RSC Republican Study Committee

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Legislative Bulletin…………………………………….………December 16, 2010

Contents:

H.R. 4853—Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 *(Oberstar, D-MN)*

Take Away Points

Supporting Arguments:

Extends Most of the 2001/2003 Tax Cuts: The 2001 and 2003 tax cuts—otherwise set to expire next month—are extended for two years (through the end of 2012). This includes the lower 35% top rate, the 10% bottom rate, the $1,000 child tax credit, the marriage penalty relief, and the 15% capital gains and dividend tax rates.

Payroll Tax Cut: The legislation replaces the President's Making Work Pay Tax Credit with a one-year two-percentage point reduction to the employee portion of the Social Security payroll tax. Per the bill, this portion of the payroll tax would fall from 6.2% to 4.2% in 2011 only. It is notable, however, that the employer portion would remain the same (as would the Medicare portion of the payroll tax). The employer portion of the payroll tax increases the cost of hiring someone. For 2011, this provision is a $111.7 billion tax cut. Some RSC Members have proposed temporary payroll reductions, but these proposals would have fallen on the employer side also. Many conservative economists have argued that a payroll tax cut is preferable to the Making Work Pay Credit.

AMT Patch Extension: The bill extends the AMT patch for two years, through 2011, preventing an unintended tax increase that would otherwise fall on 25 million Americans.

Tax Extenders Maintained: The legislation provides a two-year extension (through 2011) of the "tax extenders." This includes the research and development credit, the state and local sales tax deduction, etc. It also includes tax subsidies that many conservatives are critical of (see this analysis from Rich Lowry, for example), such as the ethanol tax credit. Many conservatives would argue that these *existing* tax cut provisions are not ideal tax policy. However, letting these provisions expire would increase taxes on businesses and individuals. See this Americans for Tax Reform analysis on the "tax extenders" portion of the bill.

***Opposing Arguments*:**

Non-Offset Extension of "Temporary" Unemployment Benefits Program: The bill provides the eighth extension of the "temporary" expansion of the unemployment compensation program created in 2008. Specifically, the bill extends the program for 13 months (through 2011) at a cost of $56 billion. The bill keeps the 99-week cap on benefits. Many conservatives are concerned that this provision is not paid for, and will lead to a higher national debt. Further, many conservative economists argue that extending unemployment benefits increases incentives to remain unemployed.

Other Spending Through Refundable Tax Credits: In the bill, provisions from the "stimulus" increasing the *refundability* (above tax liability owed) of the Earned Income Tax Credit, the Child Tax Credit, and the American Opportunity Tax Credit would be extended for two years. This is $40 billion of non-offset entitlement spending. Since these provisions were part of the "stimulus," they were meant to be temporary. Extending them as part of this bill increases the odds that they will instead become a permanent part of the tax code.

Death Tax Reinstated: The death tax was eliminated in 2010 (as part of the 2001 tax law), but is not extended as part of this law. Instead, the legislation adopts the Kyl-Lincoln proposal to provide a 35% rate and a $5 million exemption for two years. Under current law, it goes back to a 55% rate and a $1 million exemption next year and beyond. The death tax provision in this bill is lower than the 45% rate, $3.5 million exemption, proposed by Democrats. The bill's death tax provision is a tax cut compared to allowing the death tax cuts to completely expire, but a tax increase compared to keeping the death tax at the current rate of 0%.

Legislation Is Not Permanent: The legislation provides no sense about what tax policy will look like beginning in January 2013, thereby making it difficult for businesses and individuals who do five-year (or more) financial plans to prepare them properly. Many conservative economists argue that tax uncertainty is a big obstacle to job creation and growth.

More Strain on Social Security: Many conservatives have argued that the employee-side payroll tax reduction, in the absence of benefit reductions or comprehensive Social Security reform, will put further strain on a Social Security system already in dire fiscal straits. Since it will be politically difficult for the employee-side payroll tax to ever increase, some conservatives have expressed concern that more and more general Treasury revenues will likely have to be used for Social Security (or the employer-side payroll tax will have to increase).

