



HIGHLIGHTS:

- Required Individual Coverage*
- Affordability Credits*
- Enhanced Employer Responsibility*
- Small Business Tax Credits*
- Medicare Payroll Surtax*
- Tax On High-Cost Insurance*
- New Caps On FSAs*

Senate Passes Health Care Reform; Tough Negotiations Loom Over Surtax/ Other Revenue Offsets

By a vote of 60-39, the Senate approved a massive health care reform bill on December 24, 2009 with over \$390 billion in revenue raisers and new taxes on employers and individuals. The Patient Protection and Affordable Care Act (H.R. 3590) is a version of bills passed earlier by the Senate Finance Committee (SFC) and the Senate Health, Education, Labor, and Pensions (HELP) Committee. Although the Senate bill is similar in scope to the House-passed Affordable Health Care for America Act (H.R. 3962) many differences remain, especially over revenue raisers.

to sign before his January State of the Union address.

Impact *The House bill imposes a surtax on higher-income individuals; the Senate bill includes an added payroll tax on higher-income wage earners. Opponents charge that the new taxes, combined with revival of the top two pre-2001 individual marginal income tax rates and expected higher capital gains rates after 2010, will push the effective tax rate on higher income individuals to record highs.*

Comment The GOP has criticized the Senate health care bill for effectively raising taxes on middle income taxpayers. Democrats counter that the bill effectively reduces the tax burden on taxpayers, especially lower income individuals who qualify for tax credits to help purchase qualified insurance coverage, and reduces the tax burden on small businesses.

Impact *After passage of the bill in the Senate, lawmakers now begin the difficult task of reconciling the House and Senate versions. House Speaker Nancy Pelosi, D-Calif., squashed rumors that the House would simply pass the Senate bill, saying that a conference is the preferred route to write a final bill. The White House reportedly is working to move the expected final Senate bill closer to the House bill. It is unclear if this means including a public option or, as an administration official recently said, making sure that health care insurance is affordable for all Americans. Democratic leaders in the House and Senate have indicated their goal to pass a final bill in time for President Obama*

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KEY OFFSETS

To help finance health care reform, the Senate bill includes an excise tax on high-cost “Cadillac” insurance plans, an increase in Medicare payroll taxes on wage earners in the \$200K-plus income category (\$250K for joint filers), and a handful of medical-related taxes, includ-

ing a new five-percent levy on elective cosmetic surgery. The House-passed bill, in vivid contrast, imposes a new surtax on higher-income individuals over the \$500K/\$1 million level that would raise more than \$400 billion over 10 years.

Both the Senate and House bills would place new limits on health flexible spending accounts. But while the Senate bill keeps virtually all tax measures health related in some way, the House bill includes tightened treaty benefit limitations, new information reporting requirements, repeal of worldwide interest allocation, and codification of a broad economic substance doctrine, in addition to the surtax on high-income individuals.

CORE CONCEPTS

Although many details still need to be worked out before Congress passes a final bill, the core concepts that are emerging would fundamentally alter the health care landscape.

First. All individuals would be required to obtain health care coverage or pay penalties. Employer-provided coverage would generally satisfy the universal-coverage requirement. The House bill includes a “public option;” the Senate bill does not. Lower-income individuals would receive a credit or voucher to help pay for health insurance.

Second. Employers currently offering health insurance could elect to continue offering coverage as long as their plans meet certain acceptable minimum requirements. Employers electing not to offer qualifying coverage would be subject to an additional payroll tax to help finance the health care coverage for their employees. Exceptions would be made for small businesses.

Impact *Health care reform will fundamentally alter the scope and mission of the IRS. The IRS would be responsible for overseeing a large part of health care reform, such as the administration of additional taxes on in-*

dividuals and employers, determinations of various exemptions from those taxes, and oversight of new information reporting requirements. SFC ranking member Charles Grassley, R-Iowa, recently asked the Treasury Department for details on how the IRS would implement some of the measures. IRS Commissioner Douglas Shulman declined to provide details but said that the IRS would be ready.

“Although the Senate bill is similar in scope to the House-passed Health Care Act, many differences remain, especially over revenue raisers.”

