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February 1992

## HOUSE DEMOCRATS INCORPORATE FISCAL YEAR, ESTIMATED TAX CHANGES INTO THEIR TAX PACKAGE

Provisions that would allow certain taxpayers to use fiscal years for tax purposes instead of calendar years and that would amend new estimated tax rules for individuals are included in the House Democrats' alternative to President Bush's tax plan.

### Fiscal Year Provisions

The Democrats included in their tax proposal a modified version of H.R. 3943, which would generally allow partnerships, S corporations, and personal service corporations to elect taxable years. The required payment for partnerships and S corporations would be determined by using the maximum rate of tax plus 2 percentage points. The minimum distribution requirement for personal service corporations would be determined by using 110 percent instead of 100 percent of the amount required under present law.

H.R. 3943 was proposed by the AICPA and introduced by Rep. Beryl Anthony (D-AR) last November; in the Senate, an identical bill, S. 2109, was introduced by Senator Max Baucus (D-MT) (*Capitol Account*, December 1991). Key Person Contacts have been working for its adoption to bolster the AICPA's efforts. The modifications made to H.R. 3943 by the Ways and Means Committee were suggested by the Joint Committee on Taxa-

tion to ensure the bill does not violate the "revenue neutrality" requirement of the 1990 budget agreement.

Changes to estimated tax rules and individual income tax rates, discussed below, will affect the fiscal year rules. The AICPA is working to make sure the resulting law is easy to work with and fair.

### Personal Estimated Tax Rules

Generally, under the new estimated tax rules for individuals enacted last November, the 100 percent of the prior year's tax safe harbor for quarterly estimated taxes will not be available if the taxpayer's modified adjusted gross income (AGI) grows by more than \$40,000 over the prior year and if the taxpayer has AGI over \$75,000 in the current year.

The AICPA argued against these rules when they were being considered by the Congress and has since urged members of Congress to modify them. AICPA Key Person Contacts have also been talking to their representatives about the complexity of the new rules.

Under the Democrats' proposal, the rule denying the use of the 100 percent of last year's liability safe harbor would be repealed. Instead, the 100 percent of last year's liability safe harbor would be modified to be a 115 percent of last year's

liability safe harbor. Therefore, an individual generally would not have an underpayment of estimated tax if the estimated tax payments are equal to at least 115 percent of the tax liability of the prior year, or 90 percent of the tax liability of the current year.

### Tax Simplification

Legislation introduced by House Ways and Means Committee Chairman Dan Rostenkowski (D-IL) to

*continued on page 2*



*Rep. Butler Derrick (D-SC) addressed the AICPA 15th Annual Federal Key Person Coordinators' Conference held in Washington, D.C., on January 29-30. He urged attendees to be active in the political process and warned that if organizations with political action committees, such as the AICPA's Effective Legislation Committee, do not do a better job of educating their members about the importance of PACs, Congress will eliminate them.*

★ INSIDE FOCUS ★

I have used this column in the past to emphasize how vital grassroots support by members is for our legislative efforts here in Washington, D.C. Recently, I read a very interesting piece\* which reinforces the importance of constituent contact with Members of Congress. I'd like to share it with you. It focuses on what is known as the "Six-Minute Walk" and the rule of the "Four Cs."

Six minutes is the length of time it takes for a Member to walk from his/her office to the floor of the U.S. Capitol, where votes are cast. It is on that walk that the Member may for the first time become acquainted with the issue through a briefing given by a young aide.

The Member in these cases will most likely determine how he/she will vote based upon responses to the four "C" questions. The first question to the aide will be, "What do my Constituents think about this issue?" Have they written any mail on the subject? Which way is the mail running? Are any important constituents affected, such as large employers in the district, campaign contributors, or other close friends?

If there is constituent interest, the Member will likely vote as constituent response dictates. If there is no constituent interest, the Member moves to the next C.

The next question concerns how certain Colleagues may vote. Many Members, when faced with an issue which has no direct political ramifications, will follow the lead of a respected colleague who is known to be knowledgeable about the particular matter. Fail-

ing to find an appropriate answer to this question, the Member will move to the next C.

