



SMALL BUSINESS
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HEALTH CARE REFORM

Congratulations to Senator Reid. His Patient Protection and Affordable Care Act (PPACA) draft tipped the scales at 2074 pages. House Speaker Nancy Pelosi's House-passed version was a mere 2017 pages. Up to this point, I have avoided getting into the specifics of some of the various tax incentives for small business, the variations on the health care exchanges or permutations on the public option. I am going to stick with that plan.

PPACA follows the Senate Finance Committee approach of a quasi-mandate. In theory, a large employer could avoid providing health care benefits to employees and avoid any penalty for failing to do so. However, if just one employee obtains health care directly through the exchange program and is eligible for a subsidy to do so, a penalty is triggered. The penalty permutations are very complex and I am inclined to believe a large employer, if it choose not to provide the coverage levels established by the law, would end up paying a penalty which is equal to \$750 per employee times the total number of full-time employees, regardless of whether they have coverage or not.

Of course, the benefits a large employer must provide must meet minimum essential level, the employer must pay 60 percent of the cost, and the employee's cost must meet affordability standards, otherwise the employees will be deemed to eligible for various credits and subsidies (in other words, likely trigger the quasi-mandate.) Large employers are expected to enroll individuals within 30 days of employment.

A large employer is one with more than 50 full-time employees. A full-time employee works on average at least 30 hours a week. The bill does allow smaller employers to go over the 50 employee threshold for 120 days or fewer without triggering any obligations, if the threshold number is exceeded because of the use of seasonal workers under section 500.20(s)(1) of title 29, Code of Federal Regulations or retail workers used exclusively during holiday seasons. (Yes, holiday seasons are plural. The bill does not define "holiday seasons." I am not aware of a "holiday seasons" definition in federal law. If you know of one, let me know. It will be left to the Department of Labor to make the determination.)

The revenue offsets are of interest to small business. The bill imposes a tax on "cadillac" health benefits. The tax is collected from insurers. The tax is on benefits that exceed \$8,500 for individuals and \$23,000 for families.

PPACA includes the provision that would require every business to issue a Form 1099 information report to all vendors of services or goods to which the business paid more than \$600 annually for those goods and services. See previous Weekly Reports for further details.

PPACA includes an increase in a portion (the Medicare Hospital Insurance (HI) trust portion) of the payroll tax. The bill would increase it to 1.95 percent from 1.45 percent on wages or self-employment income over \$200,000 for individual return and \$250,000 for a joint return. There is no limit on the amount of wages or self-employment income that is subject to the tax. The introduction of the concept of imposing an employment tax at different income levels for individuals and for joint returns creates a whole new wrinkle for two wage-earner families. Up to this point, FICA taxes have been applied to each individual's wages regardless of how income taxes

were filed. The bill provides that employer can continue to withhold the employee's share as if an employee's spouse's wages were not applied towards the threshold. This means joint return taxpayers will have to make an adjustment somewhere on their income tax return for the fact extra HI tax might have been withheld. Same for self-employment income.

The second wrinkle is an even more interesting one. This is an increase in the employee's share only. The employer would continue to pay to its 1.45 percent rate share on the employee's wages. In the case of the self-employed, they would pay only an additional 0.5 percent instead of a combined one percent.

On Saturday, the Senate voted to proceed to consideration of the bill. Sixty votes were needed to end a filibuster. Sixty votes were cast by the 58 Democrats and the two Independents. The next step is debate and deliberation. Eventually, another cloture motion will be filed to end debate. If that is successful and the Senate passes a bill, a conference committee would be convened to develop a final compromise. At the moment, the Senate's majority leadership is projecting three weeks of debate. It is possible the Senate will vote on a final version before the end of year; a lot depends on the Senate Majority Leader's ability to cobble together sixty votes for the final bill. It may be easier for him to find a Republican vote or two rather than the 60 votes he found for the procedural motion, given the wide range of concerns expressed among the current 60-vote majority.

EXTENDERS ANYONE?

This spring it looked as if the perennial debate over the fate of the temporary Research and Development (R&D) Credit would finally come to an end. President Obama's proposed budget included a recommendation to grant permanent status to the credit. Several bills by key players were introduced to revise the credit and make it permanent. Now it looks as if the credit is destined for another year on the temporary roller coaster. The Ways and Means Committee is preparing a bill to extend a variety of expiring tax provisions for another year. (The estate tax issue is not part of this "extenders" debate. It is on a separate track).

Late last year, the Emergency Economic Stabilization Act extended the "regular" R&D credit through 2009, extended the alternative simplified credit through 2009 and modified it for 2009, and extended the alternative incremental research credit for 2008 only.

In addition to the one-year extension of the R&D credit, the bill is likely to include a one-year extension of the temporary accelerated depreciation schedule for retail structural improvements. There are some energy-related items that are expected to be included, but none of widespread interest to the small business community. There are a number of deductions and credits taken by individuals such as the deduction for state and local sales taxes, some related to specific charitable contributions, some very narrow business deductions and credits, and some related to disaster relief that are under consideration for inclusion.

My understanding is there could somewhere between 30 and 40 expiring provisions that get a one year reprieve.

As I have written before, there are over a hundred tax relief provisions that expire at the end of this year or at the end of 2010. If Congress passes this extension, all 100 plus will be fighting for revenue oxygen at the end of next year.

ANNUAL MEETING

Mark your calendars. Monday, February 8, 2010 at 8 a.m. DC location to be determined.

HAPPY THANKSGIVING

It has not been a great year for small businesses and the trade associations that serve them. Having said that, we still have a lot to be thankful for. I am thankful for all of your support, year in and year out, in the good times and the tough times. I hope you have a wonderful Thanksgiving.