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Legislative Bulletin……………………………………….………December 9, 2009

Contents:

Take-Away Points

--***Tax Increases.*** The bill contains some **<u>$32.3 billion of tax increases over ten years</u>** plus a harmful corporate estimate tax payment shift gimmick. These are permanent tax increases to "payfor" *temporarily* extending some tax provisions.

--***Short-Term Extensions.*** The extensions in the bill are for only one-year, despite the obvious reality that most of the provisions will need to be extended again at the end of next year. Furthermore, as in the case of the research and development tax credit, the lack of long-term extensions prevent American companies from being able to make proper business plans.

--**<u>Outside Organizations Opposed</u>:** Americans for Tax Reform (ATR) is opposed to the legislation. The National Taxpayers Union (NTU) will be scoring a vote against the legislation.

For more details, see below.

H.R. 4213— Tax Extenders Act of 2009 *(Rangel, D-NY)*

<u>Order of Business</u>: The House is scheduled to consider H.R. 4213 on Wednesday, December 9, 2009 under a closed rule (H.Res. 955). The rule waives all points of order against consideration of the bill except for Clause 9 (earmark disclosure) and 10 (PAYGO) of Rule XXI, and provides one hour of debate.

<u>Summary</u>: H.R. 4213 would impose **<u>more than $32.3 billion in long-term tax increases</u>** as offsets to short-term tax extenders and other extensions of current law. Key highlights of the bill are below.

<u>TAX INCREASES</u>

- **Carried Interest:** Requires investment fund managers to treat carried interest as ordinary income (and thus be taxed at a higher rate). Currently, carried interest is taxed at the capital gains rate, since it is a capital gain. Carried interest is the name given to the compensation that fund managers earn based on the performance of the fund which they manage. This compensation is the main performance incentive driving fund managers to do better—but such compensation only comes from capital gains. It is by no means "ordinary" income. In fact, this capital gain revenue is already subject to the 35 percent corporate tax rate before it is distributed to investors as capital gains or dividends. This provision would increase the top tax rate for carried interest from 15% to 35% (although this will increase to 39.6% in 2011, and increases to 45% under the House-passed government health care takeover). ***Cost to taxpayers $24.6 billion over ten years.***

- **Foreign Account Tax Compliance:** Taxes at a 30% rate payments to foreign entities that do not comply with certain disclosure and reporting requirements. ***Cost to taxpayers $7.7 billion over ten years.***

- **Corporate Estimated Tax Timing Gimmick:** This provision would increase the estimated tax payments that certain corporations must remit to the federal government. This legislation would increase the payment due for the third quarter of calendar-year 2014 by 26.5 percentage points. The payment due for the fourth quarter of calendar-year 2014 would be reduced accordingly. This provision is merely a revenue timing shift, a gimmick used to comply with the House's PAYGO rule, yet would have real-world implications, as it forces certain companies to pay more of their tax payments earlier ($13.8 billion). Given the time value of money, earlier payments harm the bottom line of employers.

TAX EXTENDERS

Extends numerous tax credits and deductions generally for <u>one year</u> (through the end of 2010), with examples as follows:

Individual Tax Relief:

- State and local sales tax deduction. ***Saves taxpayers $1.8 billion over ten years.***
- Standard deduction for local and real property taxes. ***Saves taxpayers $1.5 billion over ten years.***
- Above-the-line deduction for qualified tuition. ***Saves taxpayers $1.5 billion over ten years.***
- Deduction for certain expenses of elementary and secondary school teachers. ***Saves taxpayers $228 million over ten years.***

Business Tax Relief:

- Research and Development Credit. ***Saves taxpayers $7.0 billion over ten years.***
- 15-year depreciation for leasehold and restaurant improvements. ***Saves taxpayers $5.4 billion over ten years.***
- 7-year depreciation for motorsports entertainment complex improvements. ***Saves taxpayers $45 million over ten years.***
- 50% tax credit for certain railroad track maintenance spending. ***Saves taxpayers $165 million over ten years.***

Other Provisions:

