TAXES: SENATE PASSES BILL TO EXTEND TAX CUTS, BUT LETS RATES FOR HIGH EARNERS RISE; DEFEATS BILL EXTENDING ALL CURRENT RATES

The Senate on July 25, 2012, by a mostly party line vote of 51-47 approved S. 3412, the Senate leadership measure to extend the Bush-era tax cuts for most Americans but allow the current tax rates on individuals earning over $200,000 annually and couples earning more than $250,000 to expire. The rates for those taxpayers would rise from the current 33 percent and 35 percent to 36 percent and 39.6 percent in January 2013. The IRS estimates the higher rates would affect about 2.5 million households.

S. 3412 also does not extend the current $5 million exemption for estate taxes and the 35 percent top rate. Estate taxes, also called death taxes, would revert to the previous treatment of exempting the first $1 million of the estate and taxing the remainder at 55 percent. Dividend and capital gains would be taxed at 20 percent versus 15 percent.

Immediately before passage, the Senate voted down S. 3413, the Republican plan, also mostly on a party line vote of 45-54. The Republican measure would extend all of the 2001 and 2003 cuts, including those affecting higher earning taxpayers.

After the Senate action, House Speaker John Boehner announced that the House would vote on its tax plan the week of July 30th. The House leadership plan would track the Senate Republican plan and extend all of the Bush tax cuts for a year. House Democrats will be allowed to offer the Senate-passed plan as a substitute amendment.

ENERGY: HOUSE APPROVES OFFSHORE DRILLING EXPANSION

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The bill will replace the Administration’s Proposed Final Outer Continental Shelf Oil & Gas Leasing Program (2012-2017) with a congressional plan that will expand oil and natural gas lease sales to open up more of the U.S. coast to offshore energy development and production.

Under the approved bill, drilling leases off the California coast will be increased, as well as off the coasts of other states on the Pacific, Atlantic, and Gulf of Mexico. The bill will not affect Florida, however. The congressional moratorium on offshore drilling off California’s coast expired October 1, 2008.

During consideration on the floor, the House approved an amendment offered by Rep. Laura Richardson (Long Beach) that requires the Secretary of the Interior to consult with the California Governor and State Legislature before leasing areas off the state’s coast. The amendment was approved by voice vote.

Prior to passage of H.R. 6082, the House failed to pass under suspension of the rules, another bill, H.R. 6168, which would have supported the Obama Administration’s offshore drilling plan. The vote was 164-261, short of the two-thirds majority required under suspension.


### Taxes: House Judiciary Considers Online Sales Tax Bill

On Tuesday, July 25, 2012, the House Judiciary Committee held a hearing on H.R. 3179, the Marketplace Equity Act of 2011. The bill, sponsored by Rep. Jackie Speier (Hillsborough) would enable states to collect sales taxes from retailers who lack a physical presence in the state.

In 1992, the Supreme Court held that under the commerce clause, a state could not compel a retailer to collect and remit the state’s sales tax if the retailer lacks a physical presence in the state. Brick and mortar store retailers argue that the Court’s holding established an uneven playing field that advantages online retailers. State governments have also complained that the holding results in the loss of billions of dollars a year in sales tax revenues. Rep. Speier’s testified that California is expected to lose more than $1.8 billion in uncollected tax revenue this year. On the other hand, others, such as Rep. Elton Gallegly (Simi Valley) question whether it is feasible for online sellers to comply with the tax laws of some 9,000 different taxing jurisdictions.

Under H.R. 3179, states would be required to simplify their tax policies if they want to collect sales taxes from out-of-state retailers, and retailers with less than $1 million in annual sales would be exempt from the bill. During the hearing, Ranking Member John Conyers (MI) announced that he would support H.R. 3179, rather than continue to push for a similar bill he has introduced over the years.

Witnesses at the hearing included: Rep. Speier; Tennessee Governor Bill Haslam, on behalf of the National Governors Association; Utah State Representative Wayne Harper, on behalf of the Streamlined Sales Tax Governing Board; and Steve DelBianco, Executive Director, NetChoice.

In his testimony Rep. Harper argued that the technology available to online retailers has improved so significantly since the Supreme Court’s decision that the collection of the tax will not present a burden for online retailers.

