



Legislative Bulletin.....December 12, 2007

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H.R. 4351—AMT Relief Act

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Order of Business: On November 9, 2007, the House [passed](#) the Temporary Tax Relief Act (H.R. 3996), which, appropriately named, would provide temporary AMT tax relief for some (the AMT “patch”) and permanent tax increases for others. The Senate took up the House-passed bill, stripped out the tax increases, and [passed](#) a “clean” AMT “patch.” However, reportedly the Senate has refused to send the papers for the amended H.R. 3996 back to the House, fearing that the House would just add back tax increases. Therefore, Ways & Means Chairman Charles Rangel (D-NY) introduced a new bill, H.R. 4351, in order to try to attach tax increases to the AMT “patch.” Senate Majority leader Harry Reid (D-NV) has indicated that an AMT “patch” bill with tax increases attached will not pass the Senate.

The consideration today of H.R. 4351 is subject to the passage of the closed rule, [H.Res. 861](#), which would allow no amendments, waive all points of order against considering the bill (except those for earmarks and PAYGO), waive all points of order against the bill itself, and allow for one motion to recommit, with or without instructions.

To read the RSC Legislative Bulletin for H.R. 3996, visit this webpage:
http://www.house.gov/hensarling/rsc/doc/lb_110907_amtpatch.doc.

Summary: H.R. 4351 would impose **\$55.74 billion** in permanent tax increases on businesses and individuals over ten years in order to offset the prevention of a huge, unintended tax increase for tax-year 2007 (i.e. a one-year “patch” on the exemption level for the Alternative Minimum Tax (AMT)). NOTE: Some of the provisions in this bill were taken from Rep. Rangel’s Tax Reduction and Reform Act (H.R. 3920, commonly known by critics as the “Mother of All Tax Hikes”). Highlights of H.R. 4351 are as follows:

- AMT “Patch” and Other AMT Fixes. Provides for a \$66,250 AMT exemption amount for married couples in 2007 (it was \$62,550 in 2006 and would drop to \$45,000 without a “patch”), for a \$44,350 exemption amount for singles (it was \$42,500 in 2006 and would drop to \$33,750 without a “patch”), and for an extension of the current-law relief for nonrefundable personal AMT credits. The “patch” would prevent the AMT from newly impacting tens of millions of families and businesses. This section would also prevent

taxpayers with AMT credits from paying tax on “phantom” income attributable to incentive stock options (i.e. income that appears on paper but that the taxpayer has not actually exercised). *Saves taxpayers \$52.85 billion over ten years.*

- Refundable Child Tax Credit. Reduces (beginning in tax-year 2008) the amount above which the portion of a taxpayer’s income is refundable under the child tax credit from about \$11,000 to \$8,500 and eliminates any inflation adjustments. *Increases mandatory spending by \$2.87 billion over ten years.*
- Deferred Compensation. Taxes individuals on a current basis if such individuals receive deferred compensation from certain offshore entities. Thus, deferred compensation would be taxed as it accrues, rather than when it’s actually paid. Current law generally allows executives and other employees to defer paying taxes on compensation until the compensation is paid. *Costs taxpayers \$23.71 billion over ten years.*
- Economic Substance Doctrine. Codifies the “economic substance doctrine” used in certain court decisions, which prohibits businesses from making certain free-market business decisions (and from taking the related tax benefits) based solely on tax-lowering motives. The bill would also impose a 20% penalty on understatements attributable to a transaction lacking economic substance (40% in cases where certain facts are not disclosed). In other words, under this provision, companies could be assessed tax penalties for engaging in business transactions aimed primarily at lowering their tax bills. *Costs taxpayers \$4.08 billion over ten years.*
- Worldwide Allocation of Interest. Delays by nine years (to tax-year 2018) the implementation of the provision allowing U.S. corporations to elect special (i.e. tax-lowering) interest allocation rules for foreign assets (used when determining the foreign income tax credit). *Costs taxpayers \$26.21 billion over ten years.*
- Failure-to-File Partnership and S Corporation Returns Penalty Increases. Creates a uniform \$100 per partner/shareholder per month (up to 12 months, as opposed to \$50 over five months in current law) penalty for failure to file a partnership return or an S corporation return for a taxable year. *Costs taxpayers \$1.62 billion over ten years.*
- Failure-to-File General Returns Penalty Increases. Increases the failure-to-file penalty for general tax returns to the lesser of \$150 (up from \$100 in current law) or 100% of the amount required to be shown on such return. *Costs taxpayers \$118.0 million over ten years*
- Estimated Corporate Tax Payments. Increases 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 estimated tax payments for the third quarter of 2012 that are 115% of the estimated payment otherwise due. The payment due for the fourth quarter of 2012 is reduced accordingly so that the corporations pay no net increase in estimated payments in 2012. H.R. 4351 would increase this percentage (whatever it may be in current law when H.R. 4351 were enacted) by 52.5 percentage points. This

