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Legislative Bulletin……………………………….………February 17, 2012

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H.R. 3630—Temporary Payroll Tax Cut Continuation Act of 2011 (Rep. Camp, R-MI)

Order of Business: The conference report is being considered on Friday, February 17, 2012, under a closed rule.

Summary: The legislation reduces taxes by $77 billion over ten years and increases direct spending by $11 billion over ten years. The following are highlights of the legislation.

Payroll Tax Cut Holiday Extension: The legislation extends the 2 percent reduction on the employee side of the Social Security payroll tax from 6.2% to 4.2%, through the end of 2012. The employer portion would remain the same (as would the Medicare portion of the payroll tax). However, the self-employment tax is also lowered by 2 percentage points (since the self-employed have to pay both the employee and employee payroll tax). In short the total payroll tax is kept at 13.3% instead of going back up to 15.3%. The legislation also transfers the amount of revenue lost by the tax cut from the General Treasury to the Social Security Trust Fund (this does not have any impact on the federal budget). The payroll tax was first created as part of the Social Security Act of 1935. From 1937 to 1949 it was a 2% tax (employer and employee combined) on the first $3,000 of income. **$94.0 billion tax cut over ten years.**

Temporary Expanded Unemployment Benefits Extension/Reforms: The bill provides the tenth extension of the "temporary" expansion of the unemployment compensation program created in 2008. The bill, however, lowers the previous 99-week cap on benefits by eliminating the 20 weeks "extended benefits" program. Most states (36 according to the committee) would now have a cap on benefits of 63 weeks, with the rest at 73 weeks. The legislation also reforms the unemployment benefits program by (among other things) allowing states to do drug testing, and requiring recipients to undertake job search activities. **$30 billion spending increase over ten years.**

TANF Extension: The legislation extends the Temporary Assistance for Needy Families (TANF) Program through September 30, 2012. The program would otherwise expire at the end of February. The funding level provided in the legislation is the same as the baseline (as well as current spending levels), $16.5 billion on an annualized basis. *The legislation also prohibits TANF funds from being accessed at ATMs in strip clubs, liquor stores, and casinos.*

Federal Pension Reforms: Most federal civilian employees, who started federal service after 1986, are participants in the Federal Employees Retirement System (FERS), under which they make a contribution toward a retirement annuity. The contribution rate is currently 0.8 percent of pay.

Title V provides:

- Employees that join federal service after December 31, 2012, with less than five years of service as of the end of 2012, would increase contributions by 2.5 percentage points.
- Members of Congress and Congressional employees entering service after December 31, 2012, with less than five years of creditable civilian service, would have their contributions determined at the same rate as other new federal employees.
- This does not affect current federal workers pension contributions or benefits.
- Similar increases in employee contributions would be made for employees in the CIA and State Department Foreign Service pension systems.

No changes would be made to pension benefits. A recent CBO report found that, on average, federal civilian employees receive 48% more in benefits than that of the average private-sector employee with similar characteristics. Part of this excessive benefit structure is the retirement benefit system. Federal employees hired since 1984 are entitled to a hybrid pension, which includes a 401(k)-style plan that the government matches up to 5% *and* a defined-benefit payment. Private workers typically only get a 401(k) with a 3% match.

The defined-benefit portion of the federal employee plan allows workers to retire at 62 and draw an annual income equal to 1.1% of the average of their three highest year's salary times the number of years they worked. For the average federal worker who earns $80,000 and retires after 30 years, that works out to $26,400 a year. Considering that federal workers contribute only 0.8% of their pay to the Federal Employees Retirement System, this is a recipe for a shortfall. Taxpayers now chip in 11.7% of employees' salaries to keep the system solvent (here is a CBO report on Federal employee's retirement benefits).

- As a result, personnel costs for current and former federal employees continue to rise. The taxpayer spends about $200 billion per year on the federal civilian workforce, and also bears the risk of the federal pension system, which has a liability nearing $700 billion.

This provision increases revenues by $15.5 billion over ten years.

Electromagnetic Spectrum Auction: Title VI of the Conference Report for H.R. 3630 contains the majority of the language included in the Discussion Draft of the Jumpstarting Opportunity with Broadband Spectrum (JOBS) Act that the Energy and Commerce Subcommittee on Communications and Technology marked up on December 1, 2011. The subcommittee favorably reported this legislation by a bipartisan roll call vote of 17-6. The majority of the Title VI of the Conference Report was included as Title IV of H.R. 3630 that has previously passed the House.

This title allows the Federal Communications Commission to conduct incentive auctions in order to rearrange portions of the broadband spectrum. This will allow for more efficient use of the spectrum. The FCC will direct a portion of the incentive auction proceeds towards current licensee holders in return for their licenses (or spectrum). These returned licenses will then be re-auctioned.