The third C stands for Conscience. Members who have little else to go on will decide their vote on moral grounds. As most votes do not involve moral issues, the Member, not yet having found the basis on which he/she will decide to vote, will probably turn to the last C.

The Member will follow the Crowd. He will inquire how his/her party leader wants him/her to vote, and vote accordingly.

The moral of the "Six-Minute Walk" is that your views, the views of a constituent, count in influencing each public policy decision. A Member rarely considers the other three Cs when he/she knows constituent issues are at stake.

Surprisingly, Members receive relatively few letters on any given issue. Consequently, a few letters can influence the outcome of any one Member's vote.

The accounting profession will continue to face many challenges in our nation's capital. To succeed in dealing with them, we *must* make our views known to the Members of Congress. Your role as an AICPA Key Person Contact is critical if we are to get our message across to Congress. Thank you for past support, and don't forget the "Four Cs"! ★

—**B.Z. Lee**,  
Deputy Chairman—Federal Affairs

*\*My thanks to Coopers & Lybrand. This piece is excerpted from their PAC newsletter.*

TAX PACKAGE (from page 1)

simplify the tax code, H.R. 2775 and H.R. 2777, was incorporated in the Democratic tax bill. The AICPA endorsed Rostenkowski's proposals last year and continues to stress the need for simplification.

Other Provisions

Also included in the Democrats' tax bill are other items of interest to CPAs, including provisions concerning the amortization of intangibles, passive loss rules, pension simplification, and taxpayers' rights.

On February 6, the AICPA wrote Rep. J.J. Pickle (D-TX), chairman of the Ways and Means Subcommittee on Oversight, to say it supported his taxpayer rights legislation, and to recommend several changes to further protect taxpayers.

Two areas targeted for change by the AICPA concerned the ability of the IRS to effectively extend the statute of limitations by using a "designated summons" and "eleventh hour" examinations when the statute of limitations is about to expire. The AICPA also recommended eliminating preconference meetings between appeals officers and examining agents and IRS solicitation of confidential client information from professionals providing tax planning and preparation services.

Outlook

The Democrats' tax package will be considered on the House floor as a substitute to President Bush's tax plan. This entire bill is being driven by presidential politics, and the votes are likely to be partisan. Still, despite the Democratic majority in the House, passage of their bill is

not a certainty. Democrats have had to modify their proposal to satisfy demands of their party members. President Bush has also said he will veto a tax increase. That's important to the fate of the Democrats' plan because much of the cost of the package would be paid for by the bill's new 35 percent tax rate for couples with taxable annual income of at least \$145,000, and a 10 percent surtax on millionaires.

In the Senate, Finance Committee Chairman Lloyd Bentsen (D-TX) plans to begin writing the Senate's tax bill on February 27. Assuming that the House and Senate are both able to pass a tax bill, differences between the two versions will have to be reconciled.

We regard the inclusion of provisions to change the fiscal year rules and new estimated tax rules as a major step forward. Our thanks to all of those Key Person Contacts who have taken the time to talk to their representatives to let them know how important these changes are.

We will be working with the Senate to fine-tune these provisions, so that the best possible solution can be included in the final version of the tax bill. ★

*[Editor's Note: On February 27, the House passed the Democrats' tax package intact. Fiscal years and estimated tax changes are included.]*

## SOUTH DAKOTA CPAs SUPPORT FISCAL YEAR REFORM LEGISLATION

A survey by the South Dakota CPA Society found that 97 percent of those responding (about 50 percent of the Society's members in public practice) favored changing the tax code to permit partnerships, S corporations, and personal service corporations to use fiscal years instead of calendar years for tax purposes.

The Society wrote to South Dakota's three federal legislators on February 5 to let them know of the January survey results, and asked them to co-sponsor H.R. 3943 and S. 2109, legislation developed by the AICPA to permit certain taxpayers to use fiscal years for tax purposes.

The South Dakota State Society anticipates that Rep. Tim Johnson (D) will co-sponsor fiscal year reform legislation, and reports that the state's senators, Larry Pressler (R) and Thomas Daschle (D), are considering co-sponsorship.

