

### Questioning HCR Implementation and Misuse of Tax-Preferred Retirement Accounts; More Labor and Employment Legislation; and Tax, Tax, Tax

Welcome to *legislate*, a weekly roundup of events on Capitol Hill that affect employee benefits and human resources. *Legislate* also will identify important legislative trends and provide tutelage on how Congress works. Finally, be on the lookout for special issues of *legislate* on hot topics such as the health and retirement platforms of the 2012 presidential candidates.

#### Summing it up

On the health care front, the House of Representatives (House) Committee on Oversight and Government Reform held a hearing exploring the IRS' implementation of the Affordable Care Act (ACA). In addition, legislation was introduced in the House providing that ACA's individual mandate should not be construed as a tax. On the retirement side, House leaders sent a letter to the IRS questioning wealthy individuals' misuse of tax-preferred retirement accounts. Both chambers saw the introduction of more labor and employment legislation and continued debate on tax issues. The House passed legislation that would temporarily extend the Bush-era tax cuts for all individuals, and general tax issues were debated in both chambers. The House passed legislation mandating expedited tax reform, and the Senate Finance Committee passed legislation that would extend certain tax provisions that have expired or soon will expire. Congress is now on recess and will reconvene after the Labor Day holiday.

#### The week in review

##### Health

On August 2, the House Committee on Oversight and Government Reform held a hearing titled "IRS Enforcing Obamacare's New Rules and Taxes." According to Committee Chairman Darrell Issa (R-CA), the purpose of the hearing was to "examine how the IRS is implementing Obamacare and the consequences for Americans." He also stated that the hearing would "review the biggest spending item under Obamacare—its complicated subsidy scheme-- and assess the challenges IRS faces with implementation." IRS Commissioner Douglas Shulman was grilled on his agency's authority to interpret and implement the ACA. Republicans also argued that premium subsidies should only be available in state exchanges and not in federally facilitated exchanges. Some argue that the literal language in the ACA only allows for premium subsidies if an individual has coverage through a state-run Exchange. However, the

IRS interpreted ACA to allow premium subsidies to taxpayers who receive coverage through either a state-run exchange or a federally facilitated exchange. A list of witnesses and testimony can be found [here](#).

Representative Raul Labrador (R-ID) introduced H.R. 6334, which provides that the ACA's individual mandate should not be construed as a tax. It would appear that the intent of this bill is to bypass the Supreme Court decision that held the individual mandate to be a constitutional use of Congress' taxing power. The text of H.R. 6334 was not available to the public at the time of publication, but it will be discussed in more detail in a future *legislate*.

### Retirement

Citing recent media reports, including one on Governor Mitt Romney, Representatives Sandy Levin (D-MI), George Miller (D-CA), and Chris Van Hollen (D-MD) sent a [letter](#) to the IRS and the DOL questioning the use of tax-preferred retirement accounts and plans, such as Individual Retirement Accounts, as tax shelters for wealthy individuals. The authors ask a series of questions pertaining to tax-avoidance techniques, such as the use of a nominal valuation for investments made in tax-preferred retirement accounts, and ask for policy recommendations in light of tax reform efforts.

### Labor and Employment

Both chambers introduced labor and employment related legislation last week. However, at the time of publication, the text of these bills had not been made available to the public, but they will be discussed in more detail in a future *legislate*. On the Senate side, Senator Robert Menendez (D-NJ) introduced a bill that would amend the Internal Revenue Code to provide a tax credit for certain employer-provided job training. On the House side, Representative Tim Griffin (R-AR) introduced H.R. 6322, which would require labor organizations to provide the notice to employees related to collecting fees required pursuant to the Supreme Court cases [Teachers Local No. 1 v. Hudson](#) and [Knox v. Service Employees International Union](#). Finally, Representative Denny Rehberg (R-MT) introduced H.R. 6346, which would amend the Fair Labor Standards Act of 1938 to provide a specific limited exemption from the overtime-pay requirements for work related to insurance claims adjustment after a major disaster.

### Sundry Items

By a vote of 256 to 171, the House passed the [Job Protection and Recession Prevention Act of 2012](#) (H.R. 8), which would extend the 2001 and 2003 Bush-era tax cuts for one year for all individuals. This is in contrast to the Senate's bill, the [Middle Class Tax Cut Act](#) (S. 3412) that previously was passed, which would, among other things, extend the Bush-era tax cuts for one year only for individuals earning less than \$200,000 annually and families earning less than \$250,000 annually. Given the Senate's bill and the Obama administration's July 31 [statement of administrative policy](#) opposing the passage of H.R. 8, it looks like the Bush-era tax cuts will be on the table when Congress returns from recess.

The Senate Finance Committee passed the [Family and Business Tax Cut Certainty Act of 2012](#), which contains various tax extenders. Tax extenders extend tax provisions that either have expired or very soon will expire. Of interest to the employee benefits community, the legislation would extend the parity in qualified transportation fringe benefits through December 31, 2013 (\$240 per month).

The House passed the [Pathway to Job Creation through a Simpler, Fairer Tax Code Act of 2012](#) (H.R. 6169), which mandates expedited consideration of a tax reform bill that:

- Consolidates the current six individual income tax brackets into two brackets of 10% and not more than 25%
- Reduces the corporate tax rate to no more than 25%
- Repeals the Alternative Minimum Tax
- Broadens the tax base to maintain revenue between 18% and 19% of the economy, and
- Changes the U.S. tax system from a worldwide to a territorial system.

Senate aides made clear that the Senate will not take up similar legislation.

## The week to come

### Sundry Items

Both the House and Senate will be on recess. Each adjourned on August 3 and will reconvene on September 10.

### Did you know?

According to the Senate Webpage, in 1965 Senator George Murphy of California made a habit of keeping a supply of candy in his desk to share with other senators. In every Congress since then, the “candy desk” has been located in the back row on the Republican side of the aisle, next to the most heavily used entrance.

Next week: What is the history of the Congressional Baseball Game?

*This legislate is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.*