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FORM 1099 REPEAL – NEXT WEEK?

At the end of Congresses, actions happen in a blink of an eye.

For a long time, this Congress has wanted to pass a food safety bill (S. 510). (The low bill number will give you a clue as to how long.) The House passed a version in July, 2009. The bill had been stuck in the Senate. It almost got “unstuck” as the lame duck session began, but it became stuck again even with growing bi-partisan support. (The recent egg contamination problem changed the minds of some on the fence.) Senator Tom Coburn (R-OK) held up the bill as the lame duck session began last week, insisting on the right to offer an amendment to have the Senate place a moratorium on earmarks. Earmarks are another word for what some refer to as pork barrel projects. That is, unless the projects are in your State or District, in which case, they are often referred to as desperately-needed, long-sought-after, job-creating appropriations.

At the end of the first week of the lame duck session, the Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch

McConnell (R-KY) announced a deal to allow Coburn to have his vote and take the final votes on the food safety bill on Monday, November 29th.

Supposedly, the House majority’s leadership has said they are willing to pass the Senate’s version “as is”, instead of going to a conference to reconcile the two versions. It could be on the President’s desk before the end of next week.

So what does this have to do with Form 1099?

Unanimous Consent agreements (UCs) are blink of the eye events. Some senator comes to the floor and says I would like to offer the following UC. The Presiding Officer asks if any Senator has an objection. “Hearing none, it is approved.” Nanoseconds.

Before breaking for Thanksgiving, the Senate approved a unanimous consent agreement for consideration of the food safety bill. From stuck to unstuck in seconds. The two Senate leaders announced that there will be votes on two versions of an amendment to the food safety bill to repeal the Form 1099 requirement. As we have previous reported, Senate Finance Committee Max

Baucus (D-MT) has thrown in the towel and conceded that repeal is appropriate. He introduced a bill to do so and one amendment will be based on his bill to repeal it. Senator Mike Johanns (R-NE), who has been the leader of the repeal movement, has proceeded with a new proposal to repeal it. His proposal offsets the cost of repeal with a rescission of unspecified non-defense discretionary spending not used by agencies. (Yeah, the expression “phantom offset” comes to mind but who am I to quibble. He is on our side and if it allows others to vote for it, I am for it.) His version will also be allowed as an amendment to the food safety bill. Either one repeals the requirement.

This happened at the last moments of the first week of the lame duck and, I suppose, over the course of the Thanksgiving week we will find out more about how this will play out. I am not entirely sure why we have to have two amendments, except for the partisan aspect. I do not know whether the House will stand by their earlier indication that they were prepared to take the Senate food safety bill “as is” - if the repeal attached. I think they would. I do not think the Senate will pass the Coburn earmark amendment but it might be close. If

the Senate did, would the House go along with it?

ESTATE TAX

There are some rumblings of momentum in the Senate for a compromise on the estate tax relief front. The buzz points a compromise in the direction of a proposal by Senators Blanche Lincoln (D-AR) and Jon Kyl (R-AZ). Too soon to suggest what the details might be. I do not think it would be exactly their proposal. But for the record, the original version of their proposal can be found in a motion to recommit that they had planned to offer earlier this year with regard to a different bill. It would have phased in a permanent \$5 million exemption and a 35 percent top rate.

“Mr. KYL (FOR HIMSELF AND MRS. LINCOLN) moves to commit H.R. 5297 to the Committee on Finance with instructions to report the same back to the Senate within 1 day with changes to provide a 35 percent estate tax rate phased in over 10 years, a \$5,000,000 exemption amount phased in over 10 years and indexed for inflation, a stepped up basis for inherited assets, and, for decedents dying in 2010, an election under which no estate tax would be imposed and assets acquired from the decedent would receive a modified carryover basis. The Committee is further instructed to offset the difference in revenue loss between a permanent 45 percent estate tax rate with a \$3,500,000 exemption amount and the proposed changes described in the preceding sentence.”

This is basically the course the SBLC-inspired **Permanent Estate Tax Relief Coalition** has been pursuing. So we have our fingers crossed.

OTHER TAX CUTS

Senate Majority Leader Harry Reid (D-NV) has said he will schedule votes on dueling bills to renew the so-called Bush tax cuts. The Democratic not-yet-unveiled version would limit the renewal to the middle and lower class tax relief. The Republican version would renew them in their entirety.

Once that pointless exercise is over and done with, (neither will get sixty votes) maybe we will see some real compromising. I also still think they will renew some of the individual tax relief items. I still think they will renew the expired Alternative Minimum Tax (AMT) income patches that raise the income levels at which the AMT is applied. I also still think we will see some extension of some business tax relief such as the R&D Credit.

Overlaying this entire lame duck speculation is the decision about what to do about funding the government for the rest of this fiscal year. I am still of the mind that they are going to end up with a short term continuing resolution, pushing the decision into February or March of next year. My caveat is there are some retiring Republican senators who want to get the full year funding locked down before they leave. Although the Senate Minority Leader has said he does not want to go in that direction, I think these Republican Senators are persistent and determined.

While a lot of folks talk about the lame ducks lingering until Christmas, once the funding issue is resolved, enthusiasm for hanging around is going to dissipate fast. The funding decision has to be made by December 3rd. There is always the possibility of another short short continuing resolution. If that happens, it means the persistent are still being persistent and the lame duck session will continue.

SBLC ANNUAL MEETING

Mark you calendars. The SBLC Annual Meeting will be held on Thursday, February 10, 2011 from 8 a.m. to 10 a.m. It will be held in Washington, D.C. at a location to be announced.

HAPPY THANKSGIVING

While it has been a tough couple of years for small business and for those of us who represent them, there is still a lot to be thankful for this year. I am grateful for your support. Happy Thanksgiving.

PS: There will not be a Weekly on November 29th unless there are some new details that would alter the analysis in this Weekly.