



From the Desk of Dean Zerbe.



Good News, At Last, On Small-Business Taxes

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Bi-partisan Senate bill contains much sought relief on AMT, credit, expensing. But its future is still unclear.

Finally - some very good news for small and medium business coming out of Washington, D.C. The Senate is considering this week a small business bill that provides real tax relief. More importantly, this bill has a good chance of becoming law - but to make that happen I greatly encourage you to contact your Senator or Member of Congress and voice your support. Your elected officials need to hear first-hand from you of the benefits of this legislation.

The tax relief includes several key provisions that we at alliantgroup have been pounding on - turning off the AMT limitation on general business credits (Section 38(c)); expanding 179 (proposal -- \$500k and phase-out at \$2 million) and five year carryback of business credits. Also included is 6707A relief. These are just a few of the good proposals included in this legislation. You readers should take a bow because it is what I've learned from speaking and talking to you all in person, on the phone and email that has done much to educate policymakers in Washington D.C. and ensure that the legislation provides strong and effective tax benefits to business.

As background on a few other matters of interest:

Estate Tax - the cart is still in the ditch. Strong chance Congress does nothing this year. Senators Kyl and Lincoln have a more expansive proposal (phase-in of \$5 million credit; 35% rate) but difficult to see the 60 votes for this legislation. There is a growing thought that you may see a one or two-year extension of '09 law (\$3.5 million credit; 45% rate) in a lameduck session. Despite politicians being upset that billionaires are engaging in the ultimate estate planning and dying under current law the view is that there will not be any retroactive estate tax - that whenever legislation is finally passed estates will get to elect whether to be under law at

the time of death or under the new law (to provide relief to smaller estates hit by step-up). At the end of the day look for 10-year limitation on GRAT but no significant limitations on family limited partnerships.

Extenders/Carried Interest/S Corp.

Senators may try to attach extenders to the small business bill -- but it feels more and more like a lameduck activity (or perhaps included in extenders in September). Fight is still on payfors - including carried interest (last deal on the table was effective date 1/1/11 and blended rate of 50% capital gains and 50% ordinary income if property held for more than 5 years - 25/75 if held less than 5 years). The carried interest provision keeps getting watered down - we will see where we end up. S Corporation provision - Senators Snowe and Enzi have really gone after this House Democrat raiser (distributions on S Corporations with 3 or fewer key/owner employees subject to payroll tax). At the moment the outlook is not strong for the Senate passing the \$9 billion dollar tax increase on S Corporations in its current form. Doing extenders in lameduck or as part of a grand deal on extending the rates may take pressure off of the need for payfors.

Bush Tax Cuts. Every day brings a new story on this. The received wisdom is an extension of all the Bush tax cuts except for the top two rates (hitting the 200k/250k and over crowd). However, with the economy where it is there are continued rumblings that you may see an extension of all the rates. Either way look for this as a September activity before the elections.

Finally, Thumper can say something nice about Congress and its tax proposals for small business. On the Senate floor this week is the Small Business Jobs Act of 2010 that is easily the best tax news for small businesses in a month of Sundays. This legislation, introduced

by Sens. Baucus, D-Mont., and Landrieu D-La., and with a strong assist by Sens. Grassley, R-Iowa, and Snowe, R-Maine, provides--finally--strong tax benefits to small businesses as well as efforts to improve access to credit. Best of all, it might actually become law if agreement can be reached to resolve other more contentious tax issues that need to be addressed--namely, what to do about the estate tax and the reauthorization of dozens of lapsed tax breaks, known as extenders.

By contrast, the House embarrassed itself when it passed its own partisan small business tax bill a few weeks ago. That bill, (H.R. 5297) only reinforced the view of many that the House leadership's understanding of small business begins and ends with the buying of soy lattes. The Senate bill is a substitute to the House-passed damp sponge.

By contrast, the Senate bill was based on discussions with the small-business community and forged through bipartisan discussions. The result is a credit to the four senators and provides significant tax relief (and dare this Forbes columnist take a bow).

