

### *From the Editor:*

## Will Offset AMT Patch Fizzle After the Fourth?

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I know you're all looking forward to your Fourth of July plans — getting away, watching fireworks, or seeing how many hot dogs you can eat. So don't let me ruin those plans by bringing up things that will happen *after* the holiday.

But when Congress gets back from its Independence Day recess, we'll see if a one-year patch of the alternative minimum tax problem gets anywhere. Stop me if you've heard this before, but the House and Senate can't agree on whether AMT relief should be offset to keep it revenue neutral.

The House last week passed a fully offset AMT patch. The pay-fors include taxing carried interest compensation at ordinary rates, eliminating the section 199 domestic manufacturing deductions for big oil companies, requiring information reporting by credit card companies, and cracking down on treaty shopping by U.S. subsidiaries of tax-haven parents.

The House's plan is almost certainly dead on arrival, however. President Bush has issued a veto threat to the legislation over the offsets. But that probably doesn't matter, as the House version won't make it to the president's desk because it will never make it out of the Senate.

That chamber won't consider an AMT patch with offsets, and Finance Committee Chair Max Baucus has admitted as much. The Senate considered a patch without offsets earlier this month as part of a tax "extenders" package, but the whole thing was held up by a GOP filibuster because of revenue raisers to pay for the extenders and energy tax breaks. The Senate is supposed to return to the bill after the Fourth (p. 1295).

The clash between what the House wants and what can get done in the Senate — because of the power of the Senate minority — is nothing new. The Republicans had the same problems when they were in the majority, and now it's the Democrats' turn.

As Jeremy Scott points out in news analysis of the farm bill saga (p. 1298), the surprise is that the Democrats are having trouble moving their agenda

at the end of a lame-duck administration that enjoys abysmal public approval ratings. Bush, with the help of Senate Republicans, has been able to get his way, or at least things more to his liking. Even though Congress overrode the president's veto twice, spending in the bill kept dropping each time, and the two major offsets — which were major sticking points for the White House — didn't make it out of conference.

Fights like those over the farm bill have frustrated Democrats in the House who are adamant about imposing "pay as you go" rules on tax legislation. But Scott says unless the Democratic leadership in the Senate stands up to Bush and the GOP, that frustration will only continue. So it could be a frustrating summer for House Democrats as they try to hash out a compromise over the AMT patch.

### **Energy, Housing**

A similar pay-go fight is shaping up in the Senate over energy incentives and a housing bill. The procedural history is complicated, but the fight centers on energy incentives that were proposed by Senate taxwriters John Ensign and Maria Cantwell. Those incentives passed in the Senate, but they didn't survive the House vote. Senators are now fighting over whether the incentives are germane to housing and can be added to the bill.

Making things even more complicated are the "VIP" deals Countrywide Mortgage gave to Sens. Kent Conrad and Christopher Dodd, both of whom had key roles in drafting the housing legislation. Sen. Jim DeMint has promised to hold up the bill unless the Democratic leadership allows a debate on the bill's possible effect on Countrywide (p. 1296).

### **Bring Back a Stock Transaction Tax?**

With gas prices continuing to increase, there's been a lot of talk of enacting a windfall profit tax on oil companies. Around here, we (well, I speak for Marty Sullivan and myself) don't like that idea because we think it would curb production and innovation and wouldn't lead to any reduction in fuel prices. But what if the high cost of oil is due to speculation in the markets?

In Tax History, Joseph Thorndike looks at a possible way to discourage speculation, and it's a way that's been tried before — a transaction tax on the sale or transfer of securities. The federal government imposed such a tax from the World War I era to the mid-1960s, and many states also had their

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own transaction taxes. Many countries around the world, including the U.K., still have the tax. Whether or not the tax would discourage speculation enough to reduce fuel prices, Thorndike thinks that the current revenue crunch might lead lawmakers back to the idea (p. 1367).

### IRS News

An IRS official acknowledged that rules in Notice 2008-20 for reporting so-called midco transactions put stock sellers and tax advisers in an unfortunate position. However, they shouldn't expect relief soon, as the Service has no corrective guidance in the works (p. 1304).

Also last week, the IRS heard from affected industries about repropoed regs on the capitalization of tangible property expenditures. The regs were repropoed in March after the first version was roundly criticized for being deficient in several ways. Practitioners are pretty pleased with the repropoal (p. 1310). At the hearing, however, several industries, including railroads, asked the IRS to take industry-specific methods and practices into account when finalizing the regs because those practices could get tangled up with the regs' general pronouncements (p. 1308).

### Commentary

In this week's special report, members of the New York State Bar Association Section of Taxation recommend changes to the way in which distributions in connection with acquisitions are treated for federal income tax purposes. They suggest a modified version of the source rule that governs distributions in connection with an acquisition of target stock, and request guidance providing confirmation that a shareholder's holding period for the section 1(h)(11) reduced rate on qualified dividend income is not tolled when a target enters into an acquisition agreement (p. 1333).

In a viewpoint, Eugene Harper Jr. introduces us to PPP, or P3. That's a private-public partnership in Wall Street lingo. P3 has become hot in the world of public infrastructure as state and local governments look for ways to raise money without raising taxes to maintain or build transportation infrastructure.

Harper looks at the current issues surrounding P3, and he suggests that if we want to encourage these public-private partnerships, the federal system of tax-exempt financing must be adjusted to level the playing field for raising capital (p. 1357).

In this week's Shelf Project, Prof. Calvin Johnson continues his series of recommendations that would change tax accounting of basis to better reflect the economic reality of an investment. He proposes treating cash received for writing an opinion, a short sale, or a future as boot or recognition of gain on underlying property. If, however, the taxpayer does not yet own the underlying property, the cash received would be treated like borrowed cash and would not be taxed until the transaction was complete (p. 1361).

Congress and the IRS have been looking at many ways to close the tax gap, and one of the ways discussed has been offering better rewards to informants. In a report in brief that summarizes a forthcoming law review article, Prof. John Dorocak looks at the federal tax whistle-blower statute, compares it with similar statutes in the states — particularly California — and discusses what federal and state policymakers can take from them to guide informant reward initiatives (p. 1353).

In *Of Corporate Interest*, Robert Willens writes about the allocation of earnings and profits in spinoffs. In his opinion, a change is in order: The net basis approach ought to supplant the relative value method in allocating E&P between the distributing corporation and the controlled corporation. Willens explains how the approach is necessary to prevent a "double dose of E&P" from a single taxable event involving the same properties, a result that can no longer be avoided because of the repeal of the *General Utilities* doctrine (p. 1369).

In a letter, Robert Wood writes to congratulate *Tax Notes* for adding David Cay Johnston to our lineup (p. 1373). We have some other new things on the horizon, so watch for announcements about them and keep your pens and keyboards ready to send those letters in response.

Have a safe and happy Fourth of July. ■

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