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Congress Eyes Passing Extenders for 2007–2008

By Bart Massey

Both chambers of Congress have taken recent action to move legislation that would provide one-year extensions of corporate and individual tax provisions. However, completion of the legislation is not expected until later in the year after Democrats and Republicans decide whether to enforce Pay-As-You-Go rules that would require the cost of the tax extenders to be offset with revenue raisers. The proposals included within the extenders bill address provisions that either expired at the end of 2007 or are set to expire at the end of this year.

House and Senate Chose Different Revenue Offsets

Extenders legislation in the House has progressed more rapidly where that chamber in May voted 263-160 to approve a bill estimated to cost $27 billion over 10 years. The Democratic-controlled chamber chose to offset the entire cost of the extenders provisions with two proposals—one that would currently tax nonqualified deferred compensation received from offshore entities, while the other would delay the effective date for the worldwide interest allocation election adopted under the American Jobs Creation Act of 2004.

Rebate Filing Deadline Approaching

Taxpayers have until October 15 to file a 2007 federal income tax return to receive an economic stimulus payment this year. "Those who do not file a tax return to obtain their stimulus payment this year may still receive their stimulus payments by filing a 2008 tax return next spring, but then their stimulus payment would be based on their 2008 qualifying income," the IRS stated in a recent announcement.

Under the Economic Stimulus Act of 2008 [P.L. 110-185], eligible taxpayers can receive payments of up to $600 ($1,200 for married filing jointly), plus an additional $300 for each eligible child younger than 17.

Most taxpayers automatically qualified for their so-called rebate when filing their 2007 federal income tax return in April. However, the IRS is reaching out to those who do not otherwise have to file a tax return (*e.g.*, their income is too low or they have nontaxable income) and trying to educate them about the process for receiving their rebate.

As of mid-July, the IRS had issued 112.4 million economic stimulus payments totaling $91.8 billion. ■

computer equipment for educational purposes

Provisions set to expire at the end of 2008, which would be extended through 2009 include the following:

- New Markets Tax Credit
- Subpart F exception for active financing income
- Lookthrough treatment of payments between related controlled foreign corporations

Finished Legislation May Come Late in Year

If the House and Senate do not pass identical legislative packages, the two chambers will have to negotiate a final compromise bill through a conference, adding a further obstacle to completing the legislation. With little time left on the fall congressional calendar, the extenders legislation, while expected to pass, may not become law until late this year.

This pattern of uncertainty—having tax laws that apply in some years and not in others—may create hardships and more complexity for some individuals and businesses that rely on certain incentives as part of their tax planning and decision making.

To read the text of the proposed bills, visit thomas.loc.gov *and search for S. 3335, Jobs, Energy, Families and Disaster Relief Act of 2008, and H.R. 6049, Renewable Energy and Job Creation Act of 2008.*

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TAX LAWS IN THE MAKING

Biz Implications of *Not* Approving Extenders

Businesses have a high stake in Congress' ongoing efforts to approve so-called tax extenders legislation, according to Marc Gerson, an attorney at Miller & Chevalier (*www.milchev.com*) in Washington, D.C., who specializes in federal tax policy.

Gerson, who previously served as Majority Tax Counsel to the U.S. House of Representatives Committee on Ways & Means, recently offered his insight to Executive's Tax & Management Report on the business implications of tax extenders. Here's what he had to say in response to the following questions.

Q: *Which of the tax extender provisions are businesses most concerned about and why?*

A: Companies have different priorities with respect to the tax extender package depending on the location of their operations and the type of business activities they are engaged in. Technology companies, for example, are primarily interested in the research tax credit. U.S. multinationals are concerned with the extension of certain international tax provisions that enable them to compete with foreign competitors by allowing them to competitively price certain financial products and redeploy earnings in a tax-efficient manner to take advantage of investment opportunities abroad. There is also a package of energy tax provisions of interest primarily to those companies investing in alternative energy technologies.

