

Congress finished its work for 2009. The House wrapped up its activities and recessed in mid-month. It took the Senate until Christmas Eve to cast its final votes for the year. Despite the seemingly unending media coverage of every Senate action on health care reform, the estate tax may be of greater immediate concern for small businesses.

## **Estate Tax Repealed, But ...**

The federal estate tax will go away in 2010 – maybe. If it does, it will be replaced with another, perhaps more onerous, provision for estates established next year and will come back in 2011. The House passed and sent to the Senate the Permanent Estate Tax Relief for Families, Farmers & Small Businesses Act to make the \$3.5 million exemption and 45 percent tax rate permanent. The Senate had other ideas about the estate tax but failed to act. This allows the estate tax to be repealed next year. However, lawmakers were talking about revisiting the matter early in 2010 and, maybe, passing legislation to reinstate it retroactively.

If the repeal kicks in, it will bring a change in how assets are valued when heirs sell them. Under current law, assets are valued at market price at the time of death. When they are sold later, capital gains taxes are paid on the difference between the value at the time the estate was established and the value at the time of sale. The law that repeals the estate tax also requires that assets be valued at their original cost. This means that capital gains taxes on future sales of those assets would be paid on a much greater appreciation in value. It also means heirs would be faced with finding documentation for assets acquired years ago. There is, however, a provision that protects the first \$1.3 million in unrealized capital gains from taxation.

## **Senate Finishes Health Care**

As you all know, the Senate passed its health care bill with no Republican votes. In the final days, a number of provisions were changed to gain the 60 Democratic votes needed to overcome procedural obstacles initiated by Republicans. A couple of those changes involve key provisions detailed in the Dec. 7 issue of *News from Washington*.

Eligibility criteria for small businesses to qualify for a health care affordability tax credit were expanded to cover more companies. The original bill allowed companies with up to 25 employees and an average salary of less than \$40,000 to qualify; later amendments changed the average salary to \$50,000. The credit would become available in 2010 instead of the original 2011.

A funding provision was changed. The original bill increased employees' share of the Medicare hospital insurance portion of the FICA tax to 1.95 percent from 1.45 percent for incomes over \$200,000 (individuals) and \$250,000 (couples). An amendment increased the percentage for higher incomes to 2.35 percent.

Health care isn't done yet. The two bills passed by the House and Senate must be reconciled into one. There's still a question as to whether a formal conference will be

convened or whether Congressional staffs will work during the holidays to knit them together. Leaders in both houses have said they want a final bill for President Obama's signature by the time he delivers the State of the Union address in late January.

### **Tax Extenders in Limbo**

There are something like 40 tax provisions that will expire on Dec. 31. Most of them expire every December and Congress manages to renew them in time. Not this year. Although the House passed the Tax Extenders Act, the Senate put it on the spring agenda. Included in the House bill were the research and development tax credit, 15-year depreciation for leasehold and retail improvements, the deduction for state sales and property taxes and the deduction for classroom supplies. If they are renewed later, they are likely to be retroactive.

There are about 70 more tax provisions that will expire at the end of 2010. Extending them costs the government money and Congress always looks for offsets – tax increases elsewhere to pay for them. One offset that tends to pop up all too frequently is LIFO inventory accounting. Proposals have been put forth in the past to repeal LIFO accounting and turn LIFO reserves into taxable income.

Also waiting for Congress is the ever-present alternative minimum tax (AMT). The American Recovery & Reinvestment Act (ARRA) increased the income thresholds for the AMT for 2009 but, without another “patch,” the exemption thresholds will return to \$33,750 for individuals and \$45,000 for couples in 2010. The thresholds are \$46,700 (individual) and \$70,950 (couples) for 2009.

### **Unemployment Benefits Extended**

Congress used the 2010 appropriations bill for the Dept. of Defense – the last one to be passed – to extend two programs for unemployed workers through Feb. 28. The two programs are emergency unemployment benefits and the 65 percent COBRA health insurance subsidy for laid-off workers. Immediately after Obama signed the law, the Employee Benefits Security Administration reminded employers that laid-off employees are to pay 35 percent of COBRA premiums and the insurance provider is reimbursed the remaining 65 percent through tax credits.

The House passed another bill, the Jobs for Main Street Act, to provide government funding for transportation infrastructure projects, aid to states to for public service jobs and an extension through 2010 of two Small Business Administration (SBA) temporary loan guarantee programs. It would extend these same unemployment benefits for another six months. The Senate will not consider this bill until next year.

### **Financial Regulation Reform**

The House passed the Wall Street Reform & Consumer Protection Act, a massive piece of legislation designed to reform financial regulation. It includes a new Consumer Financial Protection Agency (CFPA) to establish and enforce rules for consumer financial products and services.

Most retailers would be exempt from CFPA jurisdiction as long as they do not directly offer financial products or act as or own financial institutions. Gift cards would be covered, however, but CFPA's ability to impose funding assessments on issuers of retail gift cards would be limited.

### **Funding the Government**

When Obama signed the appropriations bill for the Dept. of Defense, he ended the fiscal year 2010 appropriations process. A few days earlier, he signed an omnibus bill that combined six of the 12 annual appropriations bills into one. Five appropriations bills were completed earlier in the year.

That left the federal debt ceiling. The House passed legislation to raise the government's borrowing limit to \$12.4 trillion through February; the Senate followed suit as its last action before recessing.

### **Other Business Bills**

The Senate Small Business & Entrepreneurship Committee approved the Small Business Job Creation & Access to Capital Act to increase limits for SBA loans. Limits for 7(a) loans would be increased to \$5 million, 504 loans to \$5.5 million and microloans to \$50,000. It would also extend for a year fee eliminations and increased loan guarantees set to expire under ARRA.

Senate Finance Committee chairman Max Baucus (D-MT) and ranking member Charles Grassley (R-IA) proposed the Small Business Penalty Fairness Act to balance tax penalties for failure to disclose a reportable transaction with the tax benefit received. Their bill would set the penalty at 75 percent of the benefit received; minimum and maximum penalties would be \$5,000 to \$100,000 for individuals and \$10,000 to \$200,000 for corporations.

### **Next Year's Mileage Rates**

The Internal Revenue Service (IRS) announced standard mileage rates for 2010: 50 cents a mile for business miles, 16.5 cents for medical or moving purposes and 14 cents for service to charitable organizations. Business and medical/moving rates are set by the IRS and will be lower next year primarily because the cost per gallon of gasoline has gone down. The rate for charitable service is set by Congress.