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Health Care Bill Headed Toward a Vote

The Senate Finance Committee wrapped up work on the America's Healthy Future Act, clearing the way for it to be merged with the Health, Education, Labor & Pensions (HELP) Committee's Affordable Health Choices Act and scheduled for floor debate. Meanwhile, the House worked on merging three versions of its America's Affordable Health Choices Act.

During mark-up, the Finance Committee made several changes to the original bill but major provisions remained and they differed somewhat from the other four bills. Individuals are required to have health insurance or pay an "excise tax"; employers are not required to offer insurance but would be fined if employees request government subsidies to acquire it on their own. High-value insurance plans would be taxed and insurers, pharmaceutical companies, clinical labs and medical device manufacturers would face new fees. It contained provisions for insurance cooperatives and a national insurance exchange but no federally-operated public plan.

The HELP Committee bill includes both individual and employer mandates and a public – or government-operated – insurance plan as part of a national insurance exchange, as does the House legislation. It has no funding provisions, but the House legislation includes a surtax on wealthy individuals. All the bills rely on savings from reducing "fraud, waste and abuse" in the current health care system to cover most of the cost of new legislation.

Tax Relief Extensions Loom

Toward the end of each year Congress turns its attention to expiring tax provisions; this year there were incentives enacted in the American Recovery & Reinvestment Act (ARRA) to deal with. Business tax issues included:

The federal estate tax – The 2009 estate tax exemption is \$3.5 million and the top tax rate is 45 percent; the tax itself is scheduled to be repealed at the end of this year, but

only for 2010. If no action is taken, it will revert to 2001 levels of a \$1 million exemption and 55 percent tax rate in 2011.

Rep. Charles Rangel (D-NY), chairman of the House Ways & Means Committee, indicated the House might vote to extend 2009 provisions for another year and eliminate the repeal. A one-year extension, however, would do nothing to keep the estate tax from reverting to earlier levels in 2011.

The alternative minimum tax (AMT) – There are two versions of the AMT, one for individuals and one for corporations. Companies organized as sole proprietorships, partnerships, S corporations and other pass-through entities are covered by the individual AMT. Because income exemptions for individuals are not indexed for inflation, Congress typically passes legislation each year to set temporary increases.

ARRA took care of 2009; it increased the exemption to \$46,700 for individuals and \$70,950 for couples. If Congress does nothing more, the exemptions in 2010 will drop to \$33,750 for individuals and \$45,000 for couples.

Small business direct expensing – Under Section 179 of the tax code, small businesses currently can write off as much as \$250,000 for equipment and machinery up to \$800,000. Those higher amounts are temporary and will drop to \$125,000 and \$500,000 (indexed for inflation) in 2010.

Bonus depreciation – ARRA allows companies to take an immediate 50 percent depreciation for property acquired in 2009, in addition to the Section 179 direct expensing.

15-year cost recovery – A temporary depreciation schedule shortens to 15 years the cost recovery period for some improvements to retail property. This will expire at the end of the year.

Net operating loss carry-back – ARRA provided tax relief in the form of a five-year carry-back period. It allows small businesses to carry back 2008 losses for five years instead of the usual two years. There has been talk of extending this tax benefit for 2009 losses and allowing all businesses to claim it.

Appliance Rebate Program in the Offing

It isn't exactly "cash for clunkers," but the State Energy Efficient Appliance Rebate Program could give appliance sales a boost. The Department of Energy (DOE) said it wanted to put federal grants in the hands of state officials by Nov. 30.

These grants are to be used for rebates ranging from \$50 to \$200 on Energy Star rated appliances such as refrigerators, dishwashers, clothes washers, air conditioners, furnaces and water heaters. Each state can set effective dates and other rules for the rebates.

Unemployment Benefits Being Extended

The House passed legislation to extend emergency unemployment insurance benefits for 13 weeks in states with an unemployment rate of at least 8.5 percent. It would extend for one year the \$14-per-employee Federal Unemployment Tax Act (FUTA) surtax and require reporting on newly hired employees to include their start date to reduce unemployment insurance overpayments.

