TAXES: SENATE FINANCE REPORTS TAX EXTENDERS BILL; HOUSE TO PURSUE OWN VERSION

The Senate Finance Committee favorably reported a bill on Thursday, April 3, 2014, dealing with the extension of over 40 tax provisions that expired in 2013 or are set to expire in 2014. The bill was approved by a voice vote. Included in the package are provisions extending the R&D tax credit for businesses, the work opportunity tax credit, and the deduction teachers can take for purchases of supplies for their students and classroom.

During the markup numerous amendments were considered. One amendment, that was adopted, continues the expedited expensing of capital purchases by small businesses. Chairman Ron Wyden (OR) found non-germane, however, an amendment that would have repealed the tax imposed on medical devices under the Affordable Care Act. His ruling was upheld; but he did commit to continue to work with the other Senators to resolve this issue.

For an explanation of the initial package, as well as the 95 amendments initially proposed, go to:
http://www.finance.senate.gov/hearings/hearing/?id=24a559c8-5056-a032-52d7-614d7346d690

Rep. Dave Camp (MI), chairman of the House Ways and Means Committee will hold a hearing next Tuesday on his approach to extenders. Although he has held that extender should only be considered in the context of comprehensive tax reform, he now appears to more amenable to considering them separately, as comprehensive reform moves forward. For more information on the House hearing next week, go to:

INTELLECTUAL PROPERTY: HOUSE JUDICIARY SUBCOMMITTEE FOCUSES ON COPYRIGHT ACT REVISION

On April 2, 2014, the Courts, Intellectual Property and the Internet Subcommittee of the House Judiciary Committee held a hearing titled "Preservation and Reuse of Copyrighted Works," in which the Subcommittee received testimony focused on the Section 108 Revision of the Copyright Act (which contains exceptions for use of copyrighted materials applicable to libraries and archives), orphan works (materials with no readily identifiable or locate-able rightsholder), and mass digitization (done for the
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MaryBeth Sullivan
Executive Director

preservation of and enhanced access to books, images, films, sound recordings, manuscripts, and other media). Witnesses testified on legislative solutions for maintaining the delicate balance between the rights of authors and other creators and the public interest served by providing access to their literary works.

Witnesses included: Mr. Michael C. Donaldson, Partner, Donaldson + Calif, LLP on behalf of Film Independent and International Documentary Association, Beverly Hills, CA; Mr. Jeffrey Sedlik, President and Chief Executive Officer, PLUS Coalition, Pasadena, CA; Mr. Gregory Lukow, Chief, Packard Campus for Audio Visual Conservation, The Library of Congress; Mr. Richard Rudick, Co-Chair, Section 108 Study Group; Mr. James Neal, Vice President for Information Services and University Librarian, Columbia University; and Ms. Jan Constantine, General Counsel, The Authors Guild.

Determining fair use of "orphan works" is a multifaceted issue and demands legislative action, according to several witnesses. Mr. Donaldson, on behalf of the Film Independent and International Documentary Association, argued that "the orphan works problem is perhaps the single greatest impediment to creating new works that are now possible" due to "digital production, distribution, and marketing technologies [that] are revolutionizing how we create new works, access third party materials, fund projects, and distribute our films." He explained that for many filmmakers, the threat of a lawsuit, crippling damages, and an injunction makes the risk of using an orphan work just too high. He testified in support of the approach taken by the Copyright Office in 2006 when it recommended a solution that would: (I) provide relief for those who wish to use orphan works after conducting a diligent search; (ii) provide reasonable compensation in the rare instance when a rightsholder resurfaces after the project has commenced; and (iii) limit other remedies. "We continue to support such an approach because it provides the best way to balance the need for a solution that allows filmmakers to make use of orphan works that may be of critical historical or cultural significance without facing the risk of catastrophic monetary damages or a total loss of their investment -- while ensuring that resurfacing rightsholders still obtain fair and reasonable compensation for those uses."

