



SMALL BUSINESS
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TO BE CONTINUED

This Congress continues to plow its uncharted and unpredictable course of legislating. Both the Senate and House rejected separate different individual agency spending bills last week. Congress is now in recess for four weeks and the only certainty is that there is no such thing as “regular order” when it comes to Congress fulfilling its Constitutionally mandated responsibility to fund the government. It will not fund the government by October 1st by passing the multiple appropriations bills needed to do so under the “regular order.”

It appears a temporary “continuing resolution” will be passed in September to fund the government for some specified - probably short - period of time beyond October 1st. The goal will be to buy some time. While no one is very optimistic about a “grand deal,” that is what a short-term extension will buy – some time to see if a grand deal is possible. Yes, I know you are thinking why cannot they just decide that now? While their current course of legislating is through uncharted waters, some things still hold true and without an 11th hour, Congress is hard pressed to find the will to act.

The aforementioned grand deal hinges on the only decision Congress and the President have to make this fall – to increase the debt ceiling. The grand deal we are talking about is the hope that tax reform and entitlement reform could be tied to the debt ceiling increase. There is also some hope on both ends of Pennsylvania Avenue and both parties that the current sequestration rules can be modified. Those concerned about the impact of sequestration on defense and those concerned about the impact on social programs are interested in making modifications.

The course of least resistance would be a modest increase in the debt ceiling and sequestration modifications. Tax reform and entitlement reform, while not impossible goals, require more comity than this Congress may be able to muster.

As previously noted, if there is no tax reform deal, make sure you are not standing in the hallways of Congress when the tax lobbyists stampede begins to renew any expiring tax credits and deductions. For example, the direct expensing allowance, also known as the Section 179 allowance, will drop from the current temporary levels of an allowance of \$500,000 and an asset purchase cap of \$2,000,000

to \$25,000 and \$200,000, (both without indexing) respectively, in 2014.

STILL NOT LOOKING TOO GOOD

...for immigration reform, farm program reauthorizations, postal service reform and a bunch of other issues it in this calendar year. Since this is the first session of Congress, everything carries over to the next session. Once the debt ceiling deal is iced, interest in doing any more work during the first session of Congress will wane. We give slightly better chances, if enough noise is made, for Senate consideration of some version of the House-passed bills that formalize the delay of the health care reform penalty on employers and extending it to individuals. There is a chance the House will consider legislation, the Marketplace Fairness Act, to permit the States to require out of state sellers to collect use taxes. The Senate passed a version earlier this year.

REIN THEM IN

Before recessing the House of Representatives passed a bunch of interesting bills, among them H.R. 367, the Regulations from the Executive in Need of Scrutiny Act (REINS Act) which passed by a

vote of 232-183. The REINS Act requires that federal agencies submit major regulations to Congress for approval. During the debate, amendments were approved to change the definition of a major rule from one with a \$100 million dollar impact to \$50 million. Amendments were also adopted to require congressional approval of any additional health care reform act implementation regulations and any carbon tax regulations if the Administration were to try to impose one by administrative action. In the latter case, there has been a lot of speculation about whether the Administration has the authority to do so under existing laws.

It is difficult to conjure up a situation in which the Senate Majority Leader would bring the House version or a Senate version to the floor this fall.

We expect the House to consider a variety of tort reform and regulatory reform bills in the fall. Most of them will be tough sells in the Senate but still merit mentioning if you are meeting with Senators and Representatives during the summer break and the proposed solution is relevant to your business profile.

On the tort reform front, we have LARA and ISFA. Both are resurrected bills from our piecemeal approach to tort reform past.

The Lawsuit Abuse Reduction Act of 2013 (LARA), H.R. 2655 is all about the Federal Rules of Civil Procedure. Rule 11 says that attorneys or unrepresented parties are not to file suits that are being presented for any improper purpose, such as to harass, cause

unnecessary delay, or needlessly increase the cost of litigation; the claims, defenses, and other legal contentions are not warranted by existing law or by a frivolous argument for extending, modifying, or reversing existing law or for establishing new law; and the factual contentions do not have evidentiary support. The rule allows courts to impose sanctions. However, the operative word is "may" impose sanctions. This was not always the case. Until a 1993 change in the rules, the courts were required to impose sanctions. "Shall" disappeared and the lawsuit floodgates opened. LARA reverses the 1993 amendments to Rule 11 that made sanctions discretionary rather than mandatory. In addition, LARA requires that judges impose monetary sanctions against lawyers who file frivolous lawsuits. Those monetary sanctions will include the attorney's fees and costs incurred by the victim of the frivolous lawsuit.

The IFSA is the Innocent Sellers Fairness Act, H.R. 2746, introduced by Representative Blake Farenthold (R-TX). This bill is designed to limit the liability of sellers that had no control or input in the design, production, or any other aspect of an allegedly defective product.

One regulatory reform bill is one we have mentioned before. H.R. 2542, introduced by Representative Spencer Bachus (R-AL), would expand the scope of the Regulatory Flexibility Act, in on the move in the House. Among other things, it would require agencies to consider the indirect impact of proposed rules on small businesses, not just the direct effects.