RSC
Republican Study Committee
Rep. Jeb Hensarling (R-TX), Chairman
Russ Vought, Executive Director
132 Cannon House Office Building
Washington, DC 20515
www.house.gov/hensarling/rsc
ph (202) 226-9717 / fax (202) 226-1633

Legislative Bulletin……………………………………….………May 21, 2008

Contents:

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

NOTE: Americans for Tax Reform (ATR) will score against this bill.

Order of Business: The bill is scheduled to be considered on Wednesday, May 21st, subject to a likely closed rule. The RSC will summarize any amendments provided for in, or made in order under, the rule in a separate document, if necessary.

Summary: H.R. 6049 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. For an exhaustive list of every provision in the bill, go here.

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

TAX INCREASES

- 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 $24.29 billion over ten years.***

- Worldwide Allocation of Interest. Delays by ten years the implementation of a current-law provision allowing U.S. corporations to elect special interest allocation rules for foreign assets. ***Costs taxpayers $29.96 billion over ten years.***

- Coal Excise Tax. Adjusts and extends the coal excise tax. ***Costs taxpayers $1.1 billion over eleven 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 37.75 percentage points. 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 $30.75 billion in additional tax payments in FY2013 instead of FY2014 .***

ALTERNATIVE ENERGY TAX INCENTIVES

Many of the energy tax incentives and extensions are from the House-passed version of H.R. 5351 this year.

- 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 three years, from the end of 2008 through the end 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 2014, and permits the credit to be claimed against the corporate Alternative Minimum Tax (AMT).

- Increases the solar/fuel cell credit limitation for fuels 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).

- Creates $2 billion in new clean renewable energy bonds, 100% of the available project proceeds of which would be used for capital expenditures incurred by public power providers or cooperative electric companies to construct one or more qualified renewable energy facilities (using one or more of the fuels listed above). The bill provides details for calculating the tax credit generated from the purchase of such bonds. In addition, the bonds would be tradable and could not be issued by state and local governments. **Davis-Bacon prevailing wage standards would apply to projects funded by these bonds.**

- Extends through the end of 2014 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 $1.5 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.

- Creates a new personal or business tax credit up to $6,000 for plug-in hybrid 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 $2 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>This provision might be construed as an earmark for New York City</u>.

- 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. 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.

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

- Creates $3.0 billion of new tax-credit bonds to be used for qualified energy conservation purposes (as detailed in the bill to include such things as capital expenditures for reducing energy consumption in public buildings by 20%, research grants for carbon capture technologies, mass commuting facilities, projects for "green" building technologies, and pubic education campaigns to promote energy efficiency). States and localities would have to issue the bonds, distributed to them on a per-capita basis (plus a suballocation for large cities and counties). The bonds would be tradable and <u>**would be subject to Davis-Bacon requirements**</u>**.**

- Extends the $300 credit for non-business energy property (i.e. residential energy-efficiency improvements to existing homes) for two years—to the end of 2008—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.

NON-ENERGY TAX PROVISIONS

> The bill would apply Davis–Bacon prevailing wage requirements to all tax-credit bonds, whether created by this legislation or not.

- Special Tax Cut for Trial Lawyers. Allows all trial lawyers to claim a tax deduction for their up-front expenses in contingency cases (cases in which the lawyer's compensation is based on what he or she wins for the client). Under current law, only trial lawyers whose compensation is based on winnings without regard to up-front expenses can take such a deduction. ***Saves taxpayers $1.57 billion over ten years.***

- Special Tax Cut for Hollywood. Modifies the Section 199 manufacturing tax deduction so that it encourages domestic film production and modifies the expensing rules for certain film and TV productions. ***Saves taxpayers $468.0 million over eleven years.***

Many of the one-year extenders are pulled from H.R. 3970, the "Mother of All Tax Hikes" bill.

- One-Year Extenders. Extends numerous tax credits and deductions for one year, with examples as follows:
  - --State and Local Sales Tax Deduction. ***Saves taxpayers $1.74 billion over two years.***
  - --Research and Development Credit. ***Saves taxpayers $8.76 billion over eleven years.***
  - --New Markets Credit. ***Saves taxpayers $1.32 billion over ten years.***
  - --15-Year Depreciation for Leasehold and Restaurant Improvements. ***Saves taxpayers $5.40 billion over eleven years.***
  - --7-Year Depreciation for Motorsports Entertainment Complex Improvements. ***Saves taxpayers $48.0 million over eleven years.***
  - --Accelerated Depreciation for Indian Reservation Business Property. ***Saves taxpayers $152.0 million over eleven years.***

--Tuition Expenses Deduction. ***Saves taxpayers $2.60 billion over two years.***

--DC Investment Tax Incentives (such as the first-time homebuyer credit). ***Saves taxpayers $129.0 million over eleven years.***

