



#### 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*
- ✓ *Cosmetic Surgery Tax*

## Senate Health Bill Calls For Excise Tax On Insurance Plans, Added Payroll Tax On High-Wage Earners

Health care reform took another major step forward on November 21 when the Senate voted, 60 to 39, to proceed with debate on the Patient Protection and Affordable Care Act. The bill, which had been introduced earlier in the week by Senate Majority Leader Harry Reid, is a blended version of bills passed earlier by the Senate Finance Committee (SFC) and the Senate Health, Education, Labor, and Pensions (HELP) Committee. The \$849 billion package, with \$370 billion in revenue raisers, was drafted not only with an eye toward garnering the 60 votes necessary for full Senate approval but also in preparation for conference committee negotiations. 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.

**Comment** Unlike in the House, Democrats in the Senate need 100 percent party unity to pass their bill with 60 votes outside of the reconciliation process. While the November 21st procedural vote represents a significant victory for the current Senate bill, amendments to that version are likely as work continues to preserve the votes needed for final passage.

#### KEY OFFSETS

Key tax increases in the Senate bill to help finance health care reform include 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, including 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 blended 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

**Impact** *The House bill would impose a surtax on higher-income individuals; the Senate bill would impose 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.*

#### Inside

Key Offsets.....	1
Core Concepts.....	2
Individuals.....	2
Employers.....	3
Small Business.....	3
Surtax/Payroll.....	4
Tax On High-Cost Insurance.....	4
FSAs.....	5
HSAs.....	5
Medical Expenses.....	5
Exclusion.....	5
Compensation.....	6
Cosmetic Surgery.....	6
Other Health-Related Offsets	6
Non-Health Offsets.....	7
More Pending Legislation.....	7

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 face penalties. Employer-provided coverage would generally satisfy the universal-coverage requirement. Individuals without employer-provided coverage would be allowed to shop among private insurers and a “Health Insurance Exchange.” 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 so 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 individuals 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.*

## INDIVIDUAL COVERAGE

**House bill.** Under the House-passed Affordable Health Care for America Act (the Health Care Act), 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)

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

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-approved version of health care reform 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’s Health Care Act 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. The Health Care Act includes a religious objection provision.

**Comment** As passed by the House, the Health Care Act 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 blended 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 penalty would start at \$95 per year for qualified individuals in 2014 and climb to \$750 per year for qualified individuals by 2017 with an adjustment for inflation after 2016.

The blended Senate bill includes a religious conscience exception, excludes undocumented individuals in the U.S., 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.

The blended 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 eligibility for the premium assistance tax credit.

## EMPLOYERS

**House bill.** The Health Care Act, as passed by the House, 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 blended Senate bill does not mandate employers to provide health insurance coverage.

**Comment** However, the blended Senate bill mandates automatic enrollment in health insurance plans sponsored by large employers.

"Large employers" (essentially moderate and large size employers) that fail to offer minimum essential coverage during any month and 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 (defined 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 which exceeds 30 days but not 60 days or which exceeds 60 days) would be liable for an additional tax.

**Impact** *The blended Senate bill's definition of large employer is not what immediately comes to most people's minds: large multinational companies. The blended 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 blended 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 of service 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-approved Health Care Act 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 with respect to highly-compensated employees, which the House-passed act defines as individuals with annual compensation of more than \$80,000.

**Senate bill.** The blended Senate bill provides a two-year small employer credit that is similar to the House bill. The credit is up to 50 percent of the employer's payment of health insurance premiums. Salary-reduction contributions are not counted. A qualified small employer has 25 or fewer "full-time equivalent" (FTE) employees and pays average annual wages of \$40,000 or less. The amount of the credit is reduced for employers with 10 to 25 employees and average annual wages of \$20,000 to \$40,000 per employee. The wage threshold is indexed for inflation beginning in 2014. Tax-exempt employers would get a 35 percent credit.

**Comment** The number of 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).

## SURTAX/PAYROLL TAX

**House bill.** The Health Care Act, as passed by the House, 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 indi-*

*viduals 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.

**Senate bill.** The Senate bill imposes an additional 0.5 percent Medicare payroll tax, raising it from 1.45 percent to 1.95 percent, on individual earned income over \$200,000 (\$250,000 for joint filers). Self-employed individuals would also be liable for the additional 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 blended 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 fee would have a direct health-care nexus.*

## TAX ON HIGH-COST INSURANCE

**Senate bill.** The blended 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. 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 exceptions, such as for failures corrected within 30 days.

