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Republican Study Committee

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Americans for Tax Reform is scoring against this bill.

See the list of tax increases on page 1 and the possible conservative concerns on page 5.

H.R. 6049—Renewable Energy and Job Creation Tax Act (*Rangel, D-NY*)

Order of Business: On May 21, 2008, the House passed H.R. 6049, which included significant tax increases, by a vote of 263-160. On September 23rd, the Senate passed an amended version of H.R. 6049, with longer extensions, tax increases, an AMT "patch," and disaster tax relief, by a vote of 93-2. Tonight, the House will reportedly consider a version of H.R. 6049 with shorter extensions and large tax increases (the AMT "patch" and disaster tax package are moving separately under suspension of the rules).

NOTE: It is unclear how or when this bill will be considered. Initial reports were that the energy tax extenders and the non-energy tax extenders would be considered together. Other reports say that they will be considered separately. Below is a summary of the bill including energy and non-energy extenders, as well as significant tax increases. As more information becomes available, the RSC will send updates. Presumably, this bill or any of its derivatives would be considered under a motion to amend the Senate-amended bill, thereby shutting down all amendments, including a motion to recommit.

Summary, as amended: H.R. 6049, as amended, would impose long-term tax increases as offsets to primarily short-term tax extenders and other extensions of current law. Key highlights of the bill are below.

Note: This bill does NOT contain any repeal or inflation adjustment of the Alternative Minimum Tax (AMT).

TAX INCREASES

- Tax Increase on Energy. Denies the scheduled increase in the corporate tax deduction for income attributable to the production, refining, processing, transportation, and distribution of oil, natural gas, or any primary product thereof, beginning in 2010, for all oil and gas companies (not just the largest ones). The deduction rate would be permanently frozen at 6%, instead of rising to 9% in 2010, as scheduled under current law. According to the Joint Committee on Taxation, this provision would amount to a **$4.91 billion tax increase on energy** over ten years.

- Another Tax Increase on Energy. Modifies the method by which oil and gas companies calculate their foreign tax credits, beginning in 2008. Specifically, the provision would require foreign-based income to be reclassified as foreign oil and gas extraction income (FOGEI) for purposes of calculating the foreign tax credit and require "arm's-length" pricing for FOGEI. The Republican staff of the Ways & Means Committee notes that the rules governing FOGEI are more stringent than the general rules governing calculation of foreign tax credits, resulting in a smaller overall foreign tax credit for companies with non-U.S. oil and gas production income. According to the Joint Committee on Taxation, this section would amount to a **$2.23 billion tax increase on energy** over ten years.

- Yet Another Tax Increase on Energy. Increases the Oil Spill Liability Trust Fund tax from 5 cents per barrel to 8 cents per barrel (2009-2016) and to 9 cents per barrel in 2017, while repealing the requirement that the tax be suspended when the unobligated balance in the Fund exceeds $2.7 billion. According to the Joint Committee on Taxation, this section would amount to a **$1.72 billion tax increase on energy** over ten years.

- Cost Basis Reporting. Requires mandatory cost basis reporting by brokers for transactions involving stocks acquired after January 1, 2011 (January 1, 2012, in the case of mutual funds; January 1, 2013, for all other publicly traded securities). The Democrat staff of the Ways & Means Committee notes that, "Requiring brokers to maintain records of the adjusted basis of securities sold by their customers and report this information to the IRS would increase compliance with capital gains reporting." ***Costs taxpayers $6.67 billion over ten years.***

- Unemployment Surtax Extension. Extends the current-law 0.2-percentage-point surtax on the unemployment insurance tax (0.2-percentage-points of the 6.2% gross tax rate on the first $7,000 paid annually by employers to each employee), which the Joint Committee on Taxation estimates to be a **$1.47 billion tax increase** over ten years.

- Deferred Compensation. Requires hedge fund managers to pay federal income tax on deferred compensation as it accrues, rather than when it's actually paid. In other words, this provision would impose tax on income before it is received. ***Costs taxpayers $24.77 billion over ten years.***

- Corporate Estimated Tax Timing Gimmick. This provision would increase the estimated tax payments that certain corporations must remit to the federal government. Under current law, corporations with assets of at least $1 billion must make equally divided estimated tax payments for each quarter. This legislation would increase the payment due for the third quarter of calendar-year 2013 by 31 percentage points. (If each regular quarterly payment is 100% of what is owed, this additional payment would be 131% of what would otherwise be owed.) The payment due for the fourth quarter of calendar-year 2013 would be reduced accordingly so that the corporations pay no net increase in estimated payments in 2013. This provision is merely a revenue timing shift, a gimmick used to comply with the House's PAYGO rules, yet would have real-world implications, as it forces certain companies to pay more of their tax payments earlier. Given the time value of money, there's little doubt that requiring bigger, earlier payments would harm the bottom lines of qualified corporations. ***No net revenue effect beyond fiscal year 2014, but would force corporations to pay billions in additional tax payments in FY2013 instead of FY2014 .***

