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THE WHITE HOUSE- REPUBLICAN COMPROMISE FRAMEWORK

The White House and the Senate leadership have released the details of their proposed massive tax relief and unemployment benefits renewal bill. The House Democrats are balking at the idea of passing it “as is,” so at this point, I would say this will change before the ink dries. The Senate will vote for cloture on Monday.

Surprisingly, it does *not* include a repeal of the Form 1099 requirement. I am absolutely flabbergasted it does not. A senior Treasury official told a room full of people and my own ears that “the White House was not the problem.” You can draw your own conclusion as to “then who?”

It also does not include a renewal of the popular Buy American Bond program for infrastructure investment.

Some amendments will be allowed in the Senate. I am expecting that a Form 1099 amendment will be offered. If this Congress does not repeal it – it will officially go down as the weirdest behaving Congress ever.

The proposal includes dozens of renewals of expired and expiring credits and deductions. The following are the ones of most interest to small business.

Temporarily extend the 35 percent bracket. Under current law, the 35 percent individual income tax bracket expires at the end of 2010. Upon expiration, the rate becomes 39.6 percent. This proposal extends the 35 percent individual income tax bracket for an additional two years, through 2012.

Temporarily extend the capital gains and dividend rates. Under current law, the capital gains and dividend rates for taxpayers below the 25 percent bracket is equal to zero percent. For those in the 25 percent bracket and above, the capital gains and dividend rates are currently 15 percent. These rates expire at the end of 2010. Upon expiration, the rates for capital gains become 10 percent and 20 percent, respectively, and dividends are subject to the ordinary income rates. This proposal extends the current capital gains and dividends rates for all taxpayers for an additional two years, through 2012.

Two-year AMT patch. Currently, a taxpayer receives an exemption of \$33,750 (individuals) and \$45,000 (married filing jointly) under the AMT. The proposal increases the exemption amounts for 2010 to \$47,450 (individuals) and \$72,450 (married filing jointly) and for 2011 to \$48,450 (individuals) and \$74,450 (married filing jointly).

Deduction of State and local general sales taxes. The bill extends for two

years (through 2011) the election to take an itemized deduction for State and local general sales taxes in lieu of the itemized deduction permitted for State and local income taxes.

Temporary estate, gift and generation skipping transfer tax relief. There is a two year extension, and it comes with a couple of positive twists. But it is not permanent!

The EGTRRA phased-out the estate and generation-skipping transfer taxes so that they were fully repealed in 2010, and lowered the gift tax rate to 35 percent and increased the gift tax exemption to \$1 million for 2010. The proposal sets the exemption at \$5 million per person and \$10 million per couple and a top tax rate of 35 percent for the estate, gift, and generation skipping transfer taxes for two years, through 2012. The exemption amount is indexed beginning in 2012. The proposal is effective January 1, 2010, but allows an election to choose no estate tax and modified carryover basis for estates arising on or after January 1, 2010 and before January 1, 2011. The proposal sets a \$5 million generation-skipping transfer tax exemption and zero percent rate for the 2010 year.

Portability of unused exemption. Under current law, couples have to do complicated estate planning to claim their entire exemption (currently \$7 million for a couple). The proposal allows the executor of a deceased spouse’s estate to transfer any unused

exemption to the surviving spouse without such planning. The proposal is effective for estates of decedents dying after December 31, 2010.

Reunification. Prior to the EGTRRA, the estate and gift taxes were unified, creating a single graduated rate schedule for both. That single lifetime exemption could be used for gifts and/or bequests. The EGTRRA decoupled these systems. The proposal reunifies the estate and gift taxes. The proposal is effective for gifts made after December 31, 2010.

Extension of bonus depreciation.

Under current law, businesses are allowed to recover the cost of capital expenditures over time according to a depreciation schedule. Congress allowed businesses, beginning January 1, 2008 through December 31, 2009, to take an additional depreciation deduction allowance equal to 50 percent of the cost of the depreciable property placed in service in those years. Under the Small Business Jobs Act of 2010, this temporary increase in the depreciation deduction allowance was extended through December 31, 2010. The bill extends and temporarily increases this bonus depreciation provision for investments in new business equipment. For investments placed in service after September 8, 2010 and through December 31, 2011, the bill provides for 100 percent bonus depreciation. For investments placed in service after December 31, 2011 and through December 31, 2012, the bill provides for 50 percent bonus depreciation. The provision also allows taxpayers to elect to accelerate some AMT credits in lieu of bonus depreciation for taxable years 2011 and 2012.

Temporarily extend increase in the maximum amount and phase-out threshold under section 179.

Under current law, a taxpayer with a sufficiently small amount of annual investment may elect to deduct the cost of certain property placed in service for the year rather than depreciate those costs over time.

The 2003 tax cuts temporarily increased the maximum dollar amount that may be deducted from \$25,000 to \$100,000. The tax cuts also increased the phase-out amount from \$200,000 to \$400,000. In 2007, tax cuts temporarily increased these thresholds to \$125,000 and \$500,000 respectively, indexed for inflation. These amounts have been further increased and extended several times on a temporary basis, including most recently as part of the Small Business Jobs Act which increased the thresholds to \$500,000 and \$2,000,000 for the taxable years beginning in 2010 and 2011. This proposal extends the 2007 maximum amount and phase-out thresholds for taxable years beginning in 2012, at \$125,000 and \$500,000 respectively, indexed for inflation. The proposal is effective for taxable years beginning after December 31, 2011.

Temporary reduction in employee-paid payroll taxes.

Under current law, employees pay a 6.2 percent Social Security tax on all wages earned up to \$106,800 (in 2011) and self-employed individuals pay a 12.4 percent Social Security self-employment taxes of on all their self-employment income up to the same threshold. The bill provides a payroll/self-employment tax holiday during 2011 of two percentage points. This means employees will pay only 4.2 percent on wages and self-employment individuals will pay only 13.3 percent on self-employment income up to the threshold.

R&D credit. At the moment, there is no R&D credit for 2010. The bill reinstates for two years (through 2011) the research credit.

Exclusion of small business capital gains.

The provision extends the 100 percent exclusion of the gain from the sale of qualifying small business stock that is acquired before January 1, 2012 and held for more than five years

Tax benefits for certain retail improvements.

The bill extends for two years (through 2011) the special 15-year cost recovery period for certain leasehold improvements, restaurant buildings and improvements, and retail improvements.

Alternative fuels credit. The bill extends through 2011 the \$0.50 per gallon alternative fuel tax credit.

Energy-efficient new homes credit.

The bill extends through 2011 the credit for manufacturers of energy-efficient residential homes.

Energy-efficient existing homes.

The bill extends through 2011 the credit under Section 25C of the Code for energy-efficient improvements to existing homes, reinstating the credit as it existed before passage of the American Recovery and Reinvestment Act. Standards for property eligible under 25C are updated to reflect improvements in energy efficiency.