Mr. DelBianco, representing NetChoice a coalition of leading e-commerce and online retailers, strenuously opposed the legislation, however. He made four major points:

- the bill would impose a new tax “with uniquely complex burdens” for compliance;
- the sales tax simplification required by the bill is insufficient to justify imposing new burdens on out-of-state businesses;
- the new tax burdens are not justified by anticipated revenue, since total potential sales tax on all consumer e-commerce is well below one percent of total state & local tax revenue.
- the bill does not adequately protect small businesses, “for whom new collection burdens would be disproportionately complex and expensive.”

For more information, go to:
http://judiciary.house.gov/hearings/Hearings%202012/hear_07242012_2.html.

HEALTH: HOUSE SUBCOMMITTEE HOLDS HEARING ON MEDICARE PHYSICIAN PAYMENT ISSUE

On July 24, 2012, the House Ways and Means Subcommittee on Health heard testimony from physician organizations on recommendations to optimize patient care, as part of the Subcommittee’s continuing examination of reforming the Medicare physician payment system.

Witnesses included: Colonel (Retired) Lawrence Riddles, M.D., President of the Board, American College of Physician Executives; David L. Bronson, M.D., President, American College of Physicians; Michael L. Weinstein, M.D., Chair, Registry Board, American Gastroenterological Association; Peter J. Mandell, M.D., Chair, American Academy of Orthopaedic Surgeons Council on Advocacy; Aric R. Sharp, FACHE, CMPE, CEO, Quincy Medical Group; and, John Jenrette, M.D., CEO, Sharp Community Medical Group.

Issues discussed at the hearing included:
- The successes of the California Medical Group/IPA Model, a population-based payment model common in California, where provider groups are paid a fixed amount for each enrolled patient for services over a span of time, most commonly per member, per month, regardless of the amount of care the patient consumes.
- Recommendations that a "new" Medicare system should be based on the following nine components: 1) quality-centered; 2) safe for all; 3) streamlined and efficient; 4) measurement-based; 5) evidence-based; 6) value-driven; 7) innovative; 8) fair and equitable; and 9) physician-led.
- Current issues concerning the sustainable growth rate (SGR) and physician payments, and discussion of why fundamental payment and delivery system reform is imperative.
- Principles for transitioning to value-based payment and delivery system reforms, based on physician-led initiatives in the private and public sector to improve quality and lower costs. This included discussion and assessment of specific payment and delivery system reform models, in both the private and public sectors, which could be the basis for transitioning to fundamental reform.
- Developing payment policies to support physician-led programs to promote high value care while leveraging and improving existing quality improvement/value-based payment programs.
- Suggestions on a legislative framework to transition to better payment models.
- Steps to measuring and rewarding quality and efficiency from the medical field of gastroenterology that would prove useful in other fields.
- The importance of Electronic Healthcare Records (EHRs) to patient care in both the public and private sectors and as a building block for reform.
- Suggestions that absent true SGR reform, Congress should permit private contracting between patients and providers in order to help close the gap between inadequate Medicare payments and the cost of providing service to seniors.
- Suggestions that Congress should consider enabling Medicare beneficiaries to assume greater responsibility by cost sharing for the Medicare program, with protections for low income beneficiaries, in order to preserve their access to quality care.
EDUCATION: SENATE SUBCOMMITTEE HOLDS HEARING ON PRIVATE STUDENT LOANS

On July 24, 2012, the Senate Banking, Housing, and Urban Affairs Subcommittee on Financial Institutions and Consumer Protection conducted a hearing entitled Private Student Loans: Providing Flexibility and Opportunity to Borrowers?.

Witnesses included: Mr. Rohit Chopra, Student Loan Ombudsman, Consumer Financial Protection Bureau (CFPB); Ms. Deanne Loonin, Attorney and Director of Student Loan Borrower Assistance Project, National Consumer Law Center; Ms. Jen Mishory, Deputy Director, Young Invincibles; and, Mr. Jack Remondi, President and COO, Sallie Mae.

