



SMALL BUSINESS
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VETERANS' DAY

Today is Veterans' Day and we want to thank those who have served and their families for the sacrifices they made for us.

MINIMUM WAGE

There is talk of bring a minimum wage increase bill to the floor in the Senate. While one would be expected to say the Republicans will mount a filibuster and that's the end of the story, the dynamic maybe a little different. There is a lot of talk about adding amendments to the bill from both the Democratic and Republican sides of the aisle. The possible amendments range from provisions to renew expiring tax "extenders" (see story below) to efforts to postpone the individual mandate penalty about to be imposed under health care reform (the latter is gaining momentum among Democrats with each passing day.) The laundry list of possible amendments is already long and we are sure more are to come.

Now, add to that environment the fact nineteen states (now 20 with New Jersey's recent action) and the District of Columbia have minimum wage rates above the federal rate of \$7.25 per hour and this last train to Clarksville might not get derailed by a filibuster.

Would the House majority consider a bill sent over from the Senate? Our guess is if the bill does pass in the Senate, it will be laden with items not particularly attractive to the House majority. BUT, if comes over with just a couple of extenders and any sort of health care reform rebuke, that just might be the ticket for passage.

S. 460, introduced by Senator Tom Harkin (D-IA) would amend the Fair Labor Standards Act of 1938 (FLSA) to increase the federal minimum wage for employees to: (1) \$8.20 an hour on the first day of the third month after the enactment of the new law; (2) \$9.15 an hour after one year; (3) \$10.10 an hour after two years; and (4) the amount determined by the Secretary of Labor (based on increases in the Consumer Price Index) after three years, and annually thereafter. It would increase the federal minimum wage for tipped employees to \$3.00 an hour for one year on the first day of the third month after the enactment of the new law. Finally, the bill provides a formula for subsequent annual adjustments of the wage increase to ensure that it remains equal to 70 percent of the wage in effect under FLSA for other employees.

The FLSA establishes the minimum hourly wage that must

be paid to all covered workers. In 1938, the first federally mandated minimum wage was \$0.25. As you might imagine, it has been revised many times. The most recent increase to the current \$7.25 was enacted in 2007 in Public Law 110-28.

According to the Congressional Research Service, currently, there are approximately 3.6 million workers, or 4.7 percent of all hourly paid workers, whose wages are at or below the federal minimum wage of \$7.25 per hour. Approximately three-quarters of minimum wage workers are age 20 or older and nearly two-thirds work part time.

Coverage is determined by two facts. First, the "enterprise," as the term is used by the law, must have at least two employees and must have annual sales of at least \$500,000. But even a business with sales below \$500,000 can be covered with respect to individual employees, if the employee is engaged in interstate commerce or in the production of goods for "interstate commerce," a term broadly defined for FLSA purposes.

There are exemptions for various types of businesses and occupations as well as subminimum wages.

EXTENDERS

As we have reported a number of times, the fates of several tax “extenders” have been in suspended animation awaiting some signs regarding tax reform. While there are a bunch of credits and deductions that will expire at the end of the year, the one of most concern to small business is the status of the direct expensing allowance found in Internal Revenue Code Section 179.

The allowance allows businesses to write off the expenses of new capital purchases such as machinery in the year of purchase instead of depreciating it over several years. The amount of the allowance is specified in law (the portions that cannot be expensed are depreciated under regular depreciation schedules) and the more a business buys in a year, the less can be direct expensed. When the total purchases exceed a cap, the direct expensing allowance cannot be used all. (This latter requirement is why it is often referred to as a small business tax benefit. Larger firms usually invest more than the cap each year.)

Over the years, the expensing allowance and the purchase cap have been increased on a temporary basis. Most recently, on January 2, 2013, the President signed into law as Public Law 112-240, the American Taxpayer Relief Act, which increased the direct expensing allowance and asset purchase cap to \$500,000 and \$2,000,000 for 2012 and 2013. (In effect, a retroactive increase for 2012.) Neither number is indexed for inflation.

