SMALL BUSINESS LEGISLATIVE COUNCIL

SBLC WEEKLY

Via E-mail
December 6, 2010 Volume XII, Issue 36

THE STARS ARE ALIGNING

Because Congress failed to fulfill its Constitutional obligation to fund the government for the fiscal year that began on October 1, 2010, Congress and the President have had to resort to the use of a temporary funding mechanism known as a continuing resolution (CR) to keep the government going. CRs can be for short or long periods of time. The last CR expired, and Congress passed and the President has signed into law a new CR. The CR funds the government through December 17th.

Congress and the President have four options. Pass and sign an "omnibus" appropriations bill that funds various government agencies at different funding levels for the remainder of this fiscal year which ends September 30, 2011. They can pass and sign a long term continuing resolution that funds the government at current levels for the remainder of the fiscal year. They can pass and sign a continuing resolution that funds the government until some time next spring. They can pass another short term continuing resolution for a few days or weeks. This last outcome is only likely if Congress and the President botch the current negotiations to extend some expiring and expired tax relief. Given their track record, one is tempted to say it is the likely next step, but I think not. I think they will get the tax negotiations completed. (Okay, there is a fifth option – have the government shut down. But that is not going to happen.)

It is beginning to look like Congress and the President will make a deal to extend temporarily the so called Bush tax cuts – the temporary tax relief passed in 2001 and 2003. The one of most direct interest to small business is the top individual income marginal rate. It was lowered to 35 percent but is scheduled to return to 39.6 percent on January 1, 2011. Most small businesses operate as "pass through" entities (i.e. they are sole proprietors, partners or S Corporation shareholders) and, as a result, pay taxes on their business income on the individual rate schedule.

The big picture debate has centered on whether to extend the relief for middle and lower class incomes only or for everybody across the board. It looks like it will be across the board. However, it may be only for two years. One would say the Democrats blinked. However, the trade off may be an extension of expiring unemployment benefits. Personally, after ten years of temporary tax policy, I believe it is time for some permanent decisions.

It is a very good chance the deal will include some estate tax relief. We are hoping for permanent relief. It may include a $3.5 million exemption or a $5 million exemption. The top rate may be 35 percent or it might be 45 percent. If nothing is done, the estate tax returns on January 1, 2011 and top rate returns to 55 percent and the exemption will be $1 million. I am feeling more optimistic than ever that Congress and the President will do something before the end of the year. The SBLC-inspired "Permanent Tax Relief Coalition" has been working for a $5 million exemption indexed for inflation and a 45 percent top rate.

I expect them to extend the Alternative Minimum Tax (AMT) "patch" for the income levels at which the AMT kicks in. If nothing is done, the AMT income levels for your 2010 tax returns will be the older lower income levels. The last temporary increase pushed the AMT exemption amounts to $46,700 (individuals) and $70,950 (married filing jointly) for tax year 2009. In 2010, the exemption amounts have reverted to $33,750 (individuals) and $45,000 (married filing jointly)

I believe some expiring and expired energy and other business credits (like the R&D Credit) and deductions will be extended – for one or two years.

The expanded Form 1099 requirement will be repealed.

I think they are going to get it done to go home on December 17th.

As noted in the last Weekly, there are some Republicans like Kit Bond (R-MO) (who is retiring) who are pushing for an omnibus appropriations bill. The fact the last CR was a short one gives them some more time to try to secure the omnibus appropriations deal but either way, once a tax deal falls in place Congress will just pick one funding option and go home. No Christmas Eve spectaculars this year.

There is an interesting issue looming in the shadows. The government is running up against its debt ceiling. Unless Congress increases the debt ceiling, the government cannot borrow money. The debt is expected to hit the ceiling next spring. Some incoming members of Congress campaigned on a platform that said they will fight not to increase the ceiling. There was some thought the new House majority leadership would choose to avoid an awkward intraparty showdown early in their tenure by including the debt ceiling increase now as part of the tax deal. I am thinking "not", but it is interesting to watch the current negotiations.