Identifying the rightsholder of images is especially difficult. "Despite significant efforts by visual artists to protect their works by adding identifying information upon distribution, this information is often lost or removed upon distribution of the works, injecting millions of newly orphaned images into the global ecosystem on a daily basis. As a result, publishers, museums, libraries, researchers, historians, documentary filmmakers and the public are often forced to dedicate considerable time and resources to endless searches aimed at identifying and contacting visual creators in order to seek necessary permissions to make use of visual works," explained Mr. Sedlik, of the Pasadena, CA-based PLUS Coalition. "At the suggestion of the Copyright Office, the PLUS Coalition was founded to 2004 to address this challenge. The PLUS Coalition is a multi-industry, non-partisan, non-profit organization operated by and for all communities engaged in creating, distributing using and preserving images... Persistent attribution is not only the key to ensuring the survival of independent visual artists, but is vital to the success of all rightsholders and distributors engaged in licensing the use and reuse of visual
works. Importantly, persistent attribution is also the key to ensuring that museums, libraries and archives are best able to preserve and maximize public access to our cultural heritage." His organization offers a model for balancing the interests of diverse stakeholders in an ongoing debate over how to best achieve these common goals.

For more information, please visit: http://judiciary.house.gov/index.cfm/hearings?ID=ED90F495-04B3-4972-ABCB-01837D6ADEBA

HEALTH: HOUSE SUBCOMMITTEE ASSESSES GENERIC DRUG LABELING

On Tuesday, April 3, 2014, the Health Subcommittee of the House Energy and Commerce Committee held a hearing titled "Examining Concerns Regarding FDA's [Food and Drug Administration] Proposed Changes to Generic Drug Labeling." The hearing focused on a proposed rule issued by the Food and Drug Administration (FDA) on November 13, 2013, which, if finalized, would significantly alter longstanding policy regarding generic drug labeling changes under the 1984 Hatch-Waxman Act amendments to the Food, Drug, and Cosmetic Act (FDCA). The Hatch-Waxman Act provides an abbreviated approval pathway for generic drug products that meet "sameness" requirements to approved brand-name drugs, and has been credited with jumpstarting the modern generic drug industry by saving trillions of dollars in costs.

Witnesses included: Janet Woodcock, Director, Center for Drug Evaluation and Research, Food and Drug Administration; Michael D. Shumsky, Partner, Kirkland & Ellis LLP; Ralph G. Neas, President and CEO, Generic Pharmaceutical Association; and Allison M. Zieve, General Counsel, Public Citizen.

For over two decades, FDA has held that these "sameness" requirements apply to the generic product as long as it remains on the market -- not only at the point of approval. With respect to labeling, FDA repeatedly has stated that a generic manufacturer would be in violation of the statute if it deviated from the FDA-approved labeling for the branded product, citing the need for consistency in labeling between brand-name drugs and their generic counterparts. Currently, as has been the case since enactment of the Hatch-Waxman Act, a generic manufacturer may not unilaterally update their labeling to include additional safety information -- rather, they must submit to an FDA approval process. On the other hand, a brand-name drug manufacturer can change the drug's labeling to reflect newly acquired safety information and immediately distribute the revised labeling prior to obtaining FDA approval; the FDA will review the proposed change and approve it as proposed or request modifications. If and when the revised labeling is ultimately approved, all generic products on the market are required to conform their labeling within 30 days.

On June 23, 2011, the U.S. Supreme Court held in PLIVA, Inc. v Mensing that a generic drug manufacturer could not be held liable in State court for failure to include adequate warnings in its product labeling since Federal law prevents them from independently changing their safety-related labeling to strengthen warnings. In an effort to "eliminate the preemption of certain failure-to-warn claims with respect to generic drugs," the FDA has proposed a regulation that would permit generic drug manufacturers to unilaterally change their safety-related product labeling through the same process used by brand-name manufacturers.

Dr. Woodcock of the FDA testified on both the legal and policy justifications in favor of this proposed rule. Ms. Zieve of Public Citizen also testified in favor of the proposed rule, asserting that it will "bring post-market regulation of generic drugs in line with the realities of the pharmaceutical market today and help ensure that drug labeling provides adequate warnings to patients based on information that comes to light after the drug is on the market. While the objections to the proposal focus on liability, the purpose of the rule is to improve drug safety."
In opposition to the proposed rule, Mr. Neas testified that the rule "would completely undermine the enormously successful Hatch-Waxman Act, and put both patient safety and health care savings at risk. Disappointingly, the FDA's proposal as drafted would create substantial confusion for pharmacists, doctors, nurses, patients and others in the health care system by allowing for multiple, different drug labels in the market for the very same product, upending 30 years of law and regulation." He went on to outline how patient safety would be jeopardized as a result, and how it would lead to "billions of dollars in annual increased costs for consumers, taxpayers, large and small businesses, and state and federal governments. The rule would decrease patient access, impede healthcare decisions and delivery, and make fewer generic drugs available." Mr. Shumsky also testified in opposition to the proposed rule.

