



From the Desk of Dean Zerbe.



'Senate Six' Could Sink Small Business

Reprinted from Forbes.com

(September 10, 2009)

The latest proposals are a disaster for enterprises of all kinds.

Interest groups in Washington, D.C., and on the Internet are racing to patch together an outline of the Senate Finance Committee's latest, yet-to-be-released plan to overhaul the nation's health care system. Here's an early-bird review of what is being proposed, with a specific focus on the implications for small businesses and their owners.

The Finance Committee is clearly anxious to appear concerned about small business. The first provision mentioned in its unreleased 18-page document, portions of which have been leaked to the public, is a tax credit for small businesses. The committee is trying to spin this in a positive way, but I am very worried about the details.

The House bill had a small-business tax credit that could most easily be applied to lemonade stands. The credit began to phase out after companies employed all of 10 people with average wages of \$20,000 each. The Senate bill is a close copy in better wrapping paper. It would include a credit for companies employing fewer than 25 people who earn an average of up to \$40,000 each. But the Senate bill leaves unclear at what point the credit would begin to phase out. It may well be the same level as in the House bill—at 10 employees. Those defined as "qualifying employers" would receive a credit for a measly two years (that's not a typo; it's only two years) with a maximum credit of 35%.

Bottom line: As it now stands, the Senate proposal represents a modest tax credit wrapped in a bright bow, but it ultimately does little to nothing for small business while allowing Washington to talk up its love for small business.

Senator Olympia Snowe, R-Maine, is the ranking member of the Senate Small Business Committee, a member of the Finance Committee and one of six senators negotiating health care legislation. Many observers have put their hopes in her to provide significant relief to small business. I worry that, as with the credit proposed in the House, the Senate's will not be applied against the alternative minimum tax. In other words, if you're a pass-thru business owner and pay the AMT, there would be no credit in the bill for you.

The Finance Committee seeks to require employers with more than 50 full-time employees (defined as those working 30 hours or more per week) that do not offer health coverage to pay a fee for each employee who receives a tax credit for health insurance. The assessment would be capped at an amount equal to \$400 per employee (confusingly, it would apply even to employees who don't take the credit). If an employee is offered health insurance coverage by his employer, the individual would be ineligible for a tax credit for health insurance purchased through an exchange.

As is often the case in Washington, the devil in this provision is in the details. The employer's coverage would have to be "affordable," which the Finance Committee defines as consuming 12% or less of an employee's income—unless the employee gets an "affordability waiver" from the government.

The committee proposes that employers with 200 or more employees be required to automatically enroll employees into health insurance plans the employers sponsor. Employees would be able to opt out of employer coverage only if they could demonstrate they had coverage from another source.

None of this, of course, is free (I understand they are still about \$100 billion short).

Here's how the Finance Committee proposes to cover the cost.

- **High-Cost Insurance Excise Tax:** An excise tax of 35% would be levied on insurers and administrators that provide benefits with values in excess of \$8,000 for singles and \$21,000 for families. This is basically the backdoor way to do what Washington didn't want to do through the front-door—namely, to kill off tax-free employer-sponsored health insurance. Happily for our elected representatives, it is the insurers, rather than Congress, that stand to face the brunt of the public's anger when they pass on the cost of this stealth tax increase.

- **Cap Flexible Spending Accounts at \$2,000.**

- **Eliminate the exclusion from gross income** for employers who maintain prescription drug plans for their Medicare Part D-eligible retirees. (Grandma's going to get her gun on that one.)

- **For small business, there's a provision that will increase the already sky-high tax compliance costs.** It requires businesses that pay more than \$600 annually to corporate providers of property and services to file an information report with each provider (1099) and with the IRS. Ask your accountant how much that's going to cost. No one has done an analysis of the cost to business (it'll be a whopper) vs. the dollars raised by the Treasury (minimal).

- **Nonprofit Hospitals Requirement.** Finally, some good news. Nonprofit hospitals enjoy \$20 billion a year in tax breaks at the federal, state and local levels. Incredibly, they are not required to offer a single penny of charity care to help the poor (some do a commendable job, but many others do little or nothing). We can hope the Senate will impose real requirements. It is inexcusable that the Senate is looking at raising taxes on small businesses while not asking those getting massive tax breaks to



From the Desk of Dean Zerbe.



step up to the plate. And it's especially galling given the enormous benefits nonprofit hospitals receive from this bill.

• **Pharmaceutical manufacturing companies fee.** This is an annual \$2.3 billion fee--\$23 billion over the next decade--that would be imposed on drug makers beginning in 2010. Be very afraid. As I type like Speedy Gonzalez to get this to you, dear reader, I'm at a loss to comprehend what sort of logic went into the concept of charging a "fee" based not on profits but on market share, as the Finance Committee is proposing. What if I don't make a profit? Would I still be on the hook for the fee? And if I'm losing money, where do I get the capital to pay it? This seems to be bad tax policy taken to an extreme.

Now that the committee has set a precedent, it's seeking to expand it. It's proposing to do so by levying a \$40 billion fee on medical device makers in the decade beginning in 2010. Again, the fee would be assigned by market share, not profits. Am I the only one who thinks this means grandma's new hip will cost more--or, more likely, that funds needed to develop a new and improved hip for grandma in the future will instead go to the Treasury?

Why stop there when you can impose a "Clinical Laboratories Fee"? This one comes to \$7.5 billion over the next decade. Then comes the big dog: A "Health Insurance Provider Fee" of \$60 billion over 10 years, again based on market share.

It's my strong hope that some Senator will have the sense to ask a few learned economists whether it is more likely these fees will disappear into thin air or be passed on to consumers. I think it's clear that grandma is going to have to get a new line of credit (good luck with that) next time she needs a major procedure.

It is very troubling to have taxes levied not on the basis of profits but on market share. I can't wait to watch the fights that break out between industry and the IRS over

how that is defined and measured. When it comes to taxes, businesses should be very worried about the precedents being set in this bill.

*Dean Zerbe
National Managing Director
alliantgroup, LP
dean.zerbe@alliantgroup.com
www.alliantgroup.com*