The bad news is that on January 1, 2014, the amounts revert to pre-2003 levels of \$25,000 and \$200,000 without inflation indexing.

If you ask tax reformers on the Hill, they will tell you that they have no plans to deal with the expiration of the temporary increases this year. Their theory is that either it will be addressed by tax reform in 2014, or there will be some retroactive action to increase the allowance.

Others on the Hill such as Senators Mary Landrieu (D-LA) Robert Menendez (D-NJ), Pat Toomey (R-PA) and Sue Collins (R-ME) will look for other legislative vehicles to which they can add an increase as well as other tax provisions as an amendment. One such vehicle may be the aforementioned minimum wage bill.

If we were putting money on the outcome, look for Congress to provide an increase in the direct expensing allowance in 2014. However, we will continue to work to get something done this year.

SEXUAL ORIENTATION DISCRIMINATION

The Senate has passed S.815, the Employment Non-Discrimination Act of 2013, to address discrimination on the bases of sexual orientation and gender identity.

As with other equal employment opportunity laws, the legislation would make it an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to the

compensation, terms, conditions, or privileges of employment of the individual, because of such individual's actual or perceived sexual orientation or gender identity; or to limit, segregate, or classify the employees or applicants for employment of the employer in any way that would deprive or tend to deprive any individual of employment or otherwise adversely affect the status of the individual as an employee, because of such individual's actual or perceived sexual orientation or gender identity.

The term “gender identity” means the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth. The term “sexual orientation” means homosexuality, heterosexuality, or bisexuality.

As is the case if a federal equal employment opportunity complaint against a business involves race, color, religion, sex (including pregnancy), national origin, disability or genetic information, under the bill the business would be subject to this federal sexual orientation or gender identity discrimination prohibition if the business has 15 or more employees who worked for the employer for at least twenty calendar weeks. (If a complaint involves age discrimination, the business may be liable if it has 20 or more employees who worked for the company for at least twenty calendar weeks.)

The House is not expected to consider the legislation.

INFLATION NUMBERS

The Internal Revenue Service has announced annual inflation adjustments for 2014. The adjustment is 1.5 percent.

- The tax rate of 39.6 percent affects singles whose income exceeds \$406,750 (\$457,600 for married taxpayers filing a joint return), up from \$400,000 and \$450,000, respectively.

- The Alternative Minimum Tax exemption amount for tax year 2014 is \$52,800 (\$82,100, for married couples filing jointly). The 2013 exemption amount was \$51,900 (\$80,800 for married couples filing jointly).

- Estates of decedents who die during 2014 have a basic exclusion amount of \$5,340,000, up from a total of \$5,250,000 for estates of decedents who died in 2013.

- The annual exclusion for gifts remains at \$14,000 for 2014.

- The annual dollar limit on employee contributions to employer-sponsored healthcare flexible spending arrangements (FSA) remains unchanged at \$2,500.

- The small employer health insurance credit provides that the maximum credit is phased out based on the employer's number of full-time equivalent employees in excess of 10 and the employer's average annual wages in excess of \$25,400 for tax year 2014, up from \$25,000 for 2013.

- The limitation on the annual benefit under a defined benefit plan is increased from \$205,000 to \$210,000.

- The annual compensation limit used to calculate limits on contributions to certain defined contribution plans is increased from \$255,000 to \$260,000.

- The limitation on contributions for defined contribution plans is increased in 2014 from \$51,000 to \$52,000.

The Social Security Administration has also released its inflations adjustments for 2014.

- The maximum amount of earnings subject to the Social Security tax (taxable maximum) will increase to \$117,000 from \$113,700. (This is the Social Security (Old-Age, Survivors, and Disability Insurance) portion of FICA, on which employers and employees, each pay 6.20 percent.)

- Monthly Social Security and Supplemental Security Income (SSI) benefits increase 1.5 percent in 2014.