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Legislative Bulletin……………………………….……November 5, 2009

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H.R. 3548—Unemployment Compensation Extension Act
(McDermott, D-WA)

Order of Business: The bill is scheduled to be considered on Thursday, November 5, 2009, under a motion to suspend the rules and pass the bill.

Summary: H.R. 3548 would extend unemployment compensation benefits, while making various changes to the tax code (some that provide tax relief, some raise tax revenue). Highlights of the legislation are as follows:

Unemployment Extension: Title IV of the FY 2008 supplemental (H.R. 2642) created a temporary program to extend unemployment benefits for 13 weeks beyond the 26 weeks provided under current law for individuals (in all states) who exhausted their regular unemployment compensation benefit. This program was subsequently extended, and expanded, as part of the Unemployment Compensation Extension Act of 2008, and then as part of the American Economic Recovery and Reinvestment Act (the so-called "stimulus").

H.R. 3548 would further extend the unemployment benefits extension program by *14 weeks* for all states, and then an extra *6 weeks* (for a total of 20 additional weeks) for states with unemployment rates in excess of 8.5%. 27 states (plus Washington DC and Puerto Rico) currently have unemployment rates in excess of this level.

Individuals in states with unemployment above 8.5%, with enactment of H.R. 3548, would be eligible for unemployment benefits for a record total of **99 weeks**.

Extension of Federal Unemployment Surtax: The bill extends the 0.2% Federal Unemployment Tax on employers for 18 months (otherwise set to expire at the end of this year). *This provision increases tax revenue by $2.6 billion.*

Homebuyer Tax Credit: H.R. 3548 extends the $8,000 tax credit, otherwise set to expire on November 30, 2009, for five months. *This provision would save taxpayers $10.8 billion.*

5-Year Net Operating Losses (NOL) Carryback: The "stimulus" temporarily extended the two-year carryback period of net operating losses (for NOLs generated in 2008 *or* 2009) to five years for firms with gross receipts of $15 million or less. This provision would remove the $15 million limitation, making all businesses eligible. The provision would also allow small businesses (with less than $5 million in gross receipts) to carryback NOLs in both 2008 and 2009 (as opposed to having to pick between one of the two years). Except for businesses with gross receipts of less than $15 million, this provision would be limited to 50% of taxable income in the fifth taxable year. The legislation also provides a $6,500 tax credit for those who have owned their primary residence at least 5 consecutive years in an 8 year period. *This provision would save taxpayers $10.4 billion.*

Delay Implementation of Worldwide Interest Allocation: This provision pushes back the implementation date of worldwide interest allocation provisions from December 31, 2010 to December 31, 2017. *This provision increases tax revenue by $20.1 billion.*

Exclusion for Military Base Realignment and Closure Fringe: The legislation expands the amount of compensatory payments to military personnel, resulting from a decrease in home value, that can be deducted from federal income taxes. *This provision would save taxpayers $243 million.*

Higher Penalties for S Corporations and Partnerships: The legislation increases the penalty for failure to file an S corporation return, as well as a partnership return, from $89 to $195. *This provision increases tax revenue by $1.2 billion.*

Electronic Filing of Certain Tax Returns: The legislation requires tax return preparers to electronically file client tax returns *if* the preparer reasonably expects to file 10 or more individual income tax returns.

Corporate Estimated Payments Budget Gimmick: The legislation increases third quarter of 2014 corporate quarterly tax payments by *33 percentage points*. This provision would shift *$18 billion* of tax revenue from FY 2015 to FY 2014. The sole purpose of this provision is to get around the PAYGO rule.

<u>Background</u>: The unemployment compensation program provides up to 26 weeks of benefits. On occasion, with the intent of addressing periods of higher unemployment, Congress has created a temporary program to extend benefits beyond the normal period. Congress has enacted legislation to this effect in 1958, 1961, 1972, 1975, 1982, 1991, 2002, and most recently in June of the 2008 through Title IV of H.R. 2642 (the FY 2008 war supplemental). This legislation created a temporary program to extend unemployment benefits for 13 weeks beyond the 26 weeks provided under current law for individuals (in all states) who have exhausted their regular unemployment compensation benefit. The legislation was subsequently expanded in the Unemployment Compensation Extension Act of 2008, and then as one provision in the American Economic Recovery and Reinvestment Act.

H.R. 3548 would cause the duration of maximum unemployment benefits available to far exceed what was available during previous recessions. H.R. 3548 would cause a total *extension* of unemployment benefits of up to 73 weeks—which far exceeds the previous record (33 weeks in 1992). By comparison, after the 2001 recession, unemployment benefits were extended for 26 weeks.

Potential Conservative Concerns: Some conservatives may have concerns with this legislation, including:

Tax Increases: The legislation includes some tax provisions that cut taxes (such as the 5-year NOL carryback provision and the homebuyer tax credit extension). However, the legislation also includes some provisions that increase taxes. Specifically, the bill extends the 0.2% Federal Unemployment Tax on employers into 2011 (otherwise set to expire at the end of this year). The bill also delays implementation of worldwide interest allocation rules until 2018, which will increase taxes by *$20.1 billion.*

Extension of unemployment benefits creates disincentive to find work: Many economists argue that extending unemployment benefits creates incentives to delay returning to work, which has a negative effect on the economy. As Martin Feldstein states in testimony before the Senate Finance Committee in January of this year:

> "[w]hile raising unemployment benefits or extending the duration of benefits beyond 26 weeks would help some individuals ... it would also create undesirable incentives for individuals to delay returning to work. That would lower earnings and total spending."

Committee Action: The legislation was introduced on September 10, 2009 and referred to the House Ways and Means Committee. The House passed its version of the legislation (substantially different than the Senate-passed version) by a vote of 331-83. The Senate passed the bill with amendment on November 4, 2009 by a vote of 98-0.

Cost to Taxpayers: According to CBO, the legislation increases *net* tax revenues by $2.46 billion over ten years. The legislation increases entitlement spending by $2.3 billion.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill extends the unemployment compensation program.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO score listing any potential mandates is available.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No committee report listing any potential earmarks is available.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

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