

Cohen Smith & Company, P.A.

NEWSLETTER



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August 2011

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Budget Control Act of 2011



After a bitter partisan battle, on August 2 Congress passed and the President signed into law S. 365, the “Budget Control Act of 2011”. The initial \$1 trillion round of deficit reduction over fiscal years 2012

through 2021 doesn’t include revenue hikes, but the second, \$1.5 trillion round of deficit reduction over the same years may feature fundamental tax changes as part of the work-product of the bill’s newly established Joint Select Committee on Deficit Reduction (JSC).

The JSC’s goal is to reduce the deficit by an

additional \$1.5 trillion over fiscal years 2012 through 2021, and in finding these savings, its duties are to “provide recommendations and legislative language that will significantly improve the short-term and long-term fiscal imbalance of the Federal Government”. The Administration’s interpretation of the JSC’s mandate is that everything is on the table, including tax reform. Without contesting the point, Republican lawmakers, no doubt looking at the composition of the committee (see below), believe that in the framework of the compromise legislation it will be “impossible” (in House Speaker John Boehner’s words) to use the deal to hike taxes.

It is hard to say what, if anything, the JSC might recommend by way of tax changes. But looking to past proposals:

...Businesses may have to give up costly tax breaks, such as accelerated depreciation under Code Sec. 168.

...Individuals may find cutbacks in key tax breaks, such as the mortgage interest deduction, in exchange for flattened and lowered tax rates.

Other issues the JSC will have to deal with include: the post-2012 expiration of the Bush-era income tax cuts (including the current rate schedules, and low tax rates for long-term capital gains); and the expiration of the Bush-era rules for estate and gift taxation, effective for estates of decedents dying, gifts made, or generation-skipping transfers made after December 31, 2012.

In remarks after he signed the Budget Control Act of 2011 into law, the President reiterated his call for a balanced plan that includes revenue changes as well as spending cuts. He said that “since you can’t close the deficit with just spending cuts, we’ll need a balanced approach where everything is on the table.

In their August 2 press releases about the Budget Control Act of 2011, neither House

Speaker Boehner (R-OH) nor Senate Republican Leader Mitch McConnell (R-KY) mentioned the possibility of tax reform as part of the deficit reduction package.

The Budget Control Act of 2011 carries extremely aggressive targets that Congress and the JSC are supposed to meet. Here’s a summary of what has to be done and when:

No later than Aug. 16, 2011 (14 days after the enactment date), the 12 members and the co-chairs of the JSC must be appointed by the majority and minority leaders of the Senate, and the Speaker and minority leader of the House, who each must appoint three members. The Speaker and the majority leader of the Senate must each appoint one member to serve as co-chair from among the JSC members.

No later than Sept. 16, 2011 (45 days after the enactment date), the JSC is to hold its first meeting.

No later than Oct. 14, 2011, House and Senate committees may transmit to the JSC their recommendations for law changes necessary to meet the goal of JSC.

No later than Nov. 23, 2011, the JSC must vote on a report containing the findings, conclusions, and recommendations of the committee, as well as the estimates provided by the Congressional Budget Office (CBO), and legislative language in support of those recommendations, which must also contain a statement of the deficit reduction achieved over fiscal years 2012 through 2021. A majority of JSC members must approve the report and accompanying legislative language, and the text of the report and accompanying legislative language must be made public promptly after the vote on adoption of those matters. Any JSC member may file additional, supplemental, or minority views within 3 calendar days if the member provides notice of this intention at the time of final vote of the report and legislative language.

No later than Dec. 2, 2011, if a majority of the JSC approves a report and legislative language, they must be transmitted to the President, Vice President, the Speaker of the

House, and the majority and minority leaders of the House and Senate.

No later than Dec. 23, 2011, if the JSC approves a report and legislative language, it must be voted on by both the Senate and the House of Representatives. No amendments will be considered.

If a majority of the JSC members fail to approve a report and legislative language, across-the-board reductions must be implemented, with annual cuts starting in 2013. The cuts will be split 50-50 between defense and domestic spending.