This section of the bill reduces the deficit by approximately $15.2 billion. The legislation would result in the contiguous 20-MHz block of spectrum by reallocating the 700 MHz D Block and providing for the return of 700 MHz narrowband spectrum. The First Responder Network Authority shall receive a license for the use of the 700 MHz D block spectrum and existing public safety broadband spectrum. The legislation directs a share of future auction proceeds to support the development of the first responder network. That share is capped at $7,000,000,000.

The Conference Report also establishes a central governing authority within the National Telecommunications and Information Administration, while permitting states that choose to build their own networks the opportunity to opt-out of the central network while maintaining interoperability.

The provision reduces direct spending by $15.2 billion over ten years.

Health Care Provisions:

Extension of Section 508 Reclassifications: Extends this wage index reclassification that was originally created in the Medicare Modernization Act of 2003—and typically extended along with other Doc Fix extensions—for one more month until March 31, 2012. Payment increases for qualifying hospitals' inpatient and outpatient Medicare reimbursement rates are indexed to a higher, nearby wage index area. These reclassification increases were originally scheduled to last for only three years and will terminate at the end of March. *CBO estimates this provision increases spending by $100 million over ten years.*

Extension of Outpatient Hold Harmless Provision: Extends the temporary hold harmless treatment until December 31, 2012 for certain rural hospitals amended under Obamacare, which expanded the hold harmless provision to all sole community hospitals, regardless of bed size. This provision pays 85% of the difference between an eligible hospital's outpatient prospective payment system (OPPS) and the hospital's costs. It also requires the Department of Health and Human Services (HHS) to publish a study on which types of hospitals rely on these payments in order to maintain beneficiary access to outpatient services. *CBO estimates this provision increases spending by $100 million over ten years.*

Physician Payment Update ("Doc Fix"): This provision extends the current physician payment rate until December 31, 2012 and, thereby, prevents a 27.4% physician reimbursement reduction scheduled to take effect on March 1, 2012. It also requires reports to Congress from the

Government Accountability Office (GAO) and HHS regarding the development of a permanent replacement to the current Sustainable Growth Rate (SGR) physician reimbursement payment system. *CBO estimates this provision costs $18 billion over ten years.*

Extension of Medicare Physician Work Geographic Adjustment: Extends payments for physician services in rural states until December 31, 2012. It increases payments to physicians in the 54 of the 89 Medicare geographic areas that would otherwise have an adjustment value below the specific floor level. Additionally, this provision requires the Medicare Payment Advisory Commission (MEDPAC) to examine whether the geographic adjustment is needed, the specific level, and the impact of the floor upon beneficiary access. *CBO estimates this provision increases spending by $400 million over ten years.*

Medicare Therapy Caps Exceptions: Under current law, Medicare Part B outpatient physical and speech language therapy services have a combined cap of $1,880 per year. This provision extends the Medicare therapy caps exceptions process until the end of this year. It also revises the exception process by requiring rejection of all claims above the cap that do not include the proper billing modifying code as well as requiring manual review of high-cost beneficiaries' claims for only medically-necessary services. Additionally, the bill extends the spending caps to the hospital outpatient department setting to prevent shifts in the site of service to higher cost settings once enforcement of the current exceptions process begins. Lastly, it requires MEDPAC to recommend outpatient benefits therapy improvements, and HHS is required to collect data to assist in reforming the payment system for therapy services. *CBO estimates this provision costs $700 million over ten years*.

Extension of Payment for Technical Component of Certain Physician Pathology: Extends this provision permitting independent laboratories to directly bill Medicare for surgical pathology services as opposed to billing the hospital until June 30, 2012. This four month transition time for labs and hospitals to establish payment arrangements will expire July 1, 2012. The GAO has recommended that this policy should expire, and concerns exist that Medicare is paying twice for the same service causing beneficiaries to make extra copayments. *CBO estimates this provision costs less than $50 million over ten years*.

Extension of Ambulance Add-On Payments: Provides an extension through December 31, 2012 for the following add-on payments: two percent for urban ground ambulance services; three percent for rural ground ambulance services; and an increase to the base rate for ambulance trips originating in qualified "super rural" areas as calculated by the Secretary (currently 22.6 percent). This provision also extends a policy that allows air ambulance services originating in certain rural areas to continue to receive a 50 percent add-on payment to their base rate. Lastly, it requires two reports to be published: a GAO report describing ambulance provider costs and a MEDPAC report on whether the ambulance fee schedule should be reformed. The goal of these reports is to inform Congress as to whether these add-on payments should be continued in future years. *CBO estimates these provisions increase spending by $100 million over ten years.*

Extension of the Qualified Individual (QI) Program: The bill extends through December 31, 2012 the Qualified Individual (QI) program, the federal reimbursement program to states that assists certain low-income seniors (incomes between 120% and 135% of the federal poverty level) with their Medicare Part B premiums. *CBO estimates that this provision costs $600 million over ten years*

Extension of Transitional Medical Assistance (TMA): The bill extends this program through December 31, 2012. The TMA program permits those with incomes below 185% of the federal poverty level (FPL) that are transitioning into the workforce to remain on Medicaid. *CBO estimates that this provision costs $1.1 billion over ten years.*

