



SBLC WEEKLY

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APPEARS AND APPARENTLY

It appears that the estate tax will be repealed at the end of the calendar year. It will be reinstated automatically at the beginning of 2011. Congress could not arrive at a compromise to freeze permanently the top rate and exemption. There is talk about a “retroactive” freeze at some point next year. It seems to me this would be a particularly vindictive penalty for those mega-wealthy families that happen to have the misfortune of a death during the year. While the congressional majority may try to pass a retroactive freeze, I don’t see how they get the votes to do so. It is hard to conjure up a procedural maneuver that would circumvent a 60-vote requirement in the Senate.

Having said that, the apparently forthcoming repeal is not much of a bargain for smaller estates “created” in 2010. Instead of an exemption and fair market value stepped-up basis for the appreciated assets, the heirs will receive the assets with a carry-over basis at their original value. Down the road, the capital gains on any sale of the assets will be substantial.

The Republicans say leverage is on their side once the tax is repealed.

While the Democrats may not like the repeal, with an automatic reversion to the pre-2001 rate and exemption on the horizon, I do not quite see how the leverage is on our side of the fulcrum.

The Senate has not been willing to go along with the House’s effort to extend a variety of expiring credits and deductions for another year. The most prominent of the business-related expiring items is the Research and Development Credit. So apparently, they will expire at the end of the calendar year. There is some talk of retroactive renewal if no action is taken in the remaining days of the calendar year.

Not even mentioned as the end of the year approaches is the state of the Alternative Minimum Tax (AMT) patch for the income thresholds for application of the tax. The patch expires at the end of the calendar year. The AMT exemption amounts are \$46,700 (individuals) and \$70,950 (married filing jointly) for tax year 2009. In 2010, the exemption amounts revert to \$33,750 (individuals) and \$45,000 (married filing jointly).

You will note I am not using declarative sentences. With the

Senate still in session, I cannot say definitively that the estate tax will be repealed, the extenders will not be extended or the AMT income levels will drop to their old levels. As long as the Senate is still trying to finish up its health care reform deliberations this year, I cannot rule out a surprise ending to any of the above issues. Highly unlikely, but not officially impossible.

In addition to fretting over the above items, already on my mind is the temporary cut in the top individual marginal income that will expire at the end of 2010, as will the temporary capital gains rate cut. Oh, did I mention the 40 or so temporary credits and deductions that will now apparently be left to expire at the end of 2009 will be joined by another 70 or so credits and deductions that will expire at the end of 2010.

I will be writing more about the tax challenges ahead of us as we enter the new year.

HEALTH CARE REFORM

Senate Majority Leader Harry Reid (D-NV) has announced he believes he has the 60 votes to approve the health care reform bill. The Republicans are dragging out the

debate but I suspect by Christmas Eve, the vote will take place. It is hardly the end of the story, as the congressional majority still needs to produce a conference version, reconciling the House and Senate bills. That conference report would face one more 60-vote hurdle in the Senate. As you know, most bills are subject to two filibusters, one on the motion to proceed to the matter, and one on substance. While the motion to proceed to a conference report is not debatable, the conference report's approval is.

Small business did gain some ground in the final negotiations in terms of incentives and subsidies. Eventually, I will report on these, but as many are temporary in nature, I have not gotten overly excited about them.

The negotiations did manage to produce in an increase in a proposed tax increase that will have some impact on small business. You will recall that Majority Leader Reid's draft included an increase in the employee share of FICA (and for the self-employed).

His initial draft included 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 (i.e. a 0.5 increase) 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 (unlike the social security portion of the FICA tax, which has a wage cap). 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.

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.

The new revision is that the tax would increase by 0.9 percent instead of 0.5 for employees and the self-employed.

HOLIDAYS

It looks like I have one more Weekly to write this year. However, I want to take this opportunity to wish you Happy Holidays and hope you have some joyous time with family and friends.