For more information, please visit:

TECHNOLOGY: HOUSE SUBCOMMITTEE EXAMINES WEB FREEDOM

The Subcommittee on Communications and Technology of the House Energy and Commerce Committee held a hearing on April 2, 2014 titled "Ensuring the Security, Stability, Resilience and Freedom of the Global Internet." The Internet is organized using Internet Protocol (IP) addresses: a series of numbers separated by dots that identify the computers on which resources are located. Rather than having to remember an IP address to find a website, however, Internet users can instead type in a corresponding domain name (e.g. www.house.gov); a series of computer databases link these domain names with their IP addresses. Due to the unimaginable increase in commercial and other network users today, Internet addressing and domain name management is exceedingly complex. In the United States, the Internet Assigned Numbers Authority (IANA) controls and coordinates the information about domain name servers, with oversight and approval of any changes conducted by National Telecommunications and Information Administration (NTIA). Currently, the U.S. government contracts with the California nonprofit Internet Corporation for Assigned Names and Numbers (ICANN) to carry out certain IANA functions; however, NTIA announced on March 14, 2014 their intention to transition oversight of key Internet domain name functions to the global multi-stakeholder community. They have asked ICANN to convene global stakeholders to develop a proposal to transition from the existing IANA contract between the U.S. government and ICANN which expires in September 2015, to an acceptable multi-stakeholder model that maintains the decentralized and open nature of Internet governance. Witnesses discussed various aspects of what the transition process will be, such as how the collection and assessment of proposals will occur, criteria for satisfactory proposals, and alternatives should a satisfactory proposal not emerge, among other topics.

Witnesses include: Mr. Lawrence Strickling, Assistant Secretary for Communications and Information, and Administrator, National Telecommunications and Information Administration; Mr. Fadi Chehade, President and CEO, Internet Corporation for Assigned Names and Numbers; Ambassador David Gross, Partner, Wiley Rein, LLP; Mr. Steve DelBianco, Executive Director, NetChoice; and Ms. Carolina Rossini, Project Director, New America Foundation Open Technology Institute.

Mr. Chehade of California-based ICANN stated: "Forty-five years ago, America demonstrated its technological brilliance by inventing the Internet. We showed our diplomatic genius 29 years later, by establishing a multi-stakeholder community model to govern a part of the Internet's basic functioning, free from the political pressures inherent in government-run institutions. This was a bold and unprecedented experiment. Governance by those who make the Internet work for the benefit of all. Over the past 16 years the multi-stakeholder community has demonstrated an extraordinary capacity to
govern itself, and according to the framework laid out across three U.S. Presidential administrations, ICANN has matured into a responsible, representative, respected governing body. America's great experiment has succeeded." "Both ICANN and the U.S. government have championed the multi-stakeholder model, in which standards and policies are developed by large and small businesses, the technical community, not-for-profit organizations, civil society, intellectual property experts, governments, academia, and Internet users from around the globe. American corporations - such as AT&T, Cisco, Google, Microsoft, Neustar and Verizon - and the Internet technical community (the IAB, IETF, the Internet Society, the RIRs and the World Wide Web Consortium) are also supporters of the multi-stakeholder model. These entities have welcomed the U.S. government's announcement as the way to bring more countries to support the multi-stakeholder approach to Internet governance, moving them away from a model in which only governments hold sway. NTIA's announcement preserves and prolongs the free and open Internet that has brought so much economic growth and social and cultural development, Mr. Chehade concluded."

Mr. Strickling further explained the position of NTIA in its decision to announce this step towards continued privatization of domain management in the global Internet community. To be accepted by the NTIA, a transition proposal must: support and enhance the multi-stakeholder model; maintain the security, stability, and resiliency of the Internet domain name system; meet the needs and expectations of the global customers and partners of the IANA services; maintain the openness of the Internet. "NTIA fully supports the need to ensure the continued growth, innovation and openness of the Internet to support economic development. This latest step, an important demonstration of the U.S. Government's commitment and confidence in the multi-stakeholder model, will help support these goals," he stated.

The Subcommittee on Courts, Intellectual Property, and the Internet of the House Judiciary Committee will follow up on these issues on April 10, in a hearing entitled, "Should the Department of Commerce Relinquish Direct Oversight Over ICANN?"


