111TH CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPORT 111–447

SMALL BUSINESS AND INFRASTRUCTURE JOBS TAX ACT OF 2010

MARCH 19, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. LEVIN, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4849]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4849) to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, extend the Build America Bonds program, provide other infrastructure job creation tax incentives, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "Small Business and Infrastructure Jobs Tax Act of 2010".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

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Intergovernmental and private-sector impact: JCT has determined that the bill contains three private-sector mandates as defined in UMRA: (i) a limitation on treaty benefits; (ii) a requirement to provide information reporting for expense payments for rental property; and (iii) a requirement that grantor retained annuity trusts ("GRATs") have a minimum 10-year term. In aggregate, the costs of all the mandates in the bill would exceed the annual threshold established by UMRA for private-sector mandates ($141 million in 2010, adjusted annually for inflation) in each of the first five years the mandates are in effect.

JCT has determined that the bill contains no intergovernmental mandates as defined in UMRA.

Estimate prepared by: Grant Driessen.

Estimate approved by: Frank Sammartino, Assistant Director for Tax Analysis.

D. Macroeconomic Impact Analysis

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill are so small relative to the size of the economy and the degree of uncertainty associated with the estimate as to be incalculable within the context of a model of the aggregate economy.

The bill provides tax incentives for small business and infrastructure investment that seem likely to result in small positive increases in employment and output. Among the tax incentives for small business, the three most notable provisions are: allowing the temporary exclusion of 100 percent of gain on certain small business stock; allowing nonrecourse small business investment company loans from the Small Business Administration to be treated as amounts at risk; and increasing the amount allowed as a deduction for startup expenditures. These provisions increase the after-tax return on capital, thereby lowering the cost of capital and tending to spur investment. Among the tax incentives for infrastructure spending, the three most notable provisions are: extension of Build America Bonds; extension and additional allocation of recovery zone bond authority; and a cash out provision for certain low income housing credit provisions. The bond provisions provide a deeper subsidy than is generally available in the tax exempt bond market, while the cash out provision is intended to open a market to investors who otherwise would not be able to take advantage of the current-law low income housing credits. Thus, these provisions are structured to encourage business and infrastructure investment in the near future, with associated net revenue losses occurring mostly in the later years. At the same time, all of the provisions are structured to provide only a limited amount of tax benefits relative to a small portion of the economy.

There are several sources of uncertainty in quantifying the effects of these incentives. Because they are targeted to specific subsectors of the economy, it is possible that these tax incentives will in part result in a reallocation of capital toward the favored activities, and away from other activities. