

House's 'Clean' Minimum Wage Hike Gets Reality Check in Senate

By Robert J. Wells — bwells@tax.org

The House last week approved the second of six items on the Democratic leadership's "100-hour" agenda, legislation that would increase the minimum wage over two years to \$7.25 per hour but not give small businesses any tax breaks.

Senate Majority Leader Harry Reid, however, had already determined that a "clean" minimum wage bill could not muster the necessary 60 votes in the Senate. "If it takes adding small-business tax cuts to have a minimum wage increase, we're going to do that," Reid said a week earlier. That seemed to come as no surprise to pragmatic House Majority Leader Steny Hoyer, who is already talking about the conference committee that will iron out differences in the chambers' bills.

So what small-business tax cuts will the Senate include in its minimum wage increase bill? Senate Finance Committee Chair Max Baucus has sketched out a "tentative package" (p. 123).

In a timely Tax Break column, Elaine Maag looks at the relationship between current tax rules and the minimum wage. She concludes that raising the minimum wage and indexing it for inflation would be a better way to help low-wage workers than tinkering with the child credit and the earned income tax credit to augment wages (p. 217).

More Hill Happenings

The Senate is working on two other pieces of legislation that correspond to other House-passed 100-hour bills.

The one that looks to be closer to passage would restore the Senate's "pay as you go" budget rule (subject to waiver if 60 senators so vote). In an economic analysis piece, Martin A. Sullivan wonders whether the return of pay-go will lead to class warfare. For example, where will the Democrats find the \$40 billion just to pay for another one-year alternative minimum tax "patch"? One place they might look for revenue — but not as a "first resort," according to House Speaker Nancy Pelosi — is in households with annual incomes above \$500,000. Thanks to pay-go, a tax increase on those folks, if used to pay for AMT relief or other tax breaks, really wouldn't be a tax increase in the macro sense,

because the whole package would be revenue neutral (p. 127; for related news coverage, see p. 126).

Former House Ways and Means Committee Chair Bill Archer and Lindy Paull, former Joint Committee on Taxation chief of staff, warned the business community last week that budgetary pressures created by the return of pay-go rules could force Democratic taxwriters to consider not only currently popular revenue raisers like codification of the economic substance doctrine, but also others that have been gathering dust since being proposed by President Bill Clinton (p. 131).

The Senate is also working on an ethics package that would include reform of the earmark process. Whatever earmark rules are enacted will cover "targeted tax benefits." What that term will mean is still very much up in the air (p. 129).

The Ways and Means subcommittees continue to take shape. The House Democratic Caucus is expected to vote this week on the party's nominations for subcommittee chairs, while the panel's Republicans officially announced the subcommittees' ranking minority members (p. 132).

Could newly divided government lead to Social Security reform? See what some knowledgeable people think (p. 156).

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Did someone in the government start off the new year with a big ol' helping of hoppin john? To several members of the tax bar, luck might be the best explanation for a North Carolina district court's grant of summary judgment to the government in the first lease-in, lease-out case to be decided. For the mostly negative reaction to the decision in *BB&T Corp. v. United States*, see Sheryl Stratton's story on p. 137. For comments on the decision from IRS Chief Counsel Donald Korb — who analogized the case to *Seinfeld* and corporate-owned life insurance cases — see p. 138.

The new year also brought National Taxpayer Advocate Nina Olson's annual report to Congress. Many of what she sees as the top problems facing taxpayers are repeats from past reports. One important newcomer, taking third place on this year's list, is the IRS's agencywide lack of transparency. According to Olson, IRS secrecy threatens to undermine tax administration (p. 149).

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The Name Is Sheppard, Lee Sheppard

The news that David Beckham would be coming to the United States to play for a Los Angeles team in a soccer league far inferior to what he's used to — OK, for \$250 million, I'd go slumming too — must have arrived too late for Lee Sheppard to discuss in this week's news analysis piece, so instead she reviews the latest James Bond movie, *Casino Royale*. She also addresses an issue raised by some tax administrators' challenges of tax positions taken by hedge funds and their investors: Are hedge funds themselves traders or investors? (See p. 140.)

More Good Stuff

In this week's first special report, Monte A. Jackel and Suzanne Walsh examine the disguised sale partnership regulations and offer suggestions for how those regulations could be improved to achieve appropriate results consistent with sound tax policy, to the benefit of both taxpayers and the government (p. 179). The second special report, by Profs. William VanDenburgh, Philip J. Harmelink, and Nancy B. Nichols, delves into the possible motivations behind some of the country's biggest family charitable foundations (p. 205).

Camp's Compendium returns with an in-depth look at the mysterious world of erroneous refunds — how they occur, why the IRS has so much trouble getting them back, and what Congress can do to help besides ignoring the "lame" recommendation of the Treasury Inspector General for Tax Administration (p. 231).

In *Of Corporate Interest*, Robert Willens discusses the temporary regulations on D reorganizations that were issued last month (p. 227). A viewpoint by Prof. Greg Geisler explains why the much-discussed problem of backdating stock options might more accurately be labeled stock option exercise date manipulation (p. 215).

Our mailbox was full last week. Paul Streckfus offers words of wisdom on IRS funding to the new Congress; Robert Wood responds to Bill and Burgess Raby's practice article on the tax treatment of interest in tax malpractice claims; Kevin B. Shea takes issue with some of the IRS's conclusions in a recent corporate tax letter ruling; and Michael J. Jones responds to Prof. Wendy Gerzog's Estate and Gift Rap column on the estate tax treatment of the gift tax paid by the decedent in *McCord*. (Letters begin on p. 247.)

In a practice article, Peter A. Lowy, Juan F. Vasquez Jr., and Jaime Vasquez discuss a new appellate court procedural rule that allows the citation of all decisions issued after January 1, 2007, and its potential effect on cases before the Tax Court (p. 171). ■