**Comment** The blended 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 individuals in high-risk occupations, such as mining 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 Health Care Act, as passed by the House, 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 blended 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 places a \$2,500 cap on FSA contributions. Unlike the House bill, the blended Senate bill's \$2,500 cap is not 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 with respect taxable years beginning after December 31, 2010.

**Comment** The House's Health Care Act and the blended 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-approved Health Care Act and the blended Senate bill would also extend 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-passed Health Care Act 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 blended Senate bill generally tracks the House bill with regard to HSAs. The blended 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 blended 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 did 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 blended Senate bill does not include a similar provision.

## COMPENSATION

**Senate.** The blended 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. The provisions would apply to taxable years beginning after December 31, 2009 with respect to services performed after December 31, 2009.

**House.** The House-passed bill does not include a similar provision.

## TAX ON COSMETIC SURGERY

**Senate.** The blended Senate bill imposes a 5 percent excise tax on elective cosmetic surgery. The individual on whom the surgery is performed would be liable for payment of the excise tax. If the individual's insurer or plan fails to pay over the tax to the IRS, the surgeon who performed the procedure would be responsible for paying over the tax to the IRS. The cosmetic surgery tax is estimated to raise \$5.8 billion and would start immediately for 2010 procedures.

**Impact** *The blended Senate bill would exclude cosmetic surgery necessary to ameliorate a deformity arising from or directly related to a congenital abnormality, a personal injury resulting from*

*an accident or trauma or a disfiguring disease.*

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

## MARKET SECTOR FEES

**Senate.** The blended Senate bill imposes annual nondeductible fees on various health-related industries over 10 years. The annual fees would be allocated across industry sectors according to market share. The annual fees would be: \$2.3 billion on manufacturers and importers of branded drugs; \$2 billion on manufacturers and importers of medical devices; and \$6 billion on health insurance providers.

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's Health Care Act 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, attributable to covered prescription drug costs incurred by a qualifying retiree of between \$295 and \$6,000 in 2009. The House's Health Care Act eliminates the exclusion, as well as denies businesses a deduction for related federal subsidies starting in 2013.

## CAFETERIA PLANS

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

**Senate.** In the only tax cut in its tax title, the blended 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.

## COBRA

The House's Health Care Act permits COBRA eligible individuals to continue their COBRA coverage until they secure coverage through a new employer or the exchange.

**Comment** The Health Care Act, as passed by the House, does not extend temporary COBRA premium assistance under the American Recovery and Reinvestment Act of 2009.

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%

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

## ECONOMIC SUBSTANCE DOCTRINE

The House-approved Health Care Act 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 avoidance in the form of 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's Health Care Act would repeal the provision entirely effective for tax years beginning after December 31, 2010.

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

## TREATY BENEFITS

The Health Care Act, as passed by the House, 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 blended 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 blended Senate bill includes a similar provision.

## UNDERPAYMENT PENALTIES

The Health Care Act, as passed by the House, 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 tax treatment more likely than not is the proper tax treatment.

**Senate.** The blended 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-approved Health Care Act 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 blended 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. Unless extended, many of these incentives will expire at year-end 2009.

In addition, the extension of the more recently-enacted tax breaks of bonus depreciation and section 179 expensing is being discussed for inclusion in a second stimulus package, along with a jobs credit. Both these business tax incentives to purchase equipment expire at the end of the 2009 tax year.

**Comment** One stumbling block to passage of the extenders is whether to offset them with revenue raisers. It is unclear at this time if the extenders could move in the House if they are not offset. If not passed by year end, Congress could still extend these provisions retroactively next 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.

**COBRA premium assistance.** Individuals involuntarily separated from employment through December 31, 2009 may elect to pay 35 percent of their COBRA coverage and be treated as

paying 100 percent. The federal government reimburses employers for their 65 percent portion of the premium through a temporary payroll tax credit. Pending legislation would extend COBRA premium assistance for an additional 12 months.

**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. Congress is expected to address the estate tax before year-end but leaders are struggling over when to work this “must pass” legislation into the calendar for a vote.

**Comment** The Estate Tax Relief Act of 2009 (H.R. 3905) would gradually increase the current exemption from \$3.5 million to \$5 million by 2019 and index it for inflation. The bill would also reduce the estate tax rate from 45 percent to 35 percent over the same 10-year period.

**Comment** Pending legislation in the House would extend the 2009 estate tax rates and exemption amounts into 2010. Long-term legislation will likely wait until 2010.

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Book #	# Pages	Pub.	Price
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