



From the Desk of Dean Zerbe.



Tax Extenders – Movement at Last From Congress

by Dean Zerbe

(September 17, 2008)

Much to talk about! Over the weekend, Senate Finance Committee tax staff, at the direction of Chairman Baucus and Ranking Member Grassley, hammered out the details of an agreement that will address tax extenders for two years, AMT patch for one year, energy tax incentives, tax relief for those hit by disasters and many other provisions – including one very important to accountants. Passage in the Senate seems certain in the next few days. The House is having to figure out its dance steps so that the Democratic “Blue Dogs” will have a cover vote given that the tax bill is only partially offset. I expect a number of House Republican members (some of whom are upset about the revenue raisers) will cross over to provide the needed majority.

Some of the highlights of the happily titled: Jobs, Energy, Families and Disaster Relief Act of 2008, S. 3335 (JEFDRA):

Individual AMT

AMT Patch – under last year’s AMT patch, a taxpayer receives an exemption of \$44,350 (individuals) and \$66,250 (married filing jointly) under AMT. To hold constant the number of taxpayers subject to AMT, the legislation increases the exemption amounts to \$46,200 (individuals) and \$69,250 (married filing jointly) for 2008.

ISO/AMT – as I anticipated, the Senate agreed to accelerate the benefits for taxpayers hit by AMT from Incentive Stock Options. The proposal would allow 50% of long-term unused minimum tax credits to be refunded over each of two years instead of 20% over each of five years, eliminate the income phase-out and abate any underpayment of tax outstanding on the date of enactment relative to ISO’s and AMT, including interest.

Business Extender Provisions

Expiring business provisions were continued for two years (to the end of 2009). Highlights include: Research and Development Credit was extended to end of 2009.

The proposal increases the alternative simplified credit from 12% to 14% and repeals the alternative incremental research credit. Joint Committee on Taxation estimates that businesses will receive approximately \$20 billion dollars in tax credits from this two-year extension.

Individual Extender Provisions

Expiring individual extender provisions were continued for two years (to the end of 2009). These include deduction of state and local sales taxes; teacher expense deduction; and Charitable IRA rollover. Practitioners note: look for in this bill and also a bill passed by the House regarding adoption (that the Senate is expected to pass shortly) that will have changes to eligibility for EITC and the refundable child credit.

Energy Tax Provisions

The bill contains extensions of several energy provisions and a myriad of new targeted provisions for everything from tax credits for plug-in (electric) cars and fringe benefits for bicycle commuters. In total, over \$16 billion in energy tax incentives.

Highlights include: the Renewable Energy Production Tax Credit – the bill extends the placed-in-service date for wind facilities for one year (through December 31, 2009) and three years (through December 31, 2011) for certain other qualifying facilities: closed-loop biomass; open-loop biomass; geothermal; small irrigation; qualified hydropower; landfill gas; and trash combustion facilities. The bill also includes a new provision for marine renewable (riding the waves and tides).

The bill also extends and modifies the solar energy and fuel cell investment tax credit. In addition, you have more time to get those solar panels on your house – the bill extends for eight years the credit for residential solar property (through 2016) and increases the annual credit cap from \$2,000 to \$4,000. Wind and geothermal now also count.

Disaster Relief

The bill contains \$5.2 billion in disaster tax relief. Highlights include: a 5-year carry-back of NOLs for qualified disaster losses; expansion of individual casualty losses (including treating it as a standard deduction); penalty-free IRA withdrawal allowances; and, a tax credit to encourage employers to retain their employees. I’m very pleased that Senate Finance Committee counsel, Jim Lyons, will be a speaker at the alliantgroup Midwest Tax Conference this October 17th, in Des Moines, IA (see more details below). Jim was the key staffer for the disaster relief provisions and will discuss them in detail with conferees.

Accountants!

Perhaps not important to the local papers, but I know important to you – big changes to Section 6662. As I predicted in speeches, the bill changes the standards for imposition of the tax return preparer penalty. The preparer standard for disclosed positions is “reasonable basis.” For tax shelters and reportable transactions to which section 6662A applies (i.e. listed transactions and reportable transactions with significant avoidance or evasion purposes), a tax return preparer is required to have a reasonable belief that such a transaction was more likely than not to be sustained on the merits. The proposal is effective for returns prepared after May 25, 2007.

So relief for accountants, but also more work. The bill also puts in place basis reporting by brokers on sales of stock. Mandatory basis reporting measures to the IRS by brokers for transactions involving publicly traded securities, such as stock, debt, commodities and derivatives. The basis reporting is part of the ongoing effort to deal with the “tax gap” that has been a big focus of Chairman Baucus.

Wrap-Up

This is a 10,000 foot level discussion of a bill with many moving parts. In general,



From the Desk of Dean Zerbe.



the individual and business extenders are extended for two years – end of 2009 (with some changes for families with children). The AMT patch was put in place for another year (with additional benefits for ISO/AMT). There are many energy tax provisions, some of them extensions but also several new and expanded provisions. Disaster relief – some provisions similar to Katrina tax relief -- but also new benefits as well. Finally, and so very important, modification of penalty on understatement of taxpayer's liability by tax return preparer (6662) and new basis reporting.

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