Issues discussed included:
- The relative unemployment rates for those with and without a college degree, and how a college degree still produces employment benefits but is not without risks. Over the past decade, wages for young college graduates have actually declined by 5.4 percent (when adjusting for inflation) while the cost of attendance at the nation's public universities and colleges increased 42 percent, and prices at private not-for-profit schools increased 31 percent (when adjusting for inflation). In addition, the job market remains weak in light of the economic recession.
- The risk of private student loans, an industry, which in recent years has made improvements to eliminate lax lending rules, but still, has shortcomings. Some issues include: lack of repayment flexibility, defaulting on loans borrowed directly from schools, and barriers to restructuring loan debt.
- The effect of large amounts of student debt, coupled with large and variable interest rates, on economic milestones such as homeownership. For example, a recent Federal Reserve study shows the share of individuals age 29-34 getting a first-time mortgage dropped significantly in the past decade.
- Financial education for loans, especially the steps to choosing a loan.
- The National Consumer Law Center's Student Loan Borrower Assistance Project, which provides training to lawyers and legal staff that represent low-income student borrowers.
- Details and issues about private debt, including that: 1) it is rarely discharged in bankruptcy; 2) many students take out private loans before exhausting public loan options; and 3) co-signers are often unaware of their responsibilities and liabilities, including that lenders often refuse to discharge debt even in the event of the death of the primary borrower.

Recommendations for improvements included engaging in outreach to federal high-debt borrowers to inform them about the new CFPB consumer complaint system, as many of those borrowers will also hold private loans. Also, lawmakers should consider ways to ease the burden on struggling borrowers, including restoring bankruptcy protections and creating federal refinancing options for private borrowers who would otherwise have qualified for federal loans. Finally, lawmakers should take action to provide transparent information about lending options, making repayment terms clear well before the application process, and easing access to federal loans, while engaging schools in a mandatory certification.

Issues discussed at the hearing included:

- The use and importance of federal Title I, IDEA, and Impact aid for school districts.
- The effect sequestration would have on schools, and especially on funding for children with special needs. Sequestration would essentially mean further cuts to schools that in some cases – as with some Texas districts – have seen a real 10 percent loss in funding over the last two fiscal years. Sequestration reductions and withholdings have thus been built into future budgets, meaning real cuts of services.
- The most recent report in the American Association of School Administrator's Economic Impact Series, which found that 71.2 percent of school districts reported a reduction in state/local revenues between the 2010-2011 and 2011-2012 school years, and 57 percent anticipate a decrease for the 2012-2013 school year.
- Strong opposition to automatic, across-the-board funding cuts, which witnesses said would be detrimental to education reform and remodeling occurring across the country.
- The immediate need for clear and complete guidance from the federal government on how sequestration will work, in the event it does go into effect on Jan. 2, 2013. States need to know when and how cuts will be made to various funding streams that they receive, witnesses agreed.
- Discussion of whether the federal government has constitutional authority to fund and administer education programs, because no mention is made of education in the specific, enumerated powers given to the federal government in Article I, Section 8; and whether the last forty-plus years of federal involvement in education has been futile, based on non-improvement, waste, fraud, abuse, and other issues.
- How and why data from the National Assessment of Academic Progress (NAEP) and federal spending data illustrate that the U.S. has not gotten any lasting bang for federal or overall education bucks and that federal expenditures could be reduced considerably without ill achievement effects. Some witnesses testified that it is quite likely that federal education dollars keep recipient districts from having to take politically difficult, but necessary, actions to increase the efficiency of their operations.
- Detailed discussion of the outline, in broad terms, of how the Department of Education and, by implication, the Federal Government as a whole, would implement a sequestration of fiscal year 2013 funds. This included details about how sequestration would affect State Formula Grant Programs, Student Aid Administration, and Impact Aid and Vocational Rehabilitation.
- The impact because the U.S. Department of Education's four largest elementary and secondary programs are forward-funded, and therefore most cuts in funding resulting from sequestration next January would not be felt in classrooms until the 2013-2014 school year. In the event that sequestration does go into effect, however, this delay would mean that in most cases districts would have the last half of 2012 to plan for cuts.

In conjunction with the hearing, Chairman of the Subcommittee Tom Harkin (IA) released a report entitled: Under Threat, Sequestration’s Impact on Nondefense Jobs and Services. It can be obtained at: http://www.appropriations.senate.gov/news.cfm?method=news.view&id=c8b2b1bb-1da9-40cf-afb0-922185578b08.