We appreciate the effort to sign up more co-sponsors for H.R. 3943 and S. 2109, and commend the Society's initiative in demonstrating broad-based support for this legislation in South Dakota.

Thank you, too, to all the South Dakota CPAs who responded so quickly to the survey. ★

## WYDEN BILL EXPECTED TO BE REINTRODUCED

A revised version of legislation, H.R. 3159, that would require independent auditors to detect and report illegal acts to regulators, is expected to be reintroduced soon by Rep. Ron Wyden (D-OR).

H.R. 3159 was introduced last year by Rep. Wyden. The bill would give the Securities and Exchange Commission (SEC) the authority to require independent auditors to report on any matter the SEC determines necessary for the protection of investors, to require the SEC to prescribe methods to be used by the auditor to detect and report illegal activities, and to require audits to be conducted "in accordance with methods prescribed by the SEC." Portions of H.R. 3159 were incorporated in the House bank reform bill in 1991, but were not included in the version of the bill that became law because the section of the bill in which the provisions were located was rejected by the House.

The deletion in the draft of a provision in H.R. 3159 requiring the SEC to study whether internal control reports by management and auditors should be required has caused some opponents to drop their objections.

However, the AICPA continues to strongly oppose provisions in the draft bill that would allow the SEC to prescribe auditing standards to detect financial fraud. AICPA representatives have let Rep. Wyden know of their opposition.

If the bill is introduced with language granting standard-setting authority to the SEC, we will work to have it modified. ★

*[Editor's Note: Rep. Wyden reintroduced the bill on February 25. Details will be provided in the next issue of Capitol Account.]*

### CPAs IN POLITICS

Several CPAs are getting first-hand experience about politics this election year. Gene Slason of Southington, CT, is running for Congress in the state's 6th District as a Democrat against Nancy Johnson, a Republican who has held the seat since 1983.

In Illinois, two CPAs are involved in U.S. presidential campaigns. Emmett Gonder, who works for the Chicago Transit Authority, is busy helping his cousin, Senator Bob Kerrey (D-NE), organize the Kerrey campaign in Illinois. Gila Bronner, of the Bronner Group, is campaigning for Governor Bill Clinton (D-AR). ★

## U.S. SUPREME COURT TO HEAR RICO CASE; EFFECT ON HOUSE RICO VOTE UNCLEAR

The U.S. Supreme Court agreed on February 24 to review the question of whether accountants and other professionals can be sued under the Federal Racketeer Influenced and Corrupt Organizations (RICO) Act for fraudulent involvement with the client. At issue is whether the accountant's involvement or level of participation amounted to management or operation of the enterprise sufficiently to meet the requirement of the statute, 18 U.S.C. 1964(c), "...to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs...."

Lower federal courts are split over the necessary level of participation to be liable under the civil RICO law. In *Reves vs. Arthur Young & Co.*, the district court dismissed the RICO suit on the grounds that the accounting firm had not taken enough part in the client's

affairs to be held liable. The ruling was upheld by a U.S. Appeals Court.

The case is important to the accounting profession because we have long worked to have the law recognize the distinction between major participants and peripheral defendants. A favorable ruling by the Supreme Court would help provide protection to accountants against civil RICO claims attached to typical securities class-action suits.

If the Supreme Court reverses the lower court's decision, the effect could be to remove a protection against civil RICO claims that some courts have recognized. This in turn could lead to more civil RICO claims being filed against accountants. Therefore, because of the importance of this case to the profession, the AICPA is considering filing an *amicus* brief.

### House Action

At press time, it is unclear what impact, if any, the Court's decision to take the case will have on Congressional consideration of legislation to reform the civil RICO statute. Prior to the Court's decision to hear this case, we had expected a vote soon by the full House on H.R. 1717, legislation to reform civil RICO. And, in anticipation of that vote, the AICPA wrote to all House members on February 14 to urge them to vote for the measure and to oppose any amendments that would weaken H.R. 1717. Key Person Contacts have also been talking with their representatives and asking them to support H.R. 1717.

We will be sure to keep you advised of any developments. Thanks to all of you who have worked so hard to have a civil RICO reform bill passed. Please continue to send the message that H.R. 1717 should be enacted without amendment. ★

**AICPA**

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