



LEGISLATIVE UPDATE

With a maximum of just six weeks left in the first session of the 111th Congress, health care reform continues to dominate the attention of Capitol Hill lawmakers -- and likely will do so through December and into the next session. Despite this, Democratic Leadership is tending to the legislative matters that typically emerge at the end of each congressional session. The most pressing of these, and the only "must do" issue, is funding the federal government. Work continues on the individual appropriations bills, and the House and Senate have passed a stop-gap "continuing resolution" that will keep the unfunded federal agencies operating through December 18. Congress likely will soon pass legislation to extend some of the economic stimulus provisions such as the homebuyer's credit, net operating loss (NOL) Carryback relief and an extension of unemployment insurance benefits. Leadership also will have to decide how to deal with the estate tax scheduled to be repealed in 2010 and other tax provisions that expire at the end of 2009.

HEALTH CARE LEGISLATION

All five committees of jurisdiction in the House and Senate have approved health care reform legislation, and over the past few weeks House and Senate Leadership have worked to meld their various bills in anticipation of floor consideration. On Thursday, October 29, House Speaker Nancy Pelosi (D-CA) unveiled an \$849 billion reform plan that reflects the merged bills from the Energy and Commerce, Education and Labor, and Ways and Means Committees. This bill is largely financed through a surtax (at a rate of 5.4 percent) on single taxpayers earning over \$500,000 per year and couples earning over \$1 million per year. The Senate Leadership continues to work on melding the plans approved by the HELP and Finance Committees, and the final Senate product likely will be financed largely through an excise tax on insurance companies that provide high cost health plans.

The House may vote on its health care bill later this week and the Senate hopes to start floor consideration in early November. Senate floor action is expected to take two to three weeks. Assuming bills pass both bodies, a conference committee would be appointed to iron out the differences between the House and Senate bills. The conference is expected to be a lengthy and difficult undertaking, further dimming the possibility that a bill can be completed and sent to the President by year-end.

STIMULUS EXTENDERS

There is wide support for extending some of the items that were included in the stimulus bill passed earlier this year, and the Senate may vote on a package perhaps as soon as this first week in November. At the top of the list are extending unemployment insurance benefits, extending the homebuyer's credit and extending the net operating loss (NOL) Carryback relief. The homebuyer's credit currently is scheduled to expire on November 30. Congress is considering extending the current \$8,000 credit for first-time homebuyers until April 30, 2010, and expanding the provision to allow a \$6,500 credit to purchasers who have lived in their current residence for five years or more. The NOL provision likely will be expanded to all businesses, not just the small businesses provided for in the earlier stimulus legislation. We have been making the argument with congressional and administration staff that inclusion of the NOL Carryback for all businesses warrants the addition of our five-year LIHTC Carryback as the NOL provision would do little to stimulate investment in LIHTC developments. We have been emphasizing the job creation inherent in any stimulus for the LIHTC program. Nonetheless, this train appears to have left the station without the LIHTC Carryback or Exchange extension.

ESTATE TAX, EXPIRING TAX PROVISIONS, PENSION FUNDING RELIEF

There are a number of provisions, such as the research and development credit and the deduction for state and local sales taxes that expire at the end of 2009. As has been the case in the past, pressure is building to pass an "extender" bill that would keep these provisions alive for another year or two. While Congress would like to address these expiring provisions this year, there is some sentiment that the extension can wait until early next year. This appears to be the logical vehicle for the extension of the Sect. 1602 Exchange program as it is also considered an expiring provision. Whether or not we are able to include the 4% credits in the extension of the program still remains to be seen.

The more pressing issue in regards to the expiring tax provisions is how to address the estate tax which currently is scheduled to end in 2010 and come back in 2011. House and Senate Leadership are reviewing options ranging from simply extending the 2009 estate tax law for another year to permanent reform. It is anticipated that there will be action on the estate tax bill before the end of the year. The timing, legislative vehicle and details remain unclear.

Another proposal that might receive favorable consideration this year is a measure to give pension fund sponsors that have been hit hard by cash flow problems and tight credit more time to satisfy their funding rules. There is bipartisan support for this legislative relief.

OTHER LEGISLATIVE INITIATIVES

Financial Services Regulatory Reform -- The House Financial Services Committee is well underway on its consideration of financial services regulatory reform, a high priority for the Obama Administration. The Committee has reported a number of separate bills and it appears that Financial Services Chairman Barney Frank (D-MA) intends to merge these bills into one bill for House floor consideration and final action this session. On the Senate side, Banking Committee Chairman Chris Dodd (D-CT) hopes to release a comprehensive reform package in November. While he hopes to complete Senate action on a reform bill this year, the ongoing debate on health care reform may preclude that. It appears more likely that the Senate will complete its action on financial services regulatory reform in early 2010.

Global Warming -- Given the short amount of time left in the session and the controversial nature of the issue, it is not anticipated that a global warming bill will see final action this year. Although the House passed its climate control legislation earlier this year, the issue is just now being considered by the Senate committees of jurisdiction.

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