For more information on the hearing, go to: http://www.appropriations.senate.gov/ht-labor.cfm?method=hearings.view&id=99c3c031-214a-4ae7-8545-f8f08cfdc40d.

**AGRICULTURE: HOUSE SUBCOMMITTEE EXAMINES TRADE BARRIERS FACED BY SMALL EXPORTERS**

The House Small Business Subcommittee on Agriculture, Energy and Trade held a hearing on July 26, 2012 titled *Market Closed: Foreign Trade Barriers Facing Small Agriculture Exporters*. The hearing
examine how foreign nations use sanitary and phytosanitary measures as non-tariff barriers to American agriculture exports.

Witnesses included: James Boyer, Owner, Jim Boyer Hogs, Ringstead, IA, Testifying on behalf of the National Pork Producers Council; Jason Hafemeister, Vice President, Allen F. Johnson and Associates, Washington, DC; Roger Mix, Owner-Operator, Mix Farms, Center, CO, Testifying on behalf of the Colorado Potato Administrative Committee and the National Potato Council; and, Carl T. Shaffer, President, Pennsylvania Farm Bureau, Mifflinville, PA.

Issues discussed at the hearing included:
- The National Trade Estimates Report, which covers 46 countries and offers evidence that the use of unjustified health or sanitary measures to restrict trade has become almost common practice.
- The World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), which disallows measures not justifiable on the basis of sound science.
- The WTO's challenge process, which is long and arduous, witnesses said; governments know that if they are challenged, the dispute resolution process is likely to allow them at least two years of continuing protection. Witnesses cited examples of four instances in which the U.S. challenged barriers under this agreement and succeeded.
- Collaborative work with the U.S. Department of Agriculture (USDA) and the U.S. Trade Representative (USTR) to combat unfair SPS measures, that, left unchecked, spread to other countries seeking relief from import competition in the same type of product.
- The fact that U.S. exporters are facing requirements in foreign markets that are: not based on scientific evidence or risk assessments; developed without taking into account comments from trading partners; implemented without adequate time for exporters to meet new standards; inconsistent with science-based international standards; not implemented using trade-facilitating policies (such as recognition of systems-based approaches that deliver equivalent levels of health and safety protection or not implementing harmonized export certificates); and, enforced using questionable testing practices and methodologies.
- Calls for the U.S. to pursue a multi-prong approach to address these barriers, including the following steps (with examples): strengthen U.S. response capacity; be aggressive in international institutions; provide technical guidance to developing countries; and, strengthen trade rules, especially by utilizing forums such as the Trans-Pacific Partnership negotiations.
- Details about the challenges facing U.S. potato exports to Mexico. The U.S. can only export fresh potatoes to that country within 26 kilometers of the border. In 2011, U.S. potato growers exported $39 million worth of fresh potatoes to Mexico. Full access to all of Mexico would have made that market the largest for fresh U.S. potatoes with a value in excess of $150 million. The reasons cited by Mexico for potato import restrictions include "excessive" pests found on incoming American-grown potatoes.
- Other examples of Mexican restrictions. For example, Mexican potatoes produced in areas of the country with identical pest profiles as those in U.S. production areas have been allowed to move throughout Mexico if they are washed or brushed and labeled for consumption only. Yet U.S. fresh potato exports to Mexico are not allowed to move in a similar manner. The application of a different standard for domestic production as opposed to imports violates the globally accepted principle of "National Treatment."
- Details of the trade relationship between the E.U. and the U.S. and the challenges to approving a future U.S.-EU Trade Agreement. A High Level Working Group (Working Group) on Jobs and Growth has been created to explore the feasibility of such an agreement.
- Witnesses called for the Working Group to focus on existing substantive issues, such as: EU actions that limit U.S. exports of products produced using biotechnology; long-standing barriers against conventionally-raised U.S. beef; ongoing EU restrictions against U.S. poultry and pork; and, use of product standards and geographic indicators to limit trade.
- The fact that global need for U.S. produced food is exposing the inadequacies of U.S. transportation infrastructure, including that of inland waterways (locks, rivers, and canals etc.), seaports (especially after the expansion of the Panama Canal moves freight to even larger ships that require deeper harbors), and the interface of ports and major roadways.