- Tax-Free IRA Distributions by Seniors for Charitable Purposes. ***Saves taxpayers $591 million over ten years.***
- Indian Employment Tax Credit. ***Saves taxpayers $49 million over ten years.***
- Accelerated depreciation for Indian reservation business property. ***Saves taxpayers $125 million over ten years.***
- District of Columbia Homebuyer Tax Credit. ***Saves taxpayers $17 million over ten years.***
- Deduction for contributions of food inventory. ***Saves taxpayers $78 million over ten years.***
- Deduction for contributions of books to public schools. ***Saves taxpayers $31 million over ten years.***
- Deduction for corporate contributions of computer equipment. ***Saves taxpayers $195 million over ten years.***
- Special allowances for S corporations donating property. ***Saves taxpayers $37 million over ten years.***
- New Markets Tax Credit. ***Saves taxpayers $1.4 billion over ten years.***

Hollywood: Modifies and extends for one-year, through the end of 2010, the Section 199 domestic manufacturing tax deduction and the special expensing rule for certain U.S. films and TV productions. ***Saves taxpayers $51million over ten years.***

ENERGY TAX EXTENSIONS

- **Incentives for Biodiesel and Renewable Diesel:** The legislation extends by one-year (through December 31, 2010) the income tax, excise tax, and payment provisions for biodiesel and renewable diesel. The biodiesel fuels credit consists of the sum of three credits: the biodiesel mixture credit ($1.00 per gallon), the biodiesel credit ($1.00 per gallon), and the small agri-biodiesel producer credit (10-cents per gallon). The Biodiesel mixture excise tax credit provides a $1.00 excise tax credit for each gallon of biodiesel used by an individual in producing a biodiesel mixture for sale. Finally, the payment provision (also extended by H.R. 4213) requires the payment, equal to the biodiesel mixture credit, for a person who produces a biodiesel fuel mixture for sale. ***Saves taxpayers $1.0 billion over ten years.***

- **Alternative Motor Vehicle Credit for Hybrids:** The legislation extends by one-year, through the end of 2010, the tax credit for fuel cell vehicles, hybrid vehicles, advanced lean burn technology vehicles, and alternative fuel vehicles. ***Saves taxpayers $7.0 million over ten years.***

- **Alternative Fuel Credits for Natural Gas and Liquefied Petroleum Gas:** The legislation extends by one-year, through the end of 2010, the excise tax credits that apply to alternative fuel, the alternative fuel credit, and the alternative fuel mixture credit. ***Saves taxpayers $125.0 million over ten years.***

- **Special Rule to Implement FERC and State Electric Restructuring Policy:** The legislation extends by one-year, through the end of 2010, the ability of a taxpayer to elect to recognize a gain from qualifying electric transmission transactions over an eight-year period if the amount realized from such sale is used to purchase exempt utility property. ***No net revenue effect over ten years.***

Potential Conservative Concerns:

Tax Increases. The bill contains some **$32.3 billion in tax increases over ten years** plus a harmful corporate estimate tax payment shift gimmick. These are permanent tax increases to "payfor" *temporarily* extending some tax provisions.

Short-Term Extensions. The extensions in this bill are for only one-year, despite the obvious reality that most of these provisions will need to be extended again at the end of next year. Furthermore, as in the case of the research and development tax credit, the lack of long-term extensions prevent American companies from being able to make proper business plans.

Committee Action: The legislation was introduced on December 7, 2009 and referred to the House Ways and Means Committee, which took no public action.

Administration Position: A Statement of Administration Policy (SAP) for H.R. 4213 is available. It indicates that the Administration supports the legislation. See here.

Cost to Taxpayers: The legislation contains a total of $32.3 billion of tax increases. Compared to CBO's baseline, the legislation increases taxes by a net amount of $1.1 billion.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill contains tax increases.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No committee report is available citing any potential earmarks.

Constitutional Authority: No committee report citing constitutional authority is available.

Outside Groups Opposed to Legislation: Americans for Tax Reform (ATR) is opposed to the legislation. The National Taxpayers Union (NTU) will be scoring a vote against the legislation.

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