(C) Tax Analysts 2009. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

Finding a Trillion Dollars For Healthcare

By Jeremy Scott — jscott@tax.org

In his initial budget, President Obama requested $600 billion over the next 10 years for healthcare reform. However, Obama was very clear that more would be needed and that $600 billion was only a down payment. And he wasn't kidding. The initial Congressional Budget Office scores estimated that the potential Senate Finance healthcare bill could cost $1.6 trillion. Although Democratic leaders in the Senate pledged to bring a bill in under $1 trillion, even that amount would dwarf Obama's initial request.

Perhaps even more disconcerting is that Congress has done a poor job finding even the first $600 billion for healthcare reform. Cost savings are expected to account for about $300 billion, but only the vaguest details have emerged on where the rest of the money will come from. Everything from reforming the employer exclusion for healthcare to taxing sugary beverages is still being considered. (Frankly, as long as soda taxes are still being included in the discussion, you can tell that Congress isn't yet taking the process seriously.) So taxpayers are left wondering where this money for a supposedly crucial reform will come from.

Both House Ways and Means Chair Charles Rangel and Finance Committee Chair Max Baucus say it won't come from outside health-related revenue measures. Rangel went a bit further than his Senate counterpart and said that international tax reform proposals put forward by the administration will not be part of the financing side for a healthcare reform package. ''No, that's for tax reform,'' Rangel said when queried about international tax provisions. It has long been suspected that Rangel still harbors hopes that his own tax reform package might see a second light of day, and his insistence that international provisions won't be part of the $1 trillion needed to pay for healthcare seems to be in line with that view. It at least shows that international tax reform will not be considered with the same urgency as healthcare or even climate change legislation.

Does this mean that Congress and the administration are planning to take a serious look at broader tax reform soon? Martin Sullivan thinks that it does, and he argues that a report from the IMF might breathe new life into tax reform efforts and Obama's tax reform panel headed by Paul Volcker. The IMF report concludes that tax codes around the world favor leverage and that they directly contributed to the economic crisis. Sullivan hopes that this will finally push Congress to reconsider interest deductions and thin capitalization rules. Volcker is a known critic of excess leverage, and Sullivan hints that there may have been a reason Obama appointed the former Fed chair to head the tax reform effort after all. (For Sullivan's analysis, see p. 1396. For healthcare coverage, see p. 1404.)

The public would be well-served by keeping a close eye on healthcare financing options being considered on Capitol Hill. If the government does need $400 billion more than Obama initially thought, that money has to come from somewhere, and it likely will come from taxpayers' pockets. So again, Americans need to ask themselves if they want healthcare reform enough to actually pay for it.

International Tax Reform Conference

Tax Analysts recently hosted a tax policy forum on the administration's international tax proposals. By and large the panelists were highly critical of Obama's plan, calling it everything from anticompetitive to poorly designed. John Samuels, vice president and senior tax counsel at General Electric, was the most vocal critic, saying that the proposals will provide even more incentives to invest overseas and move jobs offshore. Sullivan reiterated his support for simply ending deferral and lowering corporate tax rates, something proposed by the Clinton administration in 2000. Lee Sheppard was among the few to defend Obama's efforts, praising the president's effort to reform check-the-box rules and pool foreign tax credits. Sheppard concluded by pointing out that the country needs revenue and that multinationals should face the fact that ''politically, it's just their turn.'' (For coverage of the conference, see p. 1387. For an extended version of Sheppard's remarks, see p. 1391.)

Commentary

The nation's infrastructure is supposedly crumbling. At least that was the justification given by congressional Democrats and the administration for much of the spending in the stimulus legislation enacted earlier this year. According to that logic, the massive debt caused by the bill was more than justified by the economic boost that spending

would provide and the needed repairs that could be performed by state and local governments. One element of that stimulus package was the creation of so-called Build America bonds, or BABs, a new category of favored state and local obligations. According to Stanley Langbein, however, BABs are so favored by the stimulus bill that they might replace existing tax-exempt securities. Langbein argues that BABs are likely to survive beyond their 2010 expiration date and that they may replace the tax exemption for state and local securities with a straight credit from the federal government. Langbein's article also traces the history of some elements present in BABs and analyzes the proper pricing for the new bonds (p. 1449).