ALTERNATIVE ENERGY TAX INCENTIVES

- Extends the renewable energy tax credit (2.0 cents per kilowatt/hour for electricity generated from biomass, geothermal, solar, landfill gas, trash combustion, etc., indexed for inflation) for an additional 2.5 years, from the end of 2008 through the middle of 2011. (Just a one-year extension for wind.)

- Adds marine and hydrokinetic renewables as a qualifying energy source under the renewable energy tax credit above. Marine renewables include electricity produced from waves, tides, currents, rivers, lakes, streams, irrigation systems, canals, and ocean thermal energy conversion.

- Extends the 30% investment tax credit for solar and fuel cell property for commercial use from the end of 2008 to the end of 2016, and permits the credit to be claimed against the corporate Alternative Minimum Tax (AMT).

- Increases the solar/fuel cell credit limitation for fuel cells from $500 to $1,500 for each .5 kilowatt of capacity and repeals the prohibition against public utilities claiming the credit. Permits the credit to be claimed against the corporate Alternative Minimum Tax (AMT).

- Extends through the end of 2016 the residential solar and fuel cell credit and increases the $2,000-per-taxpayer cap to $4,000. This credit could also be claimed for residential small wind equipment and geothermal heat pumps. Permits the credit to be claimed against the individual Alternative Minimum Tax (AMT).

- Creates $1.1 billion in new tax credits for advanced coal electricity projects and certain coal gasification projects that demonstrate the greatest potential for carbon capture and sequestration technology. The tax credit would be conditioned on demonstrating (on an ongoing basis) that either their advanced coal electricity project would capture and sequester at least 65% of the facility's carbon dioxide emissions or that their coal gasification project would capture and sequester at least 75% of the facility's carbon dioxide emissions.

- Extends for one year (through the end of 2009) the $1.00-per-gallon production tax credit for biodiesel and the small agri-biodiesel producer credit of 10 cents per gallon. The bill would also extend for one year (through the end of 2009) the $1.00-per-gallon production tax credit for diesel fuel created from biomass.

- Creates a new personal or business tax credit up to $6,000 for plug-in electric drive automobiles (based on battery capacity). Phases out the credit applicable to vehicles that have more than 60,000 of them sold in the U.S. (total).

- Terminates the remaining portions of the New York Liberty Zone tax incentives program (implemented to encourage business investment in lower Manhattan)—the first-year 30% depreciation allowance and the additional section 179 expensing in the case of nonresidential real property and residential rental property.

  Requires the federal government to surrender its claim to about $1.1 billion in federal income taxes withheld on New York City and state employees as part of the Liberty Zone program. These surrendered funds could be used by New York for any transportation infrastructure project, including highways, mass transit, railroads, airports, ports, waterways, etc. <u>Many conservatives have construed this provision as an earmark for New York City, requested by embattled Ways & Means Committee Chairman Charlie Rangel (D-NY)</u>.

- Makes permanent the income exclusion (up to $20 per month) for bicycle commuting fringe benefits paid by an employer.

- Extends the alternative fuel vehicle refueling property credit (e.g. ethanol and biodiesel gas station pumps) for one year, from the end of 2009 to the end of 2010 (through the end of 2014 for natural gas refueling property). Increases the credit from 30% to 50% of the property value and increases the total taxpayer annual credit cap from $30,000 to $50,000. This section would also increase the 30% alternative refueling property credit for individuals (capped at $1,000) to 50% (capped at $2,000) and would extend the availability of this credit for natural gas home refueling pumps through 2017.

- Extends the $300 credit for non-business energy property (i.e. residential energy-efficiency improvements to existing homes) to the end of 2009—and adds residential biomass-fuel stoves heaters to claimable property.

- Extends the efficient commercial building tax deduction from the end of 2008 through the end of 2013. (The current deduction is $1.80 per square foot of the property for which expenditures are made to reduce the energy consumption of a commercial building by 50%.)

- Extends and modifies (as detailed in the bill) the manufacturer's tax credit for the production of energy efficient dishwashers, clothes washers, and refrigerators. Limits a manufacturer's total claim of credits under this section to $75 million per year.