**EDUCATION: SENATE FINANCE COMMITTEE HOLDS HEARING ON EDUCATION TAX INCENTIVES AND TAX REFORM**

The Senate Committee on Finance held a hearing titled Education Tax Incentives and Tax Reform on Wednesday, July 25, 2012. Witnesses included: Dr. Waded Cruzado, President, Montana State University, Bozeman, MT; Ms. Lynne Munson, President and Executive Director, Common Core, Washington, DC; Dr. Susan Dynarski, Professor, University of Michigan, Ann Arbor, MI; Mr. Scott Hodge, President, Tax Foundation, Washington, DC; and, Mr. James White, Director, Tax Issues, United States Government Accountability Office (GAO), Washington, DC.

Issues discussed at the hearing included:
- The GAO report, "Improved Tax Information Could Help Families Pay for College," which reported that in 2009 12.8 million students received federal student financial assistance and approximately 18 million tax filers claimed a higher education tax benefit for current expenses.
- The Department of Education report, "Condition of Education, 2012," which was released in May. That report stated that between 2006-07 and 2010-11, the percentage of first-time, full-time undergraduates receiving financial aid increased from 75% to 85% at all four-year colleges.
- Evidence that students are assuming more cost and borrowing more -- parents reduced their spending on college, both in terms of current income (4%) and savings (22%), according to the recent Sallie Mae and Ipsos report, "How America Pays for College 2012." To compensate, students assumed more costs on their own and borrowed more.
- Issues surrounding the understanding and paperwork required for financial aid, including the FAFSA, as well as for tax incentives.
- Calls for the government to continue, or increase, federal financial aid; simplify the tax code as it relates to higher education expenses; clarify and coordinate the various federal aid programs so that students and their parents fully understand their options and utilize the available resources to their best advantage; deliver the American Opportunity Tax Credit through the student aid system; and, continue support for deductions for college savings plans.
- The argument that tuition cost will keep pace with, if not exceed, any subsidy created by the government (to included scholarships, grants, loans, tax incentives, and other financial aid opportunities) and the call for lawmakers to stop "accommodating" rising costs and instead hold colleges and universities accountable for what they charge.
- The opposite argument that tuition does not rise when student aid availability rises, at least at non-profit and public institutions.
- Suggestions on how to hold institutions accountable for what they charge, including: 1) requiring colleges and universities to do what private foundations must: spend a certain percentage of the value of their endowments each year; 2) making colleges and universities publicly disclose the amount and purpose of each and every endowment expenditure; and, 3) making university presidents, administrators, and professors pay tax on the free college education their children receive.
- Differences in the targeting of the Pell Grant program compared to the American Opportunity Tax Credit.
- Examples of many cases where the complexity in student aid and tax incentives undermines their effectiveness. According to the GAO, 2009 IRS data for selected returns with information on education
expenses shows that tax filers do not always choose tax expenditures that maximize their potential tax benefits. Specifically, the GAO found that about 14 percent of filers (1.5 million of almost 11 million eligible returns) failed to claim a credit or deduction for which they appear eligible. On average, these filers lost a tax benefit of $466. The estimated total amount of tax benefits filers did not claim was approximately $726 million in 2009.

- Unintended consequences of using tax policy to promote higher education, including the fact that:
  1) tax credits and subsidies undermine market forces and can actually cause price inflation; 2) extensive use of tax credits has already knocked a record 58 million Americans off the tax rolls - 41 percent of all filers have no income tax liability after taking their credits and deductions; 3) education tax credits and deductions tend to benefit high-income taxpayers much more than low income families; and, 4) over-use of tax credits has turned the IRS into an extension of -- or substitute for -- other government agencies.

For more information, go to:
http://www.finance.senate.gov/hearings/hearing/?id=16f8c6bf-5056-a032-52e8-40c42f7c9a5f

SOCIAL PROGRAMS: SENATE SUBCOMMITTEE EXAMINES REAUTHORIZATION OF CHILD CARE AND DEVELOPMENT BLOCK GRANT

On Thursday, July 26, 2012, the Senate Health, Education, Labor and Pensions Subcommittee on Children and Families held a hearing titled CCDBG Reauthorization: Helping to Meet the Child Care Needs of American Families. This was the third in a series of early childhood education hearings meant to inform the Subcommittee as it works to reauthorize the Child Care and Development Block Grant.