INDIVIDUAL COVERAGE

House bill. Under the House bill, individuals without acceptable health care coverage would pay an additional tax. The additional tax to enforce the so-called “individual mandate” could equal as much as 2.5 percent of the taxpayer’s modified adjusted gross income (AGI) that exceeds the taxpayer’s applicable exemption amount plus the standard deduction for the year. The additional tax would be in addition to both the regular income tax and the alternative minimum tax (AMT). The additional tax would not be allowed to exceed the applicable national average premium for the tax year.

The House bill provides low-income individuals with “affordability credits” to help pay for the cost of coverage purchased through the exchange. The credits would be available on a sliding scale linked to the federal poverty limit. For example, a family of four earning up

to \$88,000 would be entitled to a subsidy.

The House bill also creates a reinsurance program for employer-sponsored retiree coverage. Payments made under the reinsurance program for retirees would be excluded from gross income. Additionally, health services provided or purchased by the Indian Health Service would be expressly excluded from gross income.

Impact *The additional tax would not apply to any individual properly claimed as a dependent. However, parents or guardians claiming qualified children as dependents would be required to maintain health care coverage for them. Parents can also choose to keep their children age 26 and under on their insurance policy.*

Comment Individuals with Medicare, Medicaid, Veterans’ Affairs, or other government-sponsored coverage would be treated as having acceptable coverage.

Comment The House bill includes a religious objection provision. As passed by the House, the bill limits out-of-pocket costs to no more than \$500 for an individual and \$1,000 for a family at the lowest income levels. The out-of-pocket limits rise to \$5,000 for an individual and \$10,000 for a family at the highest income tier for individuals receiving affordability credits.

Senate bill. The Senate bill would require individuals to maintain minimum essential coverage beginning after 2013. Individuals who fail to maintain minimum essential coverage would be liable for a penalty. The Senate bill uses a formula to calculate the penalty taking into account the taxpayer’s household income and a flat dollar amount. Generally, the penalty would start at \$95 for

2014, \$495 for 2015 and \$750 for 2016 (with indexing for inflation for tax years after 2016).

The Senate bill also includes a religious conscience exception, excludes undocumented individuals in the U.S. from coverage and provides special rules for children under age 18 and incarcerated individuals. Additionally, individuals who cannot afford coverage (generally where the individual's required contribution would exceed eight percent of household income for the taxable year), individuals with taxable income under 100 percent of the federal poverty limit, qualified members of Native American tribes, and certain hardship cases would be exempt from the minimum essential coverage requirement. Individuals with Medicare and other qualified government coverage would also satisfy the minimum essential coverage requirement.

Comment The Senate bill originally included a provision for covering Christian Science prayer treatments as medical treatments. Under current law, taxpayers who itemize their deductions may deduct the cost of Christian Science prayer treatments subject to the 7.5 percent of AGI threshold. This provision may re-appear in the expected conference agreement.

The Senate bill would provide premium assistance tax credits and reduced cost sharing to qualified individuals. The amount of the premium assistance tax credit would be tied to the relation of the individual's income to the federal poverty limit and would be adjusted for inflation. Generally, individuals who fall within 100 percent to 400 percent of the federal poverty limit would be eligible for premium assistance. Premium assistance tax credits would be disregarded for federal or federally-assisted programs.

Comment The IRS would be responsible for determining eli-

gibility for the premium assistance tax credit.

EMPLOYERS

House bill. The House bill requires employers to satisfy certain minimum coverage requirements. Generally, the "employer mandate" requires employers to contribute at least 72.5 percent of premium costs for individuals and 65 percent of premium costs for families. Employers that elect not to offer qualified coverage to their employees would be liable for an additional payroll tax of up to eight percent of the employee's average annual salary. Small employers (generally employers with annual payrolls below \$500,000) would be exempt from the additional payroll tax. A graduated additional payroll tax (starting at two percent and rising to six percent) would apply to employers with annual payrolls between \$500,000 and \$750,000.

Comment The FICA concept of "wages" would be used to compute the additional tax (except that there would be no annual taxable wage base). Annual payroll means the aggregate wages paid by the employer during the calendar year.