Order of Business: The bill is to be considered under a rule that provides three hours of debate equally divided and controlled by the chair and ranking minority member of the Committee on Ways and Means. The rule would have the House consider a motion by the chair of the Committee on Ways and Means that the House concur in the Senate-passed bill with the Pomeroy amendment (summarized below).

The rule waives all points of order against consideration of the motion except those arising under clause 10 of rule XXI (PAYGO). The Senate passed the legislation by [81-19] on December 15, 2010.

If the motion described above fails, then it would be in order to consider the Senate-passed bill without any changes. In other words, the House will have two potential votes:

1. A vote on the Senate-passed bill *with* the Pomeroy amendment attached. And *if* that vote fails…
2. A vote on the Senate-passed bill, exactly as passed by the Senate.

Summary of Pomeroy Amendment: The amendment would increase the death tax rate from 35% (in the underlying bill) to 45%. The amendment would further lower the death tax exemption from $5 million to $3.5 million. According to the sponsor's summary, this amendment would be a $23 billion tax increase.

Summary: Details of the Senate-passed legislation are as follows:

Budget Impact: The total score of the bill is $858 billion over ten years. $721 billion or 84% of this amount is tax relief—though more than 80% of this amount consists of simply preventing tax increases. The remaining $136 billion, or 16% of the $858 billion total, is spending—some of which is attributable to just a straight extension of the 2001/2003 tax laws (which included some mandatory spending in the form of tax rebates beyond tax liability owed). If the legislation is viewed from the perspective of a baseline that assumes extension of current tax policies—which is the way CBO treats many expiring spending provisions—the "cost" of the legislation is dramatically less than the $858 billion figure. The cost of the *new* tax and spending provisions would be just over $200 billion ($111.7 billion of this is the payroll tax cut).

2001/2003 Tax Cut Extension: The 2001 and 2003 tax cuts—otherwise set to expire next month—are extended for two years (through the end of 2012). This includes the lower 35% top rate, the 10% bottom rate, the $1,000 child tax credit, the marriage penalty relief, and the 15% capital gains and dividend tax rates. Specifically:

- **10% Tax Bracket:** Two-year extension of the lower 10% income tax bracket. *This provision reduces revenues by $89 billion compared to current law, but does not change projections compared to a baseline that assumes extension of the rates in effect today.*
- **25%, 28%, 33% and 35% Tax Brackets:** Two-year extension of the lower 10%, 25%, 33%, and 35% income tax brackets. *This provision reduces revenues by $97.4 billion compared to current law, but does not change projections compared to a baseline that assumes extension of the rates in effect today.*
- **Child Tax Credit:** Two-year extension of $1,000 child tax credit (otherwise scheduled to drop to $500 in 2011). *This provision reduces revenues by $71.7 billion compared to current law, but does not impact revenue compared to a baseline that assumes extension of existing tax law.*

- **Marriage Penalty:** Two-year extension of marriage penalty relief. Specifically, the bill extends the standard deduction/15% rate bracket set at two-times-single for married filed jointly. *This provision reduces revenues by $17.9 billion compared to current law, but does not change projections compared to a baseline that assumes extension of the tax policy in effect today.*
- **Capital Gains and Dividend Taxes:** Two-year extension of the 15% top rate on capital gains and dividend income. *This provision reduces revenues by $53.2 billion compared to current law, but does not change projections compared to a baseline that assumes extension of the tax policy in effect today.*
- **Education Tax Provisions:** Among other things, the legislation extends for two years the Coverdell education savings provisions from the 2001 tax relief law (annual $2,000 contribution limit) and the higher student loan interest deduction phaseouts ($65,000 individual/$130,000 married couple). *These provisions reduce revenues by $1.3 billion compared to current law, but do not change projections compared to a baseline that assumes extension of the tax policy in effect today.*

Death Tax: The bill adopts the Kyl-Lincoln "compromise" of a 35% rate and a $5 million exemption for two years. In 2010, per the 2001 tax law, there is no "death tax." Under current law, it goes back to 55% with a $1 million exemption in 2011. The Democrats wanted a 45% tax rate and a $3.5 million exemption (as proposed in the President's budget). *This provision **reduces revenues by $68.1 billion** compared to current law, but **increases taxes** compared to a baseline that assumes extension of the tax policy in effect today.*