To learn more about the House Judiciary hearing, please visit: http://judiciary.house.gov/index.cfm/2014/4/hearing-should-the-dept-of-commerce-relinquish-direct-oversight-over-icann

**EDUCATION: HOUSE EDUCATION HEARING FOCUSES ON NEEDS OF COLLEGE STUDENTS**

In an ongoing series entitled "Keeping College Within Reach," the House Education and the Workforce Committee held a hearing focused on "Meeting the Needs of Contemporary Students" in their consideration of committee priorities for the reauthorization of the Higher Education Act. Recognizing that student demographics are rapidly changing, the committee heard testimony about policies and programs that support continued innovation in postsecondary education, especially aimed at "non-traditional" students, or those who represent a growing majority of students who are over the age of 25, often with families or full-time jobs, who have chosen to return to school in an effort to quickly learn new skills that will help them compete for in-demand jobs. Many states, institutions, and private entities are working to modernize their educational practices through prior learning assessments, online coursework, or flexible articulation agreements to better serve this new generation of students.
Witnesses included: Dr. George A. Pruitt, President, Thomas Edison State College, Trenton, NJ; Mr. Kevin Gilligan, Chairman and CEO, Capella Education Company, Minneapolis, MN; Mr. David K. Moldoff, CEO and Founder, AcademyOne, Inc.,West Chester, PA; Dr. Joann A. Boughman, Senior Vice Chancellor for Academic Affairs, University System of Maryland, Adelphi, MD ; Mr. Stan Jones, President, Complete College America, Indianapolis, IN; Dr. Brooks A. Keel, President, Georgia Southern University, Statesboro, GA.

One theme that emerged among witnesses was the need to reevaluate current legislative and regulatory frameworks that may present barriers to the adoption of innovative programs that serve "non-traditional" students. For example, Dr. Pruitt described the mission and model used by his "specialized institution" to provide "flexible, high-quality, collegiate learning opportunities for self-directed adults," and noted that their combination of "high-quality credit-earning options that include independent study, distance education, prior learning assessment, transferring credit earned at other colleges, and courses taken through the military and with other non-collegiate providers" cannot be fairly evaluated by traditional metrics, such as graduation rates, retention, and time-to-completion. He explained various challenges that institutions such as his face when confronted by a federal regulatory framework that, in his view, "assumes that higher education is the exclusive purview of 18-22 year olds, going to college full time. But this has not been true for a generation… The Federal IPEDS system only counts first-time, full-time freshman, treats transfer students as drop outs, and excludes 40 percent of the students enrolled in our colleges." Rather, he concluded, "we need a regulatory framework that supports accountability and innovation [instead of] attempts to federalize and bureaucratize judgments that should be left to the academy, the accreditors, and the states."

These concerns were further expounded on by Mr. Gilligan of the Cappella Education Company. "Adhering to a traditional credit hour model as an indirect indication of learning presents a potential barrier to educational access and attainment, as course participation and the constraints of the credit hour requirements are often not tailored to the self-paced learning needs of the adult student," he argued. He outlined two ways that federal financial aid could be improved to support models that do not adhere to the credit hour model. First, he argued that financial aid should support students that partake in hybrid programs -- currently, students may only enroll in either a traditional program or a direct assessment program, he stated. Second, credit hours should be decoupled from financial aid in order to support programs that rely on direct assessment of student performance. "We know that competency-based direct assessment is not right for everyone… But for many of these students, direct assessment course offerings can be an important, time and cost saving component of their higher education plan."

To learn more, please visit:

**NATURAL DISASTERS: HOUSE TRANSPORTATION SUBCOMMITTEE HOLDS HEARING ON DISASTER MITIGATION**

On April 3, 2014, the Economic Development, Public Buildings and Emergency Management Subcommittee of the House Transportation and Infrastructure Committee held a hearing titled "Disaster Mitigation: Reducing Costs and Saving Lives." The Subcommittee heard from the Federal Emergency Management Agency and state and local representatives and organizations about disaster mitigation, especially as related to flooding. "Flooding is the number one natural disaster in the United States, costing the taxpayer, states, local communities, and individual homeowners and businesses billions of dollars every year. For example, in 2012 alone, the National Flood Insurance Program (NFIP) paid
more than $7.7 billion in flood insurance claims. In 2012 and 2013 the Disaster Relief Fund spent nearly $800 million just on flood-only disasters, and spent more than $7 billion on disasters that involved heavy flooding from hurricanes and tropical storms. And the federal costs are only a portion of the total costs, including the costs to communities, individual homeowners and businesses," opened Chairman Lou Barletta (PA). "Disaster mitigation has been proven to reduce the risks in disasters, including floods. At the federal level, there are programs that can help states and communities mitigate against disasters. For example, the Hazard Mitigation Grant Program, the Pre-Disaster Mitigation program, as well as the Hazard Mitigation Assistance Program help offset the costs of mitigation activities across the Nation."