Senate bill. Unlike the House bill, the Senate bill does not require employers to provide health insurance coverage. However, the Senate bill mandates automatic enrollment in health insurance plans sponsored by large employers.

"Large employers" (essentially large and mid-size employers) that fail to offer minimum essential coverage during any month for which a full-time employee has enrolled in a qualified plan and receives a premium assistance tax credit or cost-sharing reductions would be liable for an additional tax. That penalty would equal the product of the applicable payment amount (de-

finied as, with respect to any month, 1/12 of \$750) and the number of full-time employees employed by the employer during such month.

Large employers offering coverage with employees who qualify for premium assistance tax credits or cost-sharing reductions would also be liable for an additional tax equal to the product of the number of full-time employees for the month and 400 percent of the applicable payment amount. Large employers with extended enrollment waiting periods (generally those exceeding 30 days) would be liable for an additional tax of \$600 for each full-time employee for whom the extended waiting period applies. Special rules would apply to construction employers.

Impact *The Senate bill's definition of large employer is not what immediately comes to most people's minds: large multinational companies. The Senate bill defines large employer as an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year. The Senate bill includes an exception for employers of seasonal employees and special provisions for newly organized businesses.*

Comment A full-time employee is an individual who is employed on average at least 30 hours per week.

Comment Employers and other entities providing minimum essential coverage would be required to file information returns with the IRS identifying the individual, the coverage and the amount of premium, if any, paid by the individual. Penalties would be imposed for failure to file an information return.

SMALL BUSINESSES

House bill. The House bill provides a temporary (two-year) credit of up to 50 percent of qualified health coverage expenses for the tax year for qualified small employers. A qualified small employer has 25 or fewer qualified employees and pays average annual employee compensation no greater than \$40,000. A qualified employee is an employee that receives compensation of at least \$5,000 during the year. The credit phases out for employers that pay average annual employee wages of \$20,000 to \$40,000 and also for small employers with 10 to 25 employees. The wage threshold is indexed for inflation beginning in 2013. The credit is part of the general business credit.

Comment No credit is allowed for highly-compensated employees, which the House-passed bill defines as individuals with annual compensation of more than \$80,000.

Senate bill. The Senate bill provides a two-year small employer credit similar to that in the House bill. Qualified small businesses will be eligible for tax credits reaching up to 50 percent by 2014. Salary-reduction contributions are not counted. Qualified tax-exempt employers would be eligible for a reduced credit.

Comment The number of full time equivalent (FTE) employees equals the total hours worked by all employees, divided by 2,080. The average annual wages is the employer's total wages, divided by the number of FTE employees. Certain employees are excluded from the determination of employees: self-employed individuals, leased employees, certain shareholders, and persons related to the owner(s).

Comment Qualified small businesses would be able to purchase insurance for their employ-

ees through state-based web portals to be known as Small Business Health Options Programs (SHOP). These programs would allow small businesses to pool together to spread their financial risk.

SURTAX/PAYROLL TAX

House bill. The House bill imposes a surtax of 5.4 percent on married couples filing jointly and surviving spouses with modified AGI that exceeds \$1 million. The same 5.4 percent rate would apply to other taxpayers with modified AGI exceeding \$500,000, including estates and trusts. The surtax is estimated to raise \$460.5 billion over 10 years. An increasing number of taxpayers are expected to be subject to the surtax over time.

Impact *The surtax is not indexed for inflation. Consequently, taxpayers would be vulnerable to "surtax creep." As incomes rise in response to inflationary pressures, more individuals and families below the current thresholds will be liable for the surtax. The surtax, however, has little support in the Senate and could be scaled back in a final bill.*

Impact *The health care surtax kicks in at the same time as anticipated increases in the top marginal income tax rates for individuals. President Obama has proposed raising the top two marginal rates to 36 percent and 39.6 percent, starting in 2011. This increase, which would operate independently of any health care surtax, would affect individuals with incomes of more than \$200,000 (\$250,000 for married couples filing jointly).*

The surtax would apply to tax years beginning after December 31, 2010. Modified AGI for purposes of the surtax

means AGI reduced by the deduction for investment interest.

