



From the Desk of Dean Zerbe.

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Health Reform Getting Sicker with Each Treatment

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"This deal is getting worse all the time." That's the way Lando Calrissian put it in *The Empire Strikes Back*, and it will likely be the reaction of many small-business owners as they watch the health reform bill move through Congress.

The Senate Finance Committee finished crafting its version last week. While Democratic leadership will no doubt rewrite the bill before it comes to a Senate vote, the Finance product provides a depressing preview of the road ahead. Predictably, the Committee shot down on a party-line vote an amendment by Sen. Cornyn (R-Texas), to require that the Secretary of Treasury certify that no provision in the health bill would impose additional costs on small business. Some of what the committee did adopt, however, is noteworthy.

A Tax Credit For Acorn?

As I pointed out in an earlier column, the tax credit for small businesses which provide health insurance is so limited that it will only help lemonade stands. The Finance Committee expanded the credit—not to help more small businesses, but to help charities.

Since charities are already exempt from normal profit taxes, small charities will get to claim a credit against the payroll taxes (Social Security and Medicare) that they pay on behalf of their employees. Moreover, the credit can be claimed against not just what charities pay for their employees, but for the employees' share of the payroll tax taken out of their wages.

Do small businesses get to count the credit against payroll taxes if they're unprofitable? Absolutely not. Good to know that the bill is providing nonprofits (including, possibly, small ACORN affiliates) a more generous tax benefit than it is giving to struggling for-profit enterprises. The committee did find time to clarify that the self-employed and owners of small businesses

that operate as S Corps and partnerships—passing on all profits and credits to the owners' individual tax returns—will not be able to get the credit.

A Weakened Individual Mandate

The Finance Committee lowered the penalty on a family that doesn't have health insurance coverage from \$3,800 to \$1,500 (or \$750 per adult). That penalty is now phased in starting in 2014, with only a \$200 penalty that year. It doesn't come into full effect until 2017. The Committee was shocked to learn that an individual's failure to pay a tax potentially subjects him to criminal and civil penalties. So it decided to exempt this tax from criminal penalties and eliminate civil penalties and interest, too.

Collection of this penalty will be limited to withholding of federal payments (think refund claims). Wow. So this is a new type of voluntary tax—pay-if-you-feel-like-it. Is this how businesses will be treated if they don't pay the billions of dollars of taxes imposed on them in this bill? If you believe that, clap your hands and fairies will appear.

A Tougher Employer Mandate

The bill made it even harder for employers to escape taxes by providing insurance. The requirement that businesses with over 50 employees must provide employees "affordable" insurance was modified with affordable now defined as insurance that requires the employee to pay no more than 10% of his income, down from 13%. The penalties for failure to provide reasonable health insurance start July 1, 2013.

Labs Escape Taxes, Others Don't

The "fees" (really taxes) imposed on drug manufacturers, medical device manufacturers and health insurance providers remain in place. However, for reasons that make no sense (of course when it comes to sound tax policy none of this makes any sense) the annual fee of \$750 million on clinical laboratories was dropped com-

pletely. Yes, I should be happy that there was a scaling back. But it is the arbitrary and capricious nature of all this that is incredibly frightening as there is already talk about taking what is effectively a gross receipts tax on segments of the health industry and expanding it to other industries down the road. So much for the discussions after the elections about actually reducing the corporate tax rate—this is a corporate tax rate increase with a different name. (For more on disguised taxes in the Senate Finance bill, [click here](#).)

The Timing Game

Timing gimmicks were used to keep the bill's cost (as scored by the Congressional Budget Office) under control. The fees/taxes all go into place immediately (except of course the volunteer tax for uninsured individuals discussed above) and that will certainly cause an increase in insurance premiums for all families. However, the tax credit to help some low-income families pay for insurance doesn't kick in until three years later—2013. So families must struggle with increased insurance premiums and no tax credit for three years.

A Tax Hike for the Sick

The Senate Finance bill limits the deductibility of outsized medical bills—making them deductible only to the extent they exceed 10% of a family's adjusted gross income, up from 7.5% under the current law. So as not to tick off seniors, the Democrats agreed to keep the limit at 7.5% for the elderly—but only through 2016.

A New Tax Break

Yes I can say something nice about the changes to the health bill. Finance adopted an amendment to provide an expanded credit for small businesses that engage in biotech research that will be of great help potentially to many small firms (defined as 250 employees or fewer for the credit, even though small is defined as 50 employees or fewer for tax penalties elsewhere in the



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bill). However, it will effectively be a loan program for many businesses that do not yet have profits or a tax liability. Why not allow it to be claimed as a credit against the payroll tax, as the committee did for charities when it came to claiming the small business health insurance credit? Still, the credit could provide welcome relief for small and start-up biotech firms.

“Pray I don’t alter it any further” was Darth Vader’s response to Lando’s griping. With the Democratic leadership now rewriting the bill, small-business owners would be well advised to find a prayer rug. Ultimately, we may see a House-Senate Conference Committee embrace not only some of the Senate Finance’s taxes, but also some of the House’s tax ideas too, including an income tax surcharge on the wealthy—say those making \$500,000 or more.

For more on gross receipts taxes, [click here](#).

For states that have singled out the wealthy for higher taxes, [click here](#).

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