--Deduction for Contributions of Food Inventory. ***Saves taxpayers $71.0 million over two years.***

--Deduction for Contributions of Books to Public Schools. ***Saves taxpayers $31.0 million over two years.***

--Deduction for Corporate Contributions of Computer Equipment. ***Saves taxpayers $2608.0 million over two years.***

--Tax-Free IRA Distributions by Seniors for Charitable Purposes. ***Saves taxpayers $465.0 million over eleven years.***

--Special Allowance for S Corporations Donating Property. ***Saves taxpayers $62.0 million over eleven years.***

--Deduction for School Teacher Expenses. ***Saves taxpayers $204.0 million over two years.***

--Special Rules for Qualified Mortgage Bonds for Veterans, Regardless of First-Time Homebuyer Requirement. ***Saves taxpayers $158.0 million over eleven years.***

--Mental Health Parity. Extends for one year the $100-per-day excise tax on group health plans that impose limits on mental health benefits that are not imposed on medical and surgical benefits. ***Saves taxpayers $25.0 million over two years.*** *(Although this provision looks like a tax increase on its face, the Joint Committee on Taxation scores this as inducing group health plans to increase their mental health coverage and thus increase tax deductible health care expenditures.)*

- Additional Standard Deduction. Provides an additional standard deduction for state and local real property taxes paid or accrued in tax-year 2008 for people who claim the regular standard deduction. The maximum additional amount claimed would be $700 for married couples filing jointly and $350 for singles (and married filing separately). ***Saves taxpayers $1.17 billion over one year.***

- 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.***

- Incentive Stock Options. Makes adjustments to how incentive stock options are taken against the Alternative Minimum Tax (AMT), so that individuals whose AMT liability exceeds any gain from the exercise of a stock option (because of a drop in the value of such option) are made whole. ***Saves taxpayers $2.29 billion over eleven years.***

- GO Zone. Allows taxpayers in affected Gulf Opportunity (GO) Zone areas to amend prior tax returns to waive any interest earned from the receipt of hurricane-related recovery grants, waive the start-construction deadline for certain property eligible for bonus deprecation in the GO Zone, and allow projects in two additional counties in

Alabama to qualify for tax-exempt bond financing. ***Saves taxpayers $1.33 billion over eleven years.***

Committee Action: On May 14, 2008, H.R. 6049 was introduced and referred to the Ways & Means Committee, which the next day, marked up and ordered the bill reported to the full House by a near-party-line vote of 25-12.

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

Tax Increases. The bill contains about $55 billion in tax increases over ten years (primarily on 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.

Davis-Bacon Expansion. The bill would apply Davis-Bacon prevailing wage requirements to all tax-credit bonds, whether created by this legislation or not.

No AMT. This tax-extender bill does NOT contain any repeal or inflation adjustment of the Alternative Minimum Tax (AMT).

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 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 later this year. 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.

Special Tax Cut for Trial Lawyers. The bill contains a special tax cut for trial lawyers in certain contingency-fee cases.

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 $2 billion earmark for New York City for any transportation infrastructure project, including highways, mass transit, railroads, airports, ports, waterways, etc.

<u>NOTE</u>: Americans for Tax Reform (ATR) will score against this bill.

<u>Administration Position</u>: Although a Statement of Administration Policy (SAP) was not available at press time, a forthcoming SAP is expecting to express opposition to this bill.

<u>Cost to Taxpayers</u>: The Joint Committee on Taxation and the Congressional Budget Office estimate that H.R. 6049 would save taxpayers $8.055 billion in FY2008 and a total of $28.705 billion over the FY2008-FY2012 period. The bill would also increase direct spending by $98.0 million in FY2008 and a total of $4.937 billion over the FY2008-FY2012 period.

<u>Does the Bill Expand the Size and Scope of the Federal Government?</u>: No.

<u>Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?</u>: No.

<u>Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?</u>: The Ways & Means Committee, in House Report 110-__, asserts that H.R. 6049 contains no earmarks, limited tax benefits, or limited tariff benefits.

<u>Constitutional Authority</u>: The Ways & Means Committee, in House Report 110-__, cites constitutional authority in Article I, Section 8, Clause 1 (the congressional power to lay and collect taxes, etc.) and in the Sixteenth Amendment (the congressional power to tax incomes).

<u>Outside Organizations</u>: Americans for Tax Reform is opposed to this bill, citing the long-term tax increases to offset short-term extensions of current law, and will score against the bill in its annual ratings of Congress.

The Alliance for Worker Freedom, Associated Builders and Contractors, and the Independent Electrical Contractors, and possibly other groups, will oppose the bill because of the Davis-Bacon language.

<u>RSC Staff Contact</u>: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718