ADDITIONAL MEDICARE PAYROLL TAX

Senate bill. The Senate bill imposes an additional 0.9 percent Medicare payroll tax on individual earned income over \$200,000 (\$250,000 for joint filers). Self-employed individuals would also be liable for the additional tax. The additional Medicare tax would apply only to the employee portion of the tax.

Comment This tax on higher-income individuals was in neither the SFC nor Senate HELP Committee bills. It appears to be in response both to finding a compromise on the House proposal to impose an income tax surtax on high-income individuals and to raising additional revenue as the result of a compromise among Senate members to the Senate's original "Cadillac plan" excise tax. The Senate's payroll tax, however, would raise only \$53 billion and be imposed only on wages while, in contrast, the House bill would collect over \$400 billion and be imposed on all income.

Impact *The Senate bill would not start this additional tax on high earners until 2013. Issues over how certain deferred compensation arrangements would be taxed are certain to arise should this provision remain intact. In any case, the Senate's Democratic leaders believe that the Medicare surtax would be more palatable to members of Congress than a general surtax since increasing the Medicare tax would have a direct health-care nexus.*

TAX ON HIGH-COST INSURANCE

Senate bill. The Senate bill would impose a 40 percent nonrefundable excise tax on group insurers if the aggregate value of applicable employer-sponsored health coverage exceeds an inflation-adjusted \$8,500 for individual coverage and \$23,000 for family coverage beginning in 2013. Designed principally to limit so-called “Cadillac plans,” the excise tax for these high-end policies would be imposed pro rata on issuers. For self-insured plans, the plan administrator (including employers that act as plan administrators) would pay the excise tax. Transition relief would be available for coverage in 17 high-cost states for 2013, 2014, and 2015. The threshold amounts would be indexed for inflation using CPI-U + one percent. The excise tax is estimated to generate approximately \$200 billion over 10 years. Penalties would apply for failure to properly calculate the excess benefit with some exceptions, such as for failures corrected within 30 days.

Comment The Senate bill would require employers to disclose the value of employer-provided health insurance to employees annually on Form W-2 for tax years beginning after December 31, 2010.

Impact *The \$8,500/\$23,000 coverage level caps represent a \$500 and \$2,000 increase, respectively, from the original SFC bill that faced strong criticism from unions and other groups. Also narrowing application of this tax, the Senate bill insulates a greater number of taxpayers from the excise tax by expanding those falling under higher-level exceptions. The levels for coverage for high-risk jobs such as law enforcement personnel, fire fighters and other first responders, as well as miners and longshoremen have been increased (to \$9,850 for individual coverage and \$26,000 for family*

coverage). Retired individuals age 55 and older would also be eligible for the higher thresholds.

Example Abby, age 36, elects family coverage under an employer-provided fully-insured health care policy covering major medical and dental with a value of \$30,000. The amount subject to the proposed excise tax would be the \$7,000 above the \$23,000 threshold for family coverage. Abby’s employer would report \$7,000 as taxable to the insurer. The insurer calculates and pays the tax to the IRS.

Impact *An insurer would be free to pass along the excise tax to consumers in the form of higher premiums as an alternative to, or in combination with, finding cost-cutting opportunities.*

FSAS

House. The House bill prohibits taxpayers from using health FSA dollars to pay for over-the-counter medications (unless prescribed by a health professional). The Health Care Act and Senate bill would also cap annual contributions to a health FSA offered under an employer-sponsored cafeteria plan at \$2,500. The \$2,500 threshold would be indexed for inflation.

Senate. The Senate bill caps FSA contributions at \$2,500. The Senate bill is also indexed for inflation. The bill also disallows the use of FSA funds for nonprescription drugs. The Senate’s amendments would apply to distributions and reimbursements for taxable years beginning after December 31, 2010.

Comment The House bill and the Senate bill expressly include insulin as a covered expenditure

Comment If a benefit is provided under a cafeteria plan

through employer provided contributions to a health FSA, the benefit would not be treated as a qualified benefit unless the cafeteria plan provides that an employee may not elect for any taxable year to have salary reduction contributions in excess of \$2,500 made to the arrangement.

