.

Here's the reality check: it is not going to make much difference whether the Republicans or Democrats control the Senate. The Senate is the land of 60 votes and nobody is going to be close to having them in his or her pocket in the 112th Congress. Not much will get done. On balance, one could make a case that is not a bad thing.

If President Obama and Speaker-presumptive John Boehner (R-OH) change their styles and want to compromise a la President Clinton, the story line for the 112th Congress and President Obama's chances for re-election might change. A House Republican/President Obama deal on deficit reduction, for example, would force the Senate's hand, regardless of which party controls the Senate.

Otherwise, it is not going to be much fun to be a Representative unless Speaker Boehner or Speaker Pelosi (or another Democrat? If the Dems pull off the miracle) change his or her *modus operandi*. The margin is going to be slim. I am sure you will see those painful dialogues on the House floor as the last party member is cajoled into "doing it for the party." It could be a weekly exercise.

Oddly enough, I see pro-active opportunities for small business. While the big ticket items will not get out of the filibuster desert, I can see a consensus building for small ticket items with a Republican majority in the House leading the way. A good example would be repealing the Form 1099 requirement. I can see the House Ways and Means Committee

popping out a bill as soon as its first business meeting. (I give us a slight chance of repealing it in the lame duck session. More below on that.)

Forget about health care repeal. I do not see it happening even if both chambers of Congress are controlled by the Republicans. There is that tiny thing call the Constitution that is going to prevent that. Article I, Section 7, of the Constitution requires two-thirds majorities in both chambers to override vetoes: "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law."

LAME DUCK FIRST

The 111th Congress is coming back and the principal decision is how to fund the government when the current continuing resolution runs out on December 3rd. Some say, "Let's force repeal of health care by refusing to pass a continuing resolution and shutting down the government." I do not see that happening.

I do see the possibility of a deal on extending at least some of the expiring individual tax relief provisions like the rates and marriage tax penalty relief. I could see a couple of business extenders getting tossed in such as the expired Research and Development Credit. Also I could see the Alternative Minimum Tax income "patch" extended for this year. I also give us an outside chance at throwing the Form 1099 repeal in there too.

My guess is that as the end of the lame duck session approaches, concerns about revenue offsets are going to take a back seat to "piling on." Think extra ornaments on the Christmas tree as the lame ducks approach the holidays. Or the last train to Clarksville.

Why would the Republicans go along with any tax deal now? Wouldn't they have more leverage in the 112th Congress to get more? The 112th Congress is going to be faced with a nasty tax revenue scoring problem any time it wants to provide tax relief. Remember, in 2001 we were sitting on surpluses. Not now. The thinking may be it might be better to get something while it is still under the other team's watch.

Why would the Democrats go along with any tax deal now? I think it has sunk in that an automatic tax increase that will reach down into the middle and low income levels is not the way to start the New Year. Talk about sticker shock. If the first paychecks are cut before something is done, you are not going to be hearing anybody say "It is okay, I knew it was temporary all along."

In the 112th Congress, I think there is going to be a lot of pressure to tackle tax issues under the disguise of tax reform. There are just too many expired and expiring tax relief provisions and no simple ways to deal with the revenue offsets. If you can hide the ball, you may be able to get to the same goal line. Think President Reagan and Rosty and Bob Packwood. (PS if you favor meaningful deficit reduction, I have not run across many deficit reduction experts who think you can get there without an increase in tax revenues – did I mention hide the ball.)

HEALTH CARE BENEFITS AND W-2's

The Patient Protection and Affordable Care Act of 2010, Public Law 111-148, enacted March 23, 2010, requires employers to report the cost of employer-sponsored health care covered on an employee's Form W-2, the annual form used to report an employee's wages, employment taxes, and withholding to the Internal Revenue Service. The provision was to be effective for taxable years beginning on or after January 1, 2011. The IRS has announced that it will defer this new requirement, making reporting by employers optional in 2011.

The IRS has released a draft Form W-2 that includes the codes that employers may use to report the cost of coverage under an employer-sponsored group health plan. The Treasury Department and the IRS have determined that the delay is necessary to provide employers the time they need to make changes to their payroll systems or procedures in preparation for compliance with the new reporting requirement. The IRS will be publishing guidance on the new requirement later this year.

The employer community was involved with this idea before comprehensive health care reform. There is no taxable consequence with the report as it is informational only. The idea is to make employees more aware of what it costs to provide them with health care coverage.

The Internet is alive with conspiracy theories about this being a back door play to tax these benefits. This is fueled in part by the fact in 2018, the excise tax on the so-called "Cadillac" health care benefits kicks in. But the concepts are apples and oranges that were mixed together in the fruit salad.

INTERNET RUMORS

Don't get me started on the Internet. For the record, there is no way we are going to have a transaction tax on your checking account! If you do not know what I am talking about, Google or Bing it.