- Shortens the depreciable life of qualifying "smart meters" installed by a utility from 20 years to 10 years, and requires that a qualifying meter measure and record electricity usage on a time-differentiated basis at least 24 times per day, while providing real-time price and usage data to customers and to the electricity supplier.

- Extends the termination of the authority to issue qualified green building and sustainable design project bonds from September 30, 2009 to September 30, 2012.

NON-ENERGY TAX PROVISIONS

- One-Year Extenders. Extends numerous tax credits and deductions for one year, with *examples* as follows:
  --State and Local Sales Tax Deduction.
  --Tuition Expenses Deduction.
  --Tax-Free IRA Distributions by Seniors for Charitable Purposes.
  --Deduction for School Teacher Expenses.
  --Research and Development Credit.
  --New Markets Credit (for investments in low-income or developing communities).
  --15-Year Depreciation for Leasehold and Restaurant Improvements.
  --7-Year Depreciation for Motorsports Entertainment Complex Improvements.
  --Accelerated Depreciation for Indian Reservation Business Property.
  --DC Investment Tax Incentives (such as the first-time homebuyer credit).
  --Deduction for Contributions of Food Inventory.
  --Deduction for Contributions of Books to Public Schools.
  --Deduction for Corporate Contributions of Computer Equipment.
  --Special Allowance for S Corporations Donating Property.
  --Modification and extension of the Section 199 domestic manufacturing tax deduction and the special expensing rules for certain U.S. film and TV productions.

- Refundable Child Tax Credit. Reduces the amount above which the portion of a taxpayer's income is refundable under the child tax credit from about $12,000 to $8,500. ***Gives individuals $3.13 billion over one year (scores as mandatory spending).***

Committee Action: The amended version of H.R. 6049 was not considered formally by the Ways & Means Committee.

Possible Conservative Concerns: Some conservatives may have the following concerns:

Tax Increases. The bill contains about $42 billion in tax increases over ten years (primarily on energy and capital formation) plus a harmful corporate estimated tax payment shift gimmick. The tax increases are long-term, while many of the tax cuts in this bill are just one-year extensions of current law.

Too Much Energy Speculation. The energy incentives are aimed primarily at energy sources and technologies that may *or may not* provide the bulk of America's energy needs over the next few decades, while virtually ignoring—or actively harming—energy sources and technologies that *are* providing the bulk of America's energy needs today.

Annual Extenders Bill. Many of the tax cuts in the bill are just *one-year* extensions of current law, despite the obvious reality that most of these popular provisions will have to be extended again for 2009. Furthermore, as in the case of the research and development tax credit, the lack of long-term extensions prevents American companies from being able to make proper business plans, even for the near future.

Targeted Tax Cut for Movie Producers. The bill contains a targeted tax cut for movie producers, including a carve-in to the Section 199 tax deduction from which Democrats have tried to carve petroleum companies out.

Expanded Refundability of Child Tax Credit. The bill expands the refundability of the child tax credit, which increases the use of the tax code to provide entitlement expenditures.

Transportation Earmark for New York City. The bill terminates the Liberty Zone program in such a way as to essentially provide, as some conservatives have argued, a $1.1 billion earmark for embattled Ways & Means Committee Chairman Charlie Rangel (D-NY) for any New York City transportation infrastructure project, including highways, mass transit, railroads, airports, ports, waterways, etc.

Administration Position: Although a Statement of Administration Policy (SAP) for this newly amended version of H.R. 6049 is not available, the SAP for H.R. 6049 as it was before the Senate this week, includes specific opposition to the tax increases on energy, as well as overall opposition to the notion that tax relief must be offset with tax increases.

The SAP supported the tax-relief provisions.

Cost to Taxpayers: A final score for this legislation was unavailable at press time.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: A CBO score analyzing this legislation for mandates was unavailable at press time.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: An earmarks/revenue benefits statement required under House Rule XXI, Clause 9(a) was not available at press time.

Constitutional Authority: A committee report citing constitutional authority was not available at press time.

Outside Organizations: Americans for Tax Reform is opposed to this bill, and will score against the bill in its annual ratings of Congress. ATR writes, "The House amendment to the Senate extenders package is a tax increase, a spending increase, bad energy policy, and violates the principle of 'no permanent tax hikes for temporary tax relief.'"

The National Association of Manufacturers is urging the passage of this legislation, citing the importance of the tax extenders, though it expressed serious concerns about the tax increases on energy and urged their removal before final passage.

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