The administration has said that if the JSC doesn't approve a report, or if Congress fails to pass the JSC's recommendation, nearly \$1 trillion of deficit reduction would be achieved anyway, by letting the Bush-era tax cuts expire at the end of 2012. The threat of a Presidential veto of an extension of the Bush-era tax cuts would, according to the Administration, help force a balanced deficit reduction (i.e., with tax increases and spending cuts).

In 2010, businesses and individuals weren't certain what tax rules would apply to them for 2011 and 2012 until December 17, when the 2010 Tax Relief Act was signed into law. That pattern of uncertainty until the very last minute is highly likely to be repeated again this year, making year-end tax planning, and tax planning for a longer horizon, a guessing game at best until at least the end of this year.

If the JSC approves recommendations that include comprehensive tax reform, they are not likely to begin to go into effect until 2013.

If the JSC can't report out a recommendation, or Congress doesn't pass, there would be yet another bruising battle over the Bush-era tax cuts that are scheduled to expire at the end of 2012 under current law. About all we can do is wait and see, but it appears we may operate under the existing tax laws for the remainder of 2011 and 2012.

County Tangible Property Tax TRIM Notices

If, as of January 1, 2011, you own tangible property used in a business with an estimated value of \$25,000 or more, you should receive a Tangible Property Tax Notice from your County. While this notice will likely indicate that it is not a bill, it will certainly become one in November, along with real property ad valorem taxes.



We recommend you pay close attention to the values indicated on your tangible property tax notice. Even though, if we prepare your return, we take great care in making sure you report only those tangible personal property assets that are in use by your business, and each year forward to you a detailed property asset listing in order to remove disposed property, your County utilizes their own internal techniques for valuation and reporting purposes.

What this means is that even though an asset may be shown as fully depreciated on your business property depreciation schedule, the County will likely show, and tax, at least a residual value. In addition, service lives used by the County for valuation purposes often exceed the depreciation lives used on your depreciation schedule, causing values to exceed the net book value shown on your financial statements.

Please note, if your tangible property's assessed value is determined to be less than \$25,000, you are not required to file a return, unless newly purchased assets cause the total value to exceed \$25,000.

If, after reviewing your tangible personal property notice, you believe the assessed values shown by the County exceed, by a significant amount, the actual, January 1, 2011 fair market value of your personal property, your next step would be to contact your County Property Assessor's office and request a detailed listing of your personal

property record. This report will include useful lives and fair market values assigned by the County.

If, after reviewing your detailed asset listing, you believe significant differences exist between the value assigned by the County and fair market value, you should again contact the County Assessor's office and request a conference to review these differences.

In order to successfully challenge the value assigned by the County, you will need evidence substantiating the fair market value you believe is correct. For example, for the value of a copier, you might contact your copier vendor and request a letter indicating their estimate of fair market value. Also, if you choose to appeal your valuation, your application for hearing must be filed by September 15, 2011.

In light of the above, you should be mindful of the fact that the tangible tax rate is approximately \$23 per \$1,000 of assessed value (based on the 2010 average county rate). Therefore, you should carefully consider the potential benefit of appealing your tangible property values against the time and effort required to potentially obtain a lower valuation and tax.

Of course, we remain available to assist you with any of the above. Should you have any questions regarding your tangible property notice or tangible personal property return, please do not hesitate to call.

quarter of 2011. Deposit any undeposited tax. (If your tax liability is less than \$2,500, you can pay it in full with a timely filed return.) If you deposited the tax for the quarter in full and on time, you have until August 10 to file the return.

Federal unemployment tax. Deposit the tax owed through June if more than \$500.

All employers. If you maintain an employee benefit plan, such as a pension, profit-sharing, or stock bonus plan, file Form 5500 or 5500-EZ for calendar year 2010. If you use a fiscal year as your plan year, file the form by the last day of the seventh month after the plan year ends.

August 10

Employees who work for tips. If you received \$20 or more in tips during July, report them to your employer. You can use Form 4070.

August 16

Social Security, Medicare, withheld income tax. If the monthly deposit rule applies, deposit the tax for payments in July.

Nonpayroll withholding. If the monthly deposit rule applies, deposit the tax for payments in July.



TAX CALENDAR

AUGUST 2011

August 1

Social Security, Medicare, and withheld income tax. File Form 941 for the second