Payroll Tax Cut: The employee portion of the Social Security tax would fall from 6.2% to 4.2% in 2011 only. It is notable, however, that the employer portion would remain the same (as would the Medicare portion of the payroll tax). The employer portion of the payroll tax increases the cost of hiring someone. The payroll tax cut in the proposal would be in lieu of an extension of President Obama's Making Work Pay Tax Credit. *This is a $111.7 billion tax cut over ten years.*

Unemployment Compensation: The bill extends the existing "emergency" unemployment benefits program for another 13 months (through the end of 2011). This program provides 99 weeks of benefits. Many conservatives will be concerned that this extension is not paid for. Many conservatives argue that extended unemployment benefits increase incentives to remain unemployed. *This provision will increase entitlement spending by $56.1 billion over ten years, and reduce tax revenues by $430 million over ten years.*

Other "Stimulus" Spending: The legislation extends refundable tax provisions from the "stimulus" including the refundability of the Earned Income Tax Credit (EITC), the Child Tax Credit, and the American Opportunity Tax Credit for two years. Since these provisions were part of the "stimulus," they were meant to be temporary. Extending them as part of this bill increases the odds that they will instead become a part of the tax code. The spending is not offset. *These provisions will increase entitlement spending by approximately $40 billion over ten years*

Tax Extenders: The legislation extends several expiring tax provisions (the "tax extenders"), otherwise set to expire in 2009, for two years, through 2011. This keeps current tax laws with regard to tax provisions such as the Research and Development Credit, the State and Local Sales Deduction, but also the ethanol tax subsidies. For a fuller list of the tax provisions included in this section, see here for the RSC Legislative Bulletin on H.R. 4213.

AMT Patch: Provides for a $72,450 AMT exemption amount for married couples in 2010 and a $74,450 exemption in 2011 (it was $70,950 in 2009 and would drop to $45,000 without a "patch") and a $47,450 exemption amount for singles in 2010 and a $48,450 exemption in 2011 (it was $46,700 in 2009 and would drop to $33,750 without a "patch"). This would prevent for just two years a huge, unintended tax increase on 25 million taxpayers. *This provision would reduce revenues by $136.7 billion.*

Immediate 100% Business Expensing: The legislation allows businesses to immediately deduct 100% of property placed in service between September 9, 2010 and December 31, 2011. The legislation also allows businesses to take advantage of 50% bonus depreciation in 2012.

Notable Groups Supporing/Opposing:

***Groups and Key Leaders Supporting*:**

Americans for Tax Reform (ATR)
National Taxpayers Union (NTU)
FreedomWorks (see here)
National Association of Manufacturers (NAM)
US Chamber of Commerce
Newt Gingrich
National Review

Groups and Key Leaders Opposing:

Heritage Action for America (see here)
Club for Growth (see here)
60 Plus
Ed Feulner of the Heritage Foundation
Charles Krauthamer
Hugh Hewitt
Mitt Romney
Sarah Palin
RedState

Committee Action: The version of the legislation on the floor today has not been considered by any committee.

Earmarks: No committee report listing earmarks is available.

<u>Cost to Taxpayers</u>: The total score of the bill is $858 billion over ten years. $721 billion, or 84%, of this amount is tax relief (either just preventing existing tax cuts or creating new ones). $136 billion, or 16%, of this amount is spending—some of which is attributable to just a straight extension of the 2001/2003 tax laws which included some direct spending in form of refundable credits. The rest of that amount is extension of "stimulus" refundable tax credits and the unemployment benefits extension. The legislation is a $721.4 billion tax cut over ten years (though most of this figure consists of just preventing tax increases), and a $136.4 billion spending increase over ten years.

<u>Does the Bill Expand the Size and Scope of the Federal Government?</u>: The legislation contains provisions that increase the size and scope of the federal government, as well as provisions that decrease it. The legislation is a $721.4 billion tax cut over ten years (though most of this figure consists of just preventing tax increases), and a $136.4 billion spending increase over ten years.

<u>Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?</u>: No CBO score is available listing any possible mandates.

<u>Constitutional Authority</u>: No committee report with this information is available.

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