Witnesses Scheduled: David Miller, Associate Administrator, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency; Linda Langston, Supervisor, Linn County, Iowa, and President, National Association of Counties; Bryan Koon, Director, Florida Division of Emergency Management, representing National Emergency Management Association; and Chad Berginnis, Executive Director, Association of State Floodplain Managers.

"As we reflect over the early years of this century, disaster losses and costs have risen more than tenfold. Flood losses have climbed to average $10 billion per year or much more. As a nation, we really do not know what flood disasters cost us. 2012 alone resulted in 11 weather and climate disaster events, each with losses exceeding $1 billion in damages. This makes 2012 the second costliest year since 1980, with a total of more than $110 billion in damages throughout the year. The 2012 total damages rank only behind 2005, which incurred $160 billion in damages. Unfortunately, this is neither unanticipated nor is it as bad as it could get. Experts have estimated that an earthquake in San Francisco of the same magnitude as the 1906 earthquake could cause as many as 3,400 deaths, displace up to 250,000 households, and cause as much as $120 billion in property damage alone. The recently published ARkStorm scenario modeling for the Sacramento area based on a scientifically realistic flood event, similar to that which occurred in California in 1861 and 1862, indicates that three quarters of a trillion dollars in damage (business interruption costs of $325 billion in addition to the $400 billion in direct property loss) would occur if that event happened today," testified Mr. Berginnis on behalf of the Association of State Floodplain Managers. He went on to explain how state level mitigation programs compliment both local and federal efforts, using the example of the Disaster Preparedness and Flood Protection Bond Act of 2006, which authorizes $4 billion in general obligation bonds to rebuild and repair California's most vulnerable flood control structures to protect homes and prevent loss of life from flood-related disasters, including levee failures, flash floods, and mudslides and to protect California's drinking water supply system by rebuilding delta levees that are vulnerable to earthquakes and storms.

While Chairman Barletta voiced concern in his opening remarks that the Administration's proposed budget for fiscal year 2015 removes the Pre-Disaster Mitigation Program funding out of FEMA's base budget, Mr. Miller testified that "the President's FY 2015 budget request includes $400 million for the Pre-Disaster Mitigation program in the Opportunity, Growth, and Security Initiative. These funds will help augment adaption planning by States, tribes and local communities and help them prepare for events such as wildfire, floods, and other disasters that could be exacerbated by climate change. This, combined with the $150 million in base funding for NFIP mitigation grants, represents an increase of $425 million over the 2014 spending level." The Pre-Disaster Mitigation program is just one of several programs outlined during the hearing that are designed to mitigate the high costs of disasters.

For more information about disaster mitigation programs, please visit: http://transportation.house.gov/calendar/eventssingle.aspx?EventID=372904
**BRIEFING: INSTITUTE TO HOST LUNCH BRIEFING ON COLLEGE & CAREER READINESS ISSUES FOR MIDDLE-SCHOOLERS**

On Friday, April 11, 2014, the California Institute will host a congressional staff briefing on "The Forgotten Middle and The Importance of Middle Grades for College and Career Readiness." The briefing will take place in B-354 Rayburn House Office Building, Washington, DC from 12:00 - 1:30 P.M. Lunch will be served.

The briefing will focus on The Forgotten Middle, ACT's research on college and career readiness before high school. ACT will use the briefing to release an executive summary of their latest research and highlight what progress, if any, has been made since The Forgotten Middle was issued in 2008. Presenters include Steve Kappler, Assistant Vice President and Head of Postsecondary Strategy, ACT, Inc.; and Quentin Wilson, President and CEO, Career & College Clubs.

The briefing will provide valuable information on America's progress in preparing young people for college and career, as well as highlight a successful effort in California to further student readiness.

ACT, Inc. is the nonprofit organization responsible for the ACT test -- the college admissions and placement test taken by more than 1.6 million high school graduates every year. Career & College Clubs, a program of Los Angeles-based nonprofit ALL Management Corp, is focused on preparing middle grade students for success in high school, college, and life. To attend the briefing RSVP to the California Institute at sullivan@calinst.org or 202-785-5456.