TTAA Legislative & Regulatory Update

February 5, 2024

House Passes CRA on NLRB's Joint Employer Rule

On January 12, the House of Representatives passed a Congressional Review Act (CRA) resolution to revoke the Board's recently released Joint Employer Rule by a vote of 206-177, with all voting Republicans and 8 Democrats supporting the measure.

While we expect a Senate vote in the coming weeks, President Biden has indicated he will veto the CRA measure if it reaches his desk.

That said, a strong CRA vote conveys that the Board rule is unacceptable.

In the meantime, the lawsuit challenging the rule by CDW and ABC, AGC, AHLA, IFA, NRF, and the U.S. Chamber is pending in federal district court and we will update you on any developments.

Tax Package Moves to Senate

Last week, the House came out in strong support for the tax relief package negotiated by Chairmen Ron Wyden (D-OR) and Jason Smith (R-MO). Less than two weeks after sailing through the Ways & Means Committee, the bill passed the full House 357-70 and now heads to the Senate. Below is a look at what's inside the bill, its prospects in the upper chamber, and what it means for the Main Street business community.

Bill's Provisions

The *Tax Relief for American Families and Workers Act* (H.R. 7024) is centered on reversing several of the TCJA's key revenue raisers. The bill allows for immediate expensing of R&E costs, which businesses must currently amortize over several years; reinstates the less punitive "EBIT" cap on interest expense deductions; and restores 100-percent bonus depreciation, which is currently being phased out.

The relief is retroactive and stretches back to tax years starting in 2022, meaning many businesses will be able to claw back some taxes levied in prior years. On the other hand, the changes only run through 2025, meaning the "fiscal cliff" fight we know is coming will be even more consequential.

For families, the headline is a more robust Child Tax Credit. The bill increases the cap on the credit's refundability, loosens its eligibility requirements, and indexes its value to inflation. Other provisions include tweaks to the Low Income Housing Tax Credit, higher 1099 reporting thresholds, and targeted relief for victims of recent natural disasters. Again, much of the individual relief sunsets in 2025, setting the stage for a major tax battle next year.

While the business provisions enjoy general bipartisan support, the CTC changes have sharply divided conservative groups, with a vigorous debate taking place at

Heritage, AEI, and other think tanks. The Speaker's support and the strong vote last night come despite these concerns.

Offsets

According to the Joint Committee on Taxation, virtually all of the bill's $78 billion price tag is offset by ending new filings for the Employee Retention Tax Credit (ERC) and ramping up enforcement of "promoters" who may be engaged in encouraging fraudulent claims. As with the CTC, this offset has generated lots of angst in the conservative tax world, and some in the small business community dislike the optics of pairing tax relief that primarily benefits bigger companies with tax hikes generated by ending a small business program.

The SALT caucus also made itself heard, but their objections appear to have been resolved by the promise of a House-vote on a separate SALT relief package next week. We'll be interested to see how successful that effort will be, as the SALT cap enjoys support from both the right and the left.

Prospects

So where does the bill go from here? As noted, the legislation was passed out of the House in a broad bipartisan vote – in the end, 188 Democrats backed the measure, alongside 169 Republicans.

The big show of support was critical because its fate in the Senate is far from assured. While Finance Chair Ron Wyden is pushing hard to get the package across the finish line before we get too deep into the 2023 tax filing season, key Republicans are demanding a full markup and an opportunity to offer amendments, which could result in a modified product being sent back to the lower chamber for another contentious vote.

Opportunities to delay the bill in the Senate are abundant – a motivated minority can force up to seven cloture votes on a single bill – so it's really a question of how much time the Majority Leader is willing to expend verses how committed members of the minority are to amendments and full consideration.

Bottom Line

Despite the remaining obstacles, the odds of tax legislation passing this quarter have increased with the impressive vote in the House. Companies have been hammered with surprise tax hikes resulting from the tighter interest expense caps and R&E amortization rules for several years now and a fix is long overdue. On the other hand, these breaks are temporary and our number one priority – Section 199A permanence – remains to be addressed.

IRS reminder to disaster victims with extensions: File 2022 returns by Feb. 15; all or parts of 8 states and 2 territories affected

The Internal Revenue Service reminded disaster-area taxpayers who received extensions to file their 2022 returns that these returns are due on Feb. 15, 2024.

Eligible taxpayers were those affected by various disasters that occurred between Aug. 8 and Oct. 9, 2023. This included Hurricane Idalia, Hurricane Lee, Tropical Storm Bolaven, the wildfires in Hawaii, the seawater intrusion in Louisiana and storms and flooding in Illinois. For extension filers, payments on these returns were not eligible for the additional time because they were originally due last spring before any of these disasters occurred.

Locations that qualify for the Feb. 15 filing deadline:

- Forty-nine counties in Florida.
- Thirty-two counties In Georgia.
- All of Guam.
- Maui and Hawaii counties in Hawaii.
- Cook County in Illinois.
- Five parishes in Louisiana.
- All 16 counties in Maine.
- All 14 counties in Massachusetts.
- Six islands in the Northern Mariana Islands.
- All 46 counties in South Carolina.

The IRS normally provides relief, including postponing various tax filing and payment deadlines, for any area designated by the Federal Emergency Management Agency (FEMA). As long as their address of record is in a disaster-area locality, individual and business taxpayers automatically get the extra time, without having to ask for it. The current list of eligible localities is always available on the disaster relief page on IRS.gov.

In addition, the IRS will work with any taxpayer who lives outside the disaster area but whose records necessary to meet a deadline occurring during the postponement period are located in the affected area. Taxpayers qualifying for relief who live outside the disaster area need to contact the IRS at 866-562-5227. This also includes workers who assisted with relief activities who are affiliated with a recognized government or philanthropic organization.

Besides those who received extensions to file their 2022 returns, there are other returns, payments and time-sensitive tax-related actions that also qualify for the Feb. 15 deadline. For details, see the IRS disaster relief page, especially the disaster relief announcements for each state and territory.

The tax relief is part of a coordinated federal response to the damage caused by these disasters and is based on local damage assessments by FEMA. For information on disaster recovery, visit disasterassistance.gov.

Chuck Space - TTAA Executive Director
4600 Spicewood Springs Road
Suite 103
Austin, TX 78759
(512) 343-8604