Witnesses were heard on two panels. Panel I included Linda K. Smith, Deputy Assistant Secretary and Inter-Departmental Liaison for Early Childhood Development, Administration on Children and Families, Department of Health & Human Services, Washington, D.C. Panel II included: Janet Singerman, President, Child Care Resources, Inc., Charlotte, NC; Rolf Grafwallner, Ph.D., Asst. State Supt., Early Childhood Development, Maryland State Dept. of Education, Baltimore, MD; Philip Acord, Executive Director, Children's Home, Chattanooga, TN; and, Susana Coro, Assistant Teacher, Falls Church-McLean Children's Center, Falls Church, VA.

Issues discussed at the hearing included:
- The fact that investment in childcare means that parents who receive care subsidies are incentivized to work, work more hours, maintain employment, and earn more. Investing in childcare also pays dividends because quality care promotes children's development and learning long into their elementary years.
- Statistics about the Child Care and Development Fund (CCDF), which is comprised of federal funding for child care under the CCDBG Act and the Social Security Act, including that in 2010 (latest available data), CCDF provided child care assistance to 1.7 million children from nearly 1 million working families and families attending school or job training.
- The need for reforms to ensure that children are in safe, high quality care. For example, although children served by childcare subsidies and Head Start are demographically similar, Head Start children receive a wider range of support services in addition to higher quality care and early education. Children receiving childcare subsidies sometimes receive care that fails to meet basic health and safety standards.
- Belief that reauthorization of the CCDBG Act should be based on the following principles: 1) Improving Quality, 2) Supporting Access, 3) Facilitating Informed Choices, 4) Promoting Continuity of Care, and, 5) Ensuring Program Integrity. In addition, while all witnesses supported reauthorization, some were concerned that the current economic environment and national priorities will not provide sufficient additional funding to significantly increase access to high quality childcare, particularly for poor families.
- Rejection of the view that goals to improve school readiness, reduce the achievement gap, and increase high school graduation rates are separate silos, ignoring the role that child care settings play in the development and school readiness of children.

- The purposes of Tiered Quality Rating and Improvement Systems (TQRIS) for child care programs, and examples of how states such as North Carolina have embedded this process with childcare licensing.

- Programs that support the workforce, including examples like T.E.A.C.H® Early Childhood North Carolina, which provides scholarships for early childhood workers to get college education credits.

- Calls for reauthorization to require states to reserve, at a minimum, 10% of their TANF funds for childcare subsidy.

For more information on the hearing, go to: http://www.help.senate.gov/hearings/hearing/?id=9fb5f311-5056-9502-5d55-a235b2713708.

**BRIEFING: INSTITUTE TO HOST CA COUNCIL ON SCIENCE AND TECHNOLOGY**

The California Institute will host a lunch briefing featuring a presentation and discussion of a recently released California Council on Science and Technology (CCST) report on the Efficacy of Managed Access Systems to Intercept Calls from Contraband Cell Phones in California Prisons.

The report advises the State of California to use security screening systems, similar to those in airports, in state prisons before investing millions in untested technology intended to block calls by inmates from contraband cell phones. CCST encourages a robust pilot project be completed before implementing a managed access system, or any other technology across the California Department of Corrections and Rehabilitation (CDCR) facilities.

The CCST Project Team also recommends that California work in coordination with other states and California's federal legislators to seek prison specific exceptions to the Federal Communications Commission (FCC) anti-jamming regulations. If such exceptions are provided by the FCC, the jamming technology should be tested in one or more pilot projects at CDCR facilities before implementation.

CCST is a nonpartisan, impartial, not-for-profit 501(c)(3) corporation established via the California Legislature in 1988. It is designed to offer expert advice to the state government and to recommend solutions to science and technology-related policy issues.

If you would like to attend the briefing, please contact the California Institute at 202-785-5456 or sullivan@calinst.org.

For assessing compliance with Congressional gift ban rules, note that the California Institute is a 501(c)(3) charitable nonprofit organization that employs no lobbyists. We anticipate this will be a widely attended event.