Major provisions in the bill include:

General Business Credit Carried Back Five Years

Currently, unused general business credits can be carried back only one year (and carried forward 20 years). The legislation extends the carryback for five years for all forms of businesses (including sole proprietorships, partnerships and non-publicly traded corporations) with \$50 million or less in average gross receipts for the prior three years. Money in the pocket now for small-business owners who file amended returns.

General Business Credit Not Subject To AMT

Make sure granddad is sitting down when you tell him this one. This is the



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big one. You have heard me discuss in earlier columns that it is unconscionable that a strong majority of small and medium businesses cannot take the general business credits (such as the Research and Development Tax Credit, the Work Opportunity Tax Credit and nearly 30 other tax credits if the owners are subject to alternative minimum tax. Now, for the first time, Congress is looking at repealing the AMT limitation on general business credits (subject to the same \$50 million limitation as above). This change in law will provide good benefit to businesses across the country--exactly the innovative and successful businesses that Congress is looking to encourage. Finally thousands of small and medium businesses will be able to benefit from the same tax incentives provided by Congress to multinational corporations.

Increase of Section 179 Expensing

For tax years beginning in 2010, business owners may write off immediately (rather than over time) purchases of certain tangible personal property for their trade or business. This provision, known as Section 179 expensing, applies to up to \$250,000 of property and begins to phase out when property purchases hit \$800,000. This bill would increase the thresholds to \$500,000 and the phase-out to \$2 million for tax years beginning in 2010 and 2011. From talking to accountants across the nation, this is doubly good news. The problem in Section 179 has been both the amount but also that the phase-out threshold was too low. The Senate addresses both concerns.

Extension of Bonus Depreciation

Continues in place for 2010 the first-year 50% depreciation for qualifying property purchased and placed in service in 2010.

100% Exclusion of Small-Business Capital Gains - Section 1202

I have to admit I have not been a huge fan of the merits of this provision that was championed early on by the Obama administration. It had the look and feel of something that sounds good but accomplishes little--the bane of small business when it comes to policy in Washington. However, in recent discus-

sions with investors my mind has been opened to its possible benefits. For purchases of Section 1202 stock acquired after date of enactment in 2010 and held for more than five years there is a 100% exclusion of gain.

Small-Business Lending Fund

In short, Treasury can purchase preferred stock and other debt instruments from small- to medium-sized financial institutions in return for which the bank has an incentive to make loans (over and above current lending) to small businesses. In addition, the legislation provides funding for state small-business credit programs and expanded SBA lending.

Health Deduction

The bill would allow business owners to deduct the cost of health insurance incurred in 2010 for themselves and their family members in the calculation of their 2010 self-employment tax. This provision will be most welcome to a significant number of small-business owners struggling to deal with health costs.

The help in this legislation is offset by increased 1099 reporting on rental properties and other grinds. But the big revenue used to pay for these provisions (and somewhat of a surprise) is that it would allow participants in 401(k), 403(b) and governmental 457(b) plans to roll their pre-tax account balances into a Roth account. That raises revenue because the rollover amount is included in taxable income except to the extent it is the return of after-tax contributions. I don't know if this Roth revenue raiser will ultimately stay in the bill given concerns about long-term projections about the deficit. (While Roth rollovers raise revenue in the short term, in the long term they reduce government collections.)

Naturally in this election year, even a bill providing such good news is not set for smooth sailing. The parade of other issues still to be considered by the Senate in the few remaining working weeks may still gum up the works. Also casting a large shadow over small and medium business is the uncertain outlook on estate tax, extenders and marginal tax rates. Still today is a very good day for

small business. The administration has a chance to show leadership for creating jobs and insist on this commonsense tax relief bill for small business going forward.

Readers who are interested in this legislation moving forward should definitely contact their senators today. I welcome readers' comments about what passage of this law would mean to their businesses and also their suggestions for improving the bill.

Dean Zerbe is national managing director of alliantgroup and a former senior tax counsel to Sen. Charles Grassley, R-Iowa.