large increase would force applicable companies to increase their estimated payments by about **\$31.71 billion** in the last quarter of FY2012 (though they would be offset by a corresponding reduction in the subsequent quarter). **NOTE:** This provision is merely a revenue timing shift, a budget gimmick used to comply with the House's PAYGO rules and has no net budget effect over ten years. Without this gimmick, the bill would fail the PAYGO test for the five-year period.

NOTE: This bill does NOT include one-year tax extenders like the research and development tax credit.

Additional Background: The AMT was created in 1969 as a mandatory add-on to the existing tax code to prevent 155 of the very wealthiest taxpayers from lowering their tax bills using the available deductions and credits. The AMT's reach has since grown dramatically through bracket creep.

The AMT has a two-tiered rate structure, 26% and 28%, and an exemption, so that most people do not currently pay the AMT (which is always a higher tax than the tax calculated under the regular tax system).

Unlike other exemptions in the tax code, the AMT exemption (currently \$45,000 for joint returns in tax-year 2007) is not adjusted for inflation. As a result, though meant for the wealthiest of taxpayers, 3.5 million taxpayers were subject to the AMT in 2006, and tax organizations estimate that **23 million taxpayers may be subject to the AMT in 2007.**

Another important reason the AMT is negatively impacting more and more taxpayers is the 1993 tax increase, written by a Democrat Congress and signed into law by President Clinton. The Democrats raised the then-24% rate to 26% on the first \$175,000 of AMT-taxable income above the exemption and 28% on the AMT-taxable income in excess of \$175,000.

RSC Bonus Fact: In 1999, the Republican Congress sent legislation to the President fully repealing the AMT, yet President Clinton vetoed that bill.

Committee Action: On December 11, 2007, the bill was referred to the Ways & Means Committee, which took no subsequent official action on it.

Possible Conservative Concerns: Consensus is building around the need to repeal, not just "patch" for one year, the AMT for individuals, which is a mandatory recalculation of the tax bill of certain taxpayers that always leads to higher taxes for these taxpayers. Repealing the AMT would save taxpayers billions of dollars immediately and thereafter.

One significant point of controversy is whether the repeal of the AMT should be "offset" by tax increases or spending cuts elsewhere. In short, the offset approach is based on the notion that the government *is entitled to* the increasingly higher tax revenues from the AMT (even though these higher revenues were never intended to be collected). That is, this approach is based on the philosophy that the correction of tax mistakes should be offset with tax increases so that there is no net loss of revenue to the federal government, even if the tax increases apply to different

people than do the tax mistakes. The offset approach takes a government-first perspective; it views revenues from the vantage point of the federal government, rather than from the individual taxpayer.

Most conservatives have grave concerns with the offset approach, i.e. the tax-increase approach, and thus with the legislation summarized above, since it offsets temporary tax relief with permanent tax increases.

Most conservatives believe on principle that no tax relief, especially income tax relief, *needs* to be offset, since tax relief is savings to taxpayers. Most tax relief allows taxpayers to keep more of their own money; it does not “cost” the government anything. If, however, tax relief must be offset, it should be offset with spending reductions, not tax increases.