Q: *What types of financial statement and real business cost implications will companies face if the extenders are not enacted?*

A: It is important to note that some companies may already have a financial statement impact with respect to a number of the tax provisions, such as the research credit, that expired at the end of 2007. To the extent companies are currently relying on a provision such as a tax credit that will expire at the end of the year, these companies may have an adverse financial statement impact to the extent the expiration of the credit has a material impact. This financial statement impact will take the form of an increased effective tax rate and, as a result, lower reported earnings. Beyond the financial statement impact, the expiration of the extenders package may impact how companies price certain products and may also impact their investment decisions.

Q: *What other implications, if any, will businesses have to contend with if extenders legislation is not enacted?*

A: The other implication is that if the tax extenders package is not extended in the short-term, there will be increased uncertainty as to the timing of its extension in light of the upcoming Presidential and Congressional elections and the inevitable change in the Administration.

Q: *What can executives do to voice their concerns about the importance of tax extenders legislation?*

A: It is important for corporate executives to voice their support for the tax extender package, particularly the importance of extending the package in a timely fashion. In this regard, members of Congress will be particularly interested in practical examples of how particular provisions in the package positively impact the economy in terms of capital investment, job creation, *etc.*

For information on contacting your U.S. representative and senator, visit www.house.gov *and* www.senate.gov. ■

TAX LEGISLATION

Tax Credits Included in New Housing Law

Tax breaks aimed at spurring home buying are among the $15 billion in tax provisions included in a housing bill recently signed by President Bush [P.L. 110-289].

Among other things, the law enables those at risk of losing their home to refinance into more affordable, government-insured mortgages, according to the Ways and Means Committee.

In a statement, the committee explained that the bi-partisan legislation is aimed at:

- stemming the tide of foreclosures,
- stabilizing local housing markets,
- providing incentives for first-time homebuyers and
- increasing access to affordable housing for low-income communities.

"This is the right thing to do for our country during this economic downturn," said Ways and Means Committee Chairman Charles B. Rangel (D-NY). "This law expands and improves the low-income housing tax credit, which is the largest source of federal support for the construction and rehabilitation of affordable housing. It also increases volume limits on housing bonds to finance low-income rental housing and first-time homebuyers, while also providing states with greater flexibility on how to use those bonds efficiently."

Following is a summary of overviews provided by the Ways and Means Committee and the Senate Finance Committee on the law's numerous provisions.

Additional Deduction for Real Property Taxes

For 2008, home owners who claim the standard deduction for state and local real property taxes are entitled to an additional standard deduction—up to $500 ($1,000 for joint filers).

Bonds to Refinance Sub-Prime Loans

The law temporarily increases the national limit on the annual amount of tax-exempt housing bonds that each state may issue. Under the provision, an additional $11 billion of tax-exempt bonds may be issued to refinance certain subprime loans, grant loans to first-time home buyers and finance the construction of low-income rental housing.

Credit for First-Time Home Buyers

Taxpayers who purchase their first home on or after April 9, 2008, and before July 1, 2009, are eligible for a refundable tax credit that is equal to 10 percent of the purchase price of their home (up to $7,500). The credit is equivalent to an interest-free loan, since those eligible for the tax credit would have to repay any amount they receive over 15 years in equal installments, according to the Finance Committee.

Phaseout for the credit begins for taxpayers with adjusted gross income exceeding $75,000 ($150,000 for joint filers).

Low-Income Housing Tax Credit

The legislation includes provisions that improve the federal Low-Income Housing Tax Credit (LIHTC), which has helped in the development of two million rental units nationwide since the LIHTC was introduced in 1986, according to the Ways and Means Committee.

Specifically, the law authorizes a temporary increase in the LIHTC for 2008 and 2009. "Under current law, there is a state-by-state limit on the annual amount of Federal low-income housing tax credits that may be allocated by each state," the Finance Committee explained. The new legislation provides for a temporary 10 percent increase in the credit—to $2.20 for each person residing in a state.

"States with small populations are provided with a special set aside, which will increase by 10 percent as well," the Finance Committee stated.

The committee also outlined provisions in the law that simplify the LIHTC's technical rules:

- Temporarily establish a minimum credit rate for non–federally subsidized buildings placed in service after date of enactment and before December 31, 2013