Bad Debt Payment Reductions: This provision lowers the percentage that Medicare reimburses hospitals and Skilled Nursing Facilities (SNFs) for their uncollected bad debt that Medicare beneficiaries are expected to pay (but do not) through Medicare cost-sharing. Under current law, most hospitals are reimbursed for 70% of their uncollected bad debt. Other medical providers, such as federally qualified health centers (FQHCs) and dialysis centers are reimbursed 100% for this uncollected bad debt resulting from dual-eligibles (Medicare beneficiares also enrolled in Medicaid). Beginning in FY2013, this provision lowers this reimbursement rate to 65% for providers who are currently reimbursed 70% while phasing in the reduction to 65% over three years for those providers who are currently reimbursed 100%. According to the Ways and Means Committee, President Obama recommended lowering this bad debt reimbursement payment rate to 25%. *CBO estimates this provision reduces spending by $6.9 billion over ten years.*

Resetting Clinical Laboratory Payment Rates: This provision reduces payments rates by two percent for clinical laboratory services beginning in 2013. MEDPAC's October 2011 suggestions for potential Doc Fix offsets recommended a 10% cut in payments. *CBO estimates this provision reduces spending by $2.7 billion over ten years.*

Medicaid Disproportionate Share Hospital (DSH) Allotments: This provision rebases the DSH allotments beginning in fiscal year 2021 and subsequent fiscal years according to this new rebased level. DSH hospitals receive adjustment payments to offset additional costs for serving a significantly disproportionate number of low-income patients who typically are not covered by Medicare, Medicaid, the Children's Health Insurance Program, or other health insurance. *CBO estimates this provision reduces spending by $4.1 billion over ten years.*

Technical Correction to the Disaster Recovery FMAP Provision: This provision eliminates funding for the "Louisiana Purchase" included in Obamacare beginning in 2014. *CBO estimates this provision reduces spending by $2.5 billion over ten years.*

Reductions in the Prevention and Public Health Fund: This fund is an Obamacare slush fund appropriated with federal funds in perpetuity at the disposal of the HHS Secretary for activities authorized by the Public Health Service Act. The House voted to repeal this fund on April 13, 2011. This provision reduces the funding for the Prevention and Public Health fund, which *CBO estimates would reduce spending by $5 billion over ten years.*

Supporting Arguments/Potential Conservative Concerns:

Unemployment Insurance: Many economists argue that extending unemployment benefits creates incentives to delay returning to work, which has a negative effect on the economy. As Martin Feldstein states in testimony before the Senate Finance Committee in January 2009:

> "[w]hile raising unemployment benefits or extending the duration of benefits beyond 26 weeks would help some individuals ... it would also create undesirable incentives for individuals to delay returning to work. That would lower earnings and total spending."

The RSC FY 2012 budget called for not extending the additional weeks of unemployment benefits. However, unlike previous extensions, the cap on number of potential weeks of benefits is reduced from a previous high of 99 weeks to between 73 and 63 weeks in this bill. Also, the extension is more than paid for (which was not the case with previous extensions of this program in the 111th and 110th Congresses). And, as noted above, the extension comes paired with conservative reforms to the underlying program.

Payroll Tax Holiday: Some conservatives have argued that the employee-side payroll tax reduction, in the absence of other Social Security reforms, will put further strain on the Social Security system. And some conservatives would like to pay for a payroll tax cut with reforms to the Social Security system. As one example, Rep. Landry has a bill, H.R. 3551, the Social Security Preservation through Individual Choice Enhancement Act, to allow individuals to opportunity to elect the payroll tax holiday, but on condition of an actuarially equivalent delay in eligibility for Social Security benefits. Some conservatives would prefer other forms of tax cuts to a payroll tax cut. On the other hand, many conservatives favor keeping the payroll tax holiday in 2012 because it is a tax cut that allows families to keep more of their own money.

TANF Reforms: The legislation prohibits TANF funds from being accessed at ATMs in strip clubs, liquor stores, and casinos. This provision was included in the previous House-passed version, but the Senate amendment dropped it, which was a concern many conservatives had with the Senate bill.

Pension Reform and Spectrum Auctions: Some conservatives may be concerned that the new revenues generated from this legislation, rather than being used to pay down the national debt, are instead being used for new spending.

Cost to Taxpayers: The legislation reduces taxes by $77 billion over ten years and increases direct spending by $11 billion over ten years.

Does the Bill Expand the Size and Scope of the Federal Government?: The legislation contains provisions that increase the size of the federal government and provisions that decrease the size of the federal government.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO report with this information is available.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: It does not appear to contain any.

<u>Constitutional Authority</u>: The author states: "Congress has the power to enact this legislation pursuant to the following: Clause 1 of Section 7 (requiring revenue raising bills to originate in the House) and Clause 18 of Section 8, of Article 1 ("necessary and proper to execute a foregoing power") of the United States Constitution."

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