Impact *The House bill and the Senate bill would also extend this treatment to health savings accounts (HSAs), health reimbursement arrangements (HRAs) and Archer Medical Savings Accounts (Archer MSAs). The dollar limits on HSAs may be higher in any final bill to fully cover; pre-tax, the high-deductible requirements for using HSAs.*

HSAS

House. Generally, the House bill provides that individuals under age 65 must pay an additional tax for unqualified distributions from a health savings account (HSA) and increases the additional tax from 10 percent to 20 percent.

Senate. The Senate bill generally tracks the House bill with regard to HSAs. The bill would increase the additional tax on nonqualified distributions from HSAs from 10 percent to 20 percent and from Archer MSAs from 15 to 20 percent.

MEDICAL EXPENSE DEDUCTION

Senate. The Senate bill raises the threshold for the itemized medical expense deduction from 7.5 percent of adjusted gross income (AGI) to 10 percent of AGI for regular income tax purposes effective for tax years beginning after December 31, 2012. However, individuals age 65 and older (and their spouses) would be temporarily exempted from the increase. The exemption for seniors would apply to any tax year beginning

after December 31, 2012 and ending before January 1, 2017 if the taxpayer or the taxpayer's spouse attained age 65 for the tax year.

House. The House bill does not include this cutback to the medical expense deduction.

EXCLUSION

The House-approved Health Care Act extends the exclusion from gross income for employer-provided health coverage for employees' spouses and dependent children to coverage provided to domestic partners.

Impact *Domestic partners are not treated as spouses for federal tax purposes. Consequently, an employee currently pays tax on the fair market value of the cost of coverage for the employee's domestic partner.*

Senate. The Senate bill does not include a similar provision. However, the Senate Homeland Security Committee approved a bill on December 16 to provide domestic partner benefits to federal employees. The Domestic Partnership Benefits and Obligations Act of 2009 would provide the same employment benefits to federal employees in same-sex partnerships currently provided to married federal employees and their spouses, including healthcare, retirement, family leave, and other benefits.

COMPENSATION

Senate. The Senate bill modifies Code Sec. 162(m) as it applies to remuneration paid by health insurance providers to high-level executives. Generally, no Code Sec. 162(m) deduction would be allowed to the extent the remuneration exceeds \$500,000 with a special provision for deferred compensation.

House. The House bill does not include a similar provision.

INDOOR TANNING SERVICES TAX

Senate. The Senate bill imposes a tax equal to 10 percent of the amount paid for any indoor tanning service, whether paid by insurance or otherwise. The tax would be paid by the tanning customer. The tanning service provider would collect the tax and remit it quarterly to the IRS.

Comment The indoor tanning tax replaces an earlier proposed tax on cosmetic surgery.

House. The House bill does not include a similar provision.

HEALTH PROFESSIONALS' EDUCATION EXCLUSION

Senate. The Senate bill excludes payments under the National Health Services Loan Repayment Program and

certain state loan repayment programs for health professionals from an individual's gross income.

House. The House bill does not include a similar provision.

MARKET SECTOR FEES

Senate. The Senate bill imposes annual nondeductible fees on various health-related industries, such as medical device manufacturers and importers, health insurance providers and others. The annual fees would be allocated across industry sectors according to market share.

The Senate bill would also require 501(c)(3) hospitals to conduct periodic community health needs assessments and adopt written financial assistance policies. Individuals who qualify for financial assistance would be billed at the same rates as insured individuals. The bill would also add some consumer protection provisions to debt collection activities by nonprofit hospitals.

Comment The IRS would be required to review a nonprofit hospital's community benefit activities at least once every three years.

The House bill does not include market sector fees. However, it imposes a new 2.5 percent excise tax on certain medical devices. The excise tax would attach at the time of the first taxable sale of the medical device.