The furor over the taxation of compensation paid to hedge fund managers has subsided somewhat, but that hasn't stopped Congress from pushing forward several bills changing the tax characterization of carried interests. One such bill is H.R. 1935, introduced by Ways and Means member Sander Levin, D-Mich. Stephen Breitstone writes that Levin's bill would cast an overbroad net that encompasses traditional real estate ventures that do not entail the perceived abuse (p. 1459). Breitstone believes that the bill would be a deathtrap for these partnerships because reclassifying gains from carried interests as ordinary compensation would eliminate the step-up in basis on death, as the gain would then be income in respect of a decedent under section 691. Breitstone concludes that Congress should consider a more carefully drafted bill or, better yet, simply use existing section 707(a)(2) to attack perceived hedge fund compensation abuse.

Congress needs revenue, and in the next months (or even years) it will be looking at all possible sources. Laurence Seidman and Kenneth Lewis believe substantial amounts of revenue could be raised by imposing a surtax on income over $1 million or $2 million or on consumption over those amounts. While creating a consumption surtax would be complicated and involve the creation of an entirely new tax form, Seidman and Lewis find that a 10 percent surtax on high incomes would be relatively easy to implement. The authors have calculated possible revenue gains from different surtax levels and related those amounts to current federal revenue shortfalls (p. 1466). The government's quest for revenue has also led to increased efforts to track down overseas accounts and those who have avoided disclosing them. Peter Zeidenberg says a new era of openness has breached the secrecy of even the most inviolable tax haven. His viewpoint is on p. 1472.

In his article this week, David Cay Johnston compares Paul Daugerdas to Depression-era bank robber John Dillinger and concludes that the only difference between the two was their competence. According to Johnston, ''Daugerdas did work so sloppy and amateurish that it would have earned him derision from classmates when he was a first-year student at DePaul University College of Law.'' While films about Dillinger are generally dramatic fare, Johnston writes that any film about Daugerdas would be a comedy of errors. Johnston's Take is on p. 1473.

Monte Jackel and Robert Crnkovich revisit son-of-BOSS transactions and their application to partnerships in this week's Partnership Tax Report (p. 1481). The authors look at the application of section 752 and the general principles that have evolved from the case law involving son-of-BOSS decisions. In a practice article, Robert Wood updates an earlier work on the general welfare exception to inclusion in gross income. His article reviews the requirements to qualify for the exception and updates the authorities applying and rejecting it since 2005 (p. 1443). Robert Willens considers who the beneficiary is in a redemption from estates on p. 1477.

In the sole letter to the editor this week, Kenneth Kies provides his thoughts on Prof. Reuven Avi-Yonah's letter ''The Myth of Competitive Disadvantage,'' *Tax Notes*, May 25, 2009, p. 1051. Kies writes that Avi-Yonah's position is ''dangerously misguided'' and rebuts several of the article's points (p. 1487). ■

© Tax Analysts 2009. All rights reserved. Users are permitted to reproduce small portions of this work for purposes of criticism, comment, news reporting, teaching, scholarship, and research only. Any permitted use of these materials shall contain this copyright notice. We provide our publications for informational purposes, and not as legal advice. Although we believe that our information is accurate, each user must exercise professional judgment, or involve a professional to provide such judgment, when using these materials and assumes the responsibility and risk of use. As an objective, nonpartisan publisher of tax information, analysis, and commentary, we use both our own and outside authors, and the views of such writers do not necessarily reflect our opinion on various topics.

(C) Tax Analysts 2009. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.