Most conservatives would argue that the principled opposition to offsetting tax relief *especially* applies in instances where the tax relief is being provided to correct a mistake or oversight by the federal government, as it does in the case of the AMT. The correction of tax mistakes applicable to one set of people should never be offset with tax increases on a different set of people, as would be the case under H.R. 4351. That is, most conservatives believe that it is improper for the federal government to punish some people and businesses with higher taxes just because the federal government unintentionally increased taxes on other people.

Under current law, the Congressional Budget Office projects that federal revenues will increase faster than economic growth. In other words, the tax burden (measured as a percentage of Gross Domestic Product) is expected to increase. This would still be true, just to a smaller extent, if the AMT were reduced or even eliminated. Thus, the only rationale for “paying” for an AMT reduction with any offsetting tax increase is the belief that the tax burden *should be higher* than it currently is or than what it has historically been. Conservatives believe in a lower tax burden for all Americans.

Many conservatives have expressed strong objections to some of the particular tax increases and other provisions included in H.R. 4351, including, but not limited to (in no particular order):

- Economic Substance Doctrine: Businesses should not be punished for making market-driven, legal business decisions aimed solely at reducing their tax liabilities. Reducing one’s tax bill should not be something worthy of prohibition or penalty.
- Refundable Child Tax Credit: The refundable child tax credit would be greatly expanded by this bill. Many conservatives regard refundable tax credits as spending through the tax code, no different than a direct appropriation from the Treasury to individuals who have not paid taxes that year. Many conservatives may see this refundable credit expansion as particularly offensive in this legislation, since it is paired with numerous provisions increasing taxes on businesses and people that do have net tax liabilities.
- Deferred Compensation. Many conservatives have expressed concern at discouraging incentive-based compensation and forcing individuals to pay tax on such incentives before they have even been received.

- **Timing Shift Budget Gimmick.** Some conservatives may be concerned that the corporate estimated tax payments timing shift (a budget gimmick for complying with PAYGO rules on paper) is quite large in this legislation (usually the payment shift is much smaller), forcing some companies to pay nearly double their normal estimated tax payment for the fourth quarter of fiscal year 2012 (\$31.7 billion in shifted payments). American businesses should not be forced to come up with this much extra money in a quarter to remit to the federal government just because of Congress' desire for budget gimmickry.

Administration Position: Although a Statement of Administration Policy (SAP) for H.R. 4351 was not available at press time, in its SAP for H.R. 3996, the Administration noted that, “the Administration does not believe the appropriate way to protect 21 million additional taxpayers from 2007 AMT liability is to impose a tax increase on other taxpayers. Accordingly, if H.R. 3996 were presented to the President in its current form, the President’s senior advisors would recommend he veto the bill.”

Cost to Taxpayers: The Joint Committee on Taxation estimates that H.R. 4351 would provide \$52.85 billion in tax-savings over ten years, \$55.74 billion in tax increases over ten years, and increase mandatory spending by \$2.87 billion over ten years (refundable child tax credit provision).

Does the Bill Expand the Size and Scope of the Federal Government?: The bill would permanently increase taxes on some businesses and individuals and temporarily offer tax relief to others.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Based on previous, related reports from the Joint Committee on Taxation and CBO, the bill contains no intergovernmental mandates and one private-sector mandates within the meaning of Public Law No. 104-4, the Unfunded Mandates Reform Act of 1995:

- delaying the application of the worldwide allocation of interest expense.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The following statement was filed in the *Congressional Record* yesterday: “H.R. 4351, the AMT Relief Act of 2007, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.”

Constitutional Authority: A committee report for H.R. 4351 is unavailable. For H.R. 3996, the Ways & Means Committee, in [House Report 110-431](#), cited constitutional authority in Article I, Section 8, Clause 1 (the congressional power to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare of the United States) and the 16th Amendment (the congressional power to tax incomes).

Outside Organizations: Opponents of the legislation at press time include, at a minimum:

- American Conservative Union;
- Americans for Prosperity;

- Americans for Tax Reform; and
- National Taxpayers Union.

NOTE: Americans for Tax Reform does NOT consider H.R. 4351 a violation of the Taxpayer Protection Pledge.

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