RETIREE PRESCRIPTION DRUG SUBSIDY

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 created a retiree drug subsidy program to encourage employers to provide prescription drug coverage to their retirees. Employers receive a tax-favored subsidy. The subsidy, which is excluded from an employer's income, is equal to 28 percent of the allowable costs, including administrative costs,

PROPOSED HOUSE SURTAX

Taxpayer	Modified Adjusted Gross Income (AGI) Level	Surtax Rate
Joint filers Surviving spouses	Over \$1 million	5.4%
Single Filers Head of Household Married Filing Separately Estates and Trusts	Over \$500,000	5.4%

attributable to covered prescription drug costs incurred by a qualifying retiree. Any final bill is likely to eliminate the exclusion, as well as deny businesses a deduction for related federal subsidies starting in 2013.

Impact *According to supporters of the subsidy, the cost of retiree coverage is considerably more than the value of the deduction. Eliminating the deduction could prompt employers to eliminate or reduce retiree coverage.*

CAFETERIA PLANS

Under the House bill, coverage purchased through the exchange could not be purchased on a pre-tax salary reduction basis.

Senate. The Senate bill would relax the cafeteria plan rules to encourage more small employers to offer tax-free benefits to employees, including those related to health insurance coverage. It does so by carving out a safe harbor from the nondiscrimination requirements for cafeteria plans for qualified small employers.

ADOPTION CREDIT

Senate. The Senate bill would make the adoption credit refundable and raise the dollar limitation for the credit.

House bill. The House bill does not include a similar provision.

COBRA

The House bill permits COBRA eligible individuals to continue their COBRA coverage until they secure coverage through a new employer or the exchange.

Senate. The Senate bill does not include a similar provision.

Comment In the FY 2010 defense appropriations act (H.R. 3326), the House and Senate approved a temporary two-month ex-

tension of COBRA premium assistance and unemployment benefits. Eligibility for COBRA premium assistance under the American Recovery and Reinvestment Act of 2009 (2009 Recovery Act) was scheduled to expire after December 31, 2009. The defense bill also extends the maximum duration of COBRA premium assistance to 15 months.

Comment Separate legislation, the Jobs for Main Street Bill of 2010 (H.R. 2847), would extend COBRA premium assistance through June 30, 2010 and make other enhancements. The House approved the Jobs for Main Street Bill on December 17 but the Senate is not expected to act on the bill before its holiday recess.

ECONOMIC SUBSTANCE DOCTRINE

The House bill codifies the economic substance doctrine. A transaction would have economic substance only if the taxpayer's economic position (other than its federal tax position) changed in a meaningful way and the taxpayer had a substantial purpose (other than a federal tax purpose) for engaging in the transaction.

Impact *Violations are subject to stiff, automatically-applied penalties of 20 or 40 percent, depending on the underlying transaction. This no-fault penalty regime concerns many advisors, especially in connection with corporate and partnership tax planning strategies in which tax reduction has been an acceptable principal reason for structuring certain deals.*

Senate. The Senate bill does not codify the economic substance doctrine. Nevertheless, with White House endorsement of codification early this

year, along with the projected \$8.5 billion in revenue that penalties would raise, most tax practitioners are resigned to its passage, either in a final health care bill negotiated in the conference between House and Senate designees or in another tax bill now in the queue.

WORLDWIDE INTEREST

The American Jobs Creation Act of 2004 allowed a worldwide affiliated group to make a one-time election to determine the foreign source taxable income of the group by allocating and apportioning the domestic members' interest expense on a worldwide basis, as if all members of the group were a single corporation. The Housing and Economic Recovery Act of 2008 delayed the effective date of the worldwide interest allocation rules until tax years beginning after December 31, 2010, and the Worker, Homeownership, and Business Assistance Act of 2009, signed into law by President Obama on November 6, 2009, delays the effective date of worldwide allocation of interest until tax years beginning after December 31, 2017. The House bill would repeal the provision entirely effective for tax years beginning after December 31, 2010.

Senate. The Senate bill does not address worldwide allocation of interest.

TREATY BENEFITS

The House bill includes provisions to prevent foreign multinational corporations from avoiding tax on income earned in the U.S. The Health Care Act targets the practice of having a U.S. subsidiary of the foreign corporation make a deductible payment to a tax treaty jurisdiction before repatriating those earnings.

Senate. The Senate bill does not include a similar provision.

