WNTS Insight

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House passes payroll tax cut extension bill that also would extend bonus depreciation

The House today voted 234 to 193 to pass a bill (H.R. 3630) extending employee payroll tax relief, unemployment benefits, Medicare physician reimbursement rates, and the Temporary Assistance for Needy Families (TANF) program. The Middle Class Tax Relief and Job Creation Act of 2011 also would provide a one-year extension of 100-percent "bonus" depreciation.

Senate Majority Leader Harry Reid (D-NV) has said the House bill "has no chance of passing the Senate." In addition, President Barack Obama has indicated he would veto the measure because it includes a provision to accelerate the approval process for the Keystone XL oil pipeline.

Congress is seeking to finish work on payroll tax extension legislation and other "must-pass" bills so it can adjourn later this month. Majority Leader Reid told reporters today that other tax extender provisions might be added to the tax measure during the Senate consideration.

Key business provisions

Two significant provisions in the bill relate to bonus depreciation and the acceleration of alternative minimum tax (AMT) credits in lieu of bonus depreciation.

Bonus depreciation

The bill would extend 100-percent bonus depreciation through 2012 (2013 in the case of longer-production-period property and certain aircraft). As with prior extensions of bonus depreciation, the provision would extend only the placed-in-service date requirement; it would not modify the acquisition requirement. Thus, property acquired after September 8, 2010, would continue to meet the 100-percent bonus depreciation acquisition requirement. H.R. 3630 would not extend the 50-percent bonus depreciation provisions and does not include a rule allowing taxpayers to choose among claiming 100-percent bonus depreciation, claiming 50-percent bonus depreciation, and not claiming bonus depreciation. Accordingly, 100-percent and 50-percent bonus depreciation would continue to overlap in 2012 and it appears that -- for property that meets the 100-percent bonus depreciation requirements -- taxpayers would be able to choose either to claim 100-percent bonus depreciation or to elect out and claim no bonus depreciation for 2012.

The bill also would "decouple" the section 460 long-term contract rules from the section 168 bonus depreciation rules in 2012 for property that has a recovery period of seven years or less. Thus, as was the case in 2010, the bonus depreciation rules would be decoupled from the section 460 rules for applicable property in 2012.

Acceleration of AMT credits

The bill proposes several significant changes to section 168(k)(4) related to the acceleration of AMT credits in lieu of claiming bonus depreciation. The bill would remove current statutory language and replaced it with language that would allow taxpayers to accelerate in each of 2012 and 2013 the bonus depreciation amount -- 20 percent of the excess of depreciation that the taxpayer otherwise would have been entitled to deduct claiming bonus depreciation compared to not claiming bonus depreciation -- up to the lesser of (1) AMT credits for tax years ending before January 1, 2012, carried into the current year or (2) 50 percent of AMT credits for the taxpayer's first year ending after December 31, 2011.

The new language does not include the prior $30 million limit. Thus, the amount of AMT credits that may be accelerated by a taxpayer would be limited only by the lesser of the amount of bonus depreciation property and the amount available AMT credits.

A partnership with a corporate partner that makes a section 168(k)(4) election would be required to continue to depreciate that partner's share of partnership property using the straight-line method. The bill contains a significant new rule related to partnerships. This rule would allow each partner's section 168(k)(4) computation to include the partner's proportionate share of partnership property when more than 50 percent of the partnership is owned by one subchapter C corporation. Finally, the transition rule for this provision provides that the prior version of section 168(k)(4) would apply to the pre-2012 portion of any tax year that begins before January 1, 2012, and ends after December 31, 2011, and the version of section 168(k)(4) in the bill would apply to the post-2011 portion of such year.

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