The Senate was considering expanded benefits including a four-week extension of benefits in all states in addition to the 13 weeks in high-unemployment states. The Senate version would extend the FUTA surtax for two years instead of one.

DHS Rescinds No-Match Rule

The Department of Homeland Security (DHS) has rescinded the controversial no-match letter regulation ordered by the Bush Administration in 2007. The rule would have required the Social Security Administration to send letters from DHS with its own notification to employers when Social Security numbers on W-4 forms did not match its records. The letters would have advised employers of steps to take to resolve discrepancies. If employers received DHS letters, the agency would use the letters as evidence against employers in subsequent enforcement of immigration rules.

Following a challenge by a coalition of business, labor and immigrant rights groups, a federal court blocked implementation of the rule. It has never gone into effect. It is assumed now that the case will be dismissed.

Soon after DHS proposed the rescission, the Senate attached an amendment to the DHS appropriations bill to block the agency from using 2010 funds to rescind the rule. Since that appropriations bill had not been enacted, it was uncertain what effect, if any, it might have on DHS's action.

DHS says it intends to shift enforcement efforts to increasing compliance through use of E-Verify and other federal employment verification programs.

Energy/Climate Bill Passed

The House passed the American Clean Energy & Security Act which sets greenhouse gas emissions standards and establishes a cap-and-trade program to achieve reduced levels of carbon dioxide and other pollutants. It would set efficiency standards for industrial equipment, electric motors, electric appliances and lighting as well as energy improvement goals for new homes and commercial buildings and give the DOE authority to enforce building codes.

In other action, DOE published a final rule setting new efficiency standards for general service fluorescent lamps and incandescent reflector lamps. It requires electricity consumption to be reduced by 15 percent for fluorescents and by 25 percent for reflectors. The rule goes into effect July 14, 2012.

Another Red Flags Delay

The Federal Trade Commission (FTC) postponed the enforcement date for its Red Flags Rule to Nov. 1 and posted updated frequently asked questions on its web site, www.ftc.gov/redflagsrule. The Red Flags Rule requires companies that offer credit to develop written identity theft prevention programs.

In announcing the release of additional compliance information, the FTC said it would be “unlikely” to initiate enforcement actions if businesses know customers individually, if they perform services at a customer’s home, if they are in an industry where identity theft is rare and if they have not been targets of identity theft. Earlier the FTC said that retailers who provide private label credit cards would be considered in compliance if they follow their card-issuing bank’s identity theft procedures and keep a copy of the bank’s ID theft prevention plan on the store premises.

Gift Card Popularity Draws Federal Attention

The National Retail Federation advises retailers to be aware of increasing federal attention to gift cards. The Credit Card Accountability, Responsibility & Disclosure (CARD) Act, signed earlier this year, bans the sale of gift cards with an expiration date of less than five years and dormancy fees taking effect in less than a year.

Last month, the Internal Revenue Service (IRS) told its agents to begin auditing retailers who market gift cards through separate subsidiaries.

A bill in the House of Representatives to establish a Consumer Financial Protection Agency (CFPA) initially would have given CFPA jurisdiction over retailers who offer store credit, issue credit cards or sell gift cards. However, Rep. Barney Frank (D-MA), chairman of the House Financial Services Committee, said he would revise the bill to clearly exempt retailers and other non-financial businesses from CFPA regulations and oversight.

Coming in February

The IRS wants to find out how much tax money the federal government is losing because employers do not comply with employment tax laws. It has extended its National Research Program (NRP) into employment taxation – through random audits.

In February, the IRS will begin a three-year study to compile information on worker classification, fringe benefits, employee expense reimbursement plans, officer compensation and non-filing employees. The IRS will audit 2,000 employers in each of the three years. The sample will include small and large businesses, tax-exempt organizations and government entities. Taxpayers who are to be audited should receive letters advising them they have been selected.

The audits are not likely to be pleasant. John Tuzynski, chief of employment tax operations for the IRS’s Small Business/Self-Employed Div., said, “Our scope will be greater in these examinations than normal.” Benson Goldstein of the American Institute of Certified Public Accountants agreed: “[The audits] will probably be very intensive, very painful audits.”