INFORMATION REPORTING

A trade or business must file an annual information return with respect to certain payments. Taxpayers file a Form 1099-MISC for each person to whom

they have paid at least \$600 for services, rents or other income payments. Under current rules, payments to most corporations are exempt. The House-approved Health Care Act eliminates the exemption from information reporting by any trade or business for payments to all corporations effective for payments made after December 31, 2011.

Senate. The Senate bill includes a similar provision.

UNDERPAYMENT PENALTIES

The House bill requires that certain large or publicly-traded entities, to avoid underpayment penalties, show that their basis for the underpayment was a reasonable belief that the reported tax treatment is more likely than not the proper tax treatment.

Senate. The Senate bill does not include a similar provision.

BIOFUEL CREDIT

The cellulosic biofuel credit was intended to reward taxpayers that use alternative fuels in industrial and other processes. The House bill targets what some lawmakers perceive as an abuse of the credit by certain industries by denying the credit to a by-product known as “black liquor.”

Senate. The Senate bill does not include a similar provision.

MORE PENDING LEGISLATION

Extenders. Every year, Congress extends a package of popular but temporary tax breaks known as “extenders.” These include the state and local sales tax deduction, the teachers’ classroom expense deduction, the higher education tuition deduction, the Indian employment credit, brownfields remediation, and more.

The House approved the Tax Ex-

tenders Act of 2009 (H.R. 4213) on December 9, which would extend nearly all of the temporary provisions through 2010. However, the Senate did not act on the bill before its holiday recess.

In addition, the extension of the more recently-enacted tax breaks of bonus depreciation and section 179 expensing is being discussed and Congress could approve extending them in early 2010 and make the extension retroactive to January 1, 2010. Both these business tax incentives to purchase equipment expire at the end of the 2009 tax year.

AMT patch. The Emergency Economic Stabilization Act of 2008 (EESA) temporarily “patched” the AMT by raising the exemption amounts and allowing taxpayers to take nonrefundable personal credits to reduce AMT liability. The AMT “patch,” however, is for 2009 only. Consensus is growing in Congress to defer addressing this expensive measure until early next year, when it would be made effective retroactively for the entire 2010 tax year.

Estate tax reform. Under 2001 legislation, the estate tax is scheduled to be completely repealed in 2010, only to return at pre-2001 levels in 2011. The House approved the Permanent Estate Tax Relief for Families, Farmers and Small Businesses Bill of 2009 (H.R. 4154), permanently extending the top federal estate tax rate of 45 percent with a \$3.5 million exclusion (\$7 million for married couples who fully utilize their exclusions). The House Bill also provides for continuation of the gift and generation-skipping transfer (GST) tax provisions as they exist in 2009. However, the permanent extension failed to win support in the Senate, as did a temporary stop-gap measure to extend the 2009 estate tax regime for three months into 2010.

Jobs bill. The House approved

the “Jobs for Main Street Act of 2010” (H.R. 2847) (the Jobs Act) on December 16, 2009, by a 217 to 212 margin. In addition to extending unemployment insurance benefits for six months and COBRA health benefits for unemployed workers, the Jobs Act would increase eligibility for the refundable child tax credit, temporarily exempt tax refunds as income for eligibility in means-tested federal programs, and add a refundable credit for certain Qualified Zone Academy Bonds and Qualified School Construction Bonds. This bill would be paid for from existing TARP funds and, therefore, does not include revenue raising provisions as passed by the House. The Senate may consider this bill when it returns to work in January.

Technical corrections. House Democrats also introduced a package of technical corrections to recent tax acts. The Tax Technical Corrections Bill of 2009 (H.R. 4169) would make technical corrections to the American Recovery and Reinvestment Act of 2009, the Emergency Economic Stabilization Act of 2008, the Heroes Earnings Assistance and Relief Tax Act of 2008, the Economic Stimulus Act of 2008 (P.L. 110-185), and the Tax Technical Corrections Act of 2007.

Comment

Among the technical corrections are clarifications to the 2009 Recovery Act’s provision that temporarily shortened from 10 to seven years the holding period for assets subject to the built in gains tax imposed after a C corporation elects to become an S corporation. The technical corrections clarify that Congress intended seven calendar years and not seven taxable years.