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GOVERNMENT CONTRACTOR WITHHOLDING REPEAL

The Senate will consider the bill, H.R. 674, to repeal the three percent tax liability withholding requirement for government contractors. The House passed it with a revenue offset dealing with health care subsidy calculations, which the President has indicated he can accept.

The bill is subject to the usual 60 vote procedural hurdles. Senate Majority Harry Reid (D-NV) has said he wants to change the revenue offset by using one that requires the withholding to continue if the government contractor is delinquent in the payment of taxes. Whether he has the votes for that is the true test vote.

BALANCED BUDGET AMENDMENT

You may recall the debt ceiling deal reached earlier this year provided for the consideration of a balanced budget amendment to the Constitution. The debt ceiling deal requires a vote on a joint resolution entitled "Joint resolution proposing a balanced budget amendment to the Constitution of the United States" between October 1, 2011 and December 31, 2011. It does not specify the structure of the amendment. The House will probably start the process next week. The deal requires the second chamber to take up the joint resolution within a certain time after it is considered by the first chamber. To be considered as approved for Constitution amendment purposes, a two-thirds majority is required in both chambers.

At the moment there are a couple of alternatives. House Joint Resolution 1 sets forth one option:

**Prohibit outlays for a fiscal year (except those for repayment of debt principal) from exceeding total receipts for that fiscal year (except those derived from borrowing) unless Congress, by a three-fifths roll call vote of each chamber, authorizes a specific excess of outlays over receipts.*
**Limit total outlays for any fiscal year to 18% of the U.S. economic output, unless two-thirds of each House of Congress provides for a specific increase above this amount.*
**Require a three-fifths roll call vote of each chamber to increase the public debt limit.*
**Direct the President to submit a balanced budget to Congress annually.*
**Prohibit any bill to increase revenue from becoming law unless approved by two-thirds of each chamber by roll call vote.*
**Authorize waivers of these provisions when a declaration of war is in effect or under other specified circumstances involving military conflict.*

House Joint Resolution 2 offers another option:

**Prohibit outlays for a fiscal year (except those for repayment of debt principal) from exceeding total receipts for that fiscal year (except those derived from borrowing) unless Congress, by a three-fifths roll call vote of each chamber, authorizes a specific excess of outlays over receipts.*
**Require a three-fifths roll call vote of each chamber to increase the public debt limit.*
**Direct the President to submit a balanced budget to Congress annually.*
**Prohibit any bill to increase revenue from becoming law unless approved by a majority of each chamber by roll call vote.*
**Authorize waivers of these provisions when a declaration of war is in effect or under other specified circumstances involving military conflict.*

Yes, you are reading it correctly, they read almost the same. I did not just cut and paste twice. It may be only a few words, but a big difference. The difference is the spending limitation in H.J. Res 1: *Limit total outlays for any fiscal year to 18% of the U.S. economic output, unless two-thirds of each House of Congress provides for a specific increase above this amount*.

Technically, bullet point one in either version gets you a balanced budget.

These are not the only options. There are other variations on the theme. It becomes a choice between making a statement and seeing how many votes you can get.

There is a kicker to the deal. If both chambers of Congress pass the balanced budget amendment and it is "presented" to the States, the debt ceiling is automatically increased by $1.5 trillion instead of $1.2 trillion. (The deficit reduction committee has a way to achieve that same goal.) Hard to imagine the Democrats in the Senate are going to provide anywhere near the votes needed.

In the event both chambers did provide the two-thirds majorities, an amendment to the Constitution would also have to be ratified by three-fourths of the States. The debt ceiling deal does not require ratification of the amendment for the "bonus" increase; just that it is presented to the States). The Archivist of the United States is responsible for presenting it to the States and keeping track of ratification.

CAPITAL FORMATION

The House approved four equity investment bills last week. The "crowdfunding" bill is thought to have the best chance in the Senate.

H.R. 1070, the Small Company Capital Formation Act, raises the offering threshold for companies exempted from registration with the U.S. Securities and Exchange Commission (SEC) under Regulation A from $5 million to $50 million.

H.R. 1965 which would increase the number of shareholders permitted to invest in a community bank.

H.R. 2930 which would permit "crowdfunding." Under current law, SEC registration is required if there are more than 500 shareholders. There are also prohibitions on general solicitation. The legislation would permit some small solicitations but conducted on a wider scale like through the Internet. The parameters would be for transactions involving the issuance of securities for which the aggregate annual amount raised through the issue of the securities is $5,000,000 or less and the individual investments in the securities are limited to an aggregate annual amount equal to the lesser of $10,000 or 10 percent of the investor's annual income.

H.R. 2940 which would remove the solicitation prohibition under Rule 506 of Regulation D.

(See the 10-17 Weekly for the primer for the technical background on these.)

HOURS OF SERVICE

As we have been reporting, the Department of Transportation (DOT) has been working on a final rule regulating drivers' hours of service (HOS) for operating commercial vehicles above a certain size. (See SBLC Issue Paper on HOS for the full details.)

The final rules have entered another technical phase. The DOT has sent them over to the Office of Management and Budget for what is known as an Executive Order (EO) 12866 Regulatory Review. The time line for approval or rejection by OMB is a bit murky since there is the possibility of extensions. On the other hand, if the folks at OMB are happy campers it could be released for publication at any time.

What's an EO 12866 review? Under EO 12866, the Office of Information and Regulatory Affairs (OIRA) within OMB is responsible for determining which agency regulatory actions are "significant" and, in turn, subject to interagency review. Significant regulatory actions as defined in the EO include having an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The size of the vehicle is smaller than the size that triggers the need for a commercial driver's license. For the HOS, the threshold is that it weighs 10,001 pounds or more or has a gross vehicle weight rating or gross combination weight rating of 10,001 pounds or more.