



MEMORANDUM

July 21, 2010

To: Reporters and Editors
From: Scott Mulhauser and Erin Shields
for Senate Finance Committee Chairman Max Baucus (D-Mont.)
Re: Substitute Amendment to the Small Business Jobs Act

A summary of the improvements made in the substitute amendment and an updated detailed summary of the substitute amendment to the Small Business Jobs Act, unveiled by Finance Committee Chairman Max Baucus (D-Mont.) today, are attached and available on the Small Business Jobs legislation page of the Finance Committee Website at: <http://finance.senate.gov/legislation/details/?id=da799068-5056-a032-5229-92cebbd2b7a0>.

“Helping small businesses helps get Americans back to work and our economy back on track,” said Baucus. **“We discussed improvements to our small business jobs package with our colleagues, and we listened to their ideas. Small businesses are counting on us to pass this bill and it is our hope that this amendment will deliver the 60 votes we need to do just that. This updated package reflects the input we received as we promote entrepreneurship, encourage investment in small businesses and provide small businesses with the vital access to capital they need to create jobs.”**

A summary of the improvements made in the substitute amendment to the Small Business Jobs Act follows below. Legislative text will be made available as soon as possible.

Small Business Jobs Act

Summary of Changes Made in Substitute Amendment

July 21, 2010

Increase in Grants under State Small Business Credit Initiative (SSBCI). The substitute increases by \$600 million the amount provided to States for grants to support small business lending programs in the original Senate substitute amendment. *This modified provision is estimated to cost \$1.5 billion over ten years.*

Extend Elimination of Small Business Administration Loan Fees. The substitute includes a provision that would extend the American Recovery and Reinvestment Act small business lending program that eliminates the fees normally charged for loans through the SBA 7(a) and 504 loan programs and increases the government guarantees on 7(a) loans from 75% to 90%. Since its creation, the program has supported over \$26 billion in small business lending, which has helped to create or retain over 650,000 jobs. *This provision is estimated to cost \$505 million over ten years.*

Remove Cellular Phones from “Listed Property.” The substitute includes a provision that would “delist” cell phones so their cost can be deducted or depreciated like other business property, without onerous recordkeeping requirements. *This provision is estimated to cost \$411 million over ten years.*

Permit Partial Annuitization of a Nonqualified Annuity Contract. The substitute would allow holders of nonqualified annuities (that is, annuity contracts held outside of a tax-qualified retirement plan or IRA) to elect to receive a portion of the contract in the form of a stream of annuity contracts, leaving the remainder of the contract to accumulate income on a tax-deferred basis. *This provision is estimated to raise \$956 million over ten years.*

Source Rules on Guarantees. Under current law, the treatment of guarantee fees under the source rules is unclear. If guarantee fees are sourced like services, they are sourced according to the location in which the services were performed. If the guarantee fees are sourced like interest, they are sourced by reference to the country of residence of the payor. A recent court case determined that guarantee fees should be sourced like services. Sourcing guarantee fees in a manner similar to services would permit U.S. subsidiaries of foreign corporations to engage in earning stripping transactions by making deductible payments to foreign affiliates (thereby reducing their U.S. income tax liability) without the imposition of U.S. withholding tax on the payment. The substitute would provide that amounts received directly or indirectly for guarantees of indebtedness of the payor issued after the date of enactment will be sourced like interest and, as a result, if paid by U.S. taxpayers to foreign persons will generally be subject to withholding tax. No inference is intended with respect to the treatment of guarantees issued before the date of enactment. *This provision is estimated to raise \$2.025 billion over ten years.*

Strike Federal Small Business Lending Fund. The substitute removes the Federal small business lending fund provision from the bill. *This change increases the cost of the bill by \$1.1 billion over ten years.*

Strike Bad Check Penalty Clarification. The substitute removes a provision that would clarify the application of IRS's bad check penalty. This provision was enacted in HR 5263, the Homebuyer Assistance and Improvement Act of 2010. *This change reduces offsets by \$49 million over ten years.*

Strike Application of Levy to Payments to Federal Vendors Relating to Property. The bill clarifies that Treasury's continuous levy authority on government payments to Federal contractors who owe back taxes to the IRS applies to amounts paid for property, as well as to payments for goods and services. *This change reduces offsets by \$144 million over ten years.*

Technical Corrections:

- Clarifies that a partner or S corporation shareholder must also meet the gross receipts test in order to carryback its share of general business credits to five years or use its share of general business credits to offset AMT liability in 2010.
- Provides a correct cross reference to the general business credit provision on controlled groups from elsewhere in the Code and conforms the application of other general business credit provisions.
- Extends the ability to revoke an election made under Section 179 without the consent of the Commissioner and the treatment of computer software as Section 179 property through 2011.
- Corrects the effective date on bonus depreciation to allow seamless application of the provision for non-calendar year taxpayers.

Other Modifications:

- Decouples bonus depreciation from allocation of contract costs under the percentage of completion accounting method rules for assets with a depreciable life of 7 years or less in order to allow contractors that do not complete contracts within the same year in which they are entered into to benefit from bonus depreciation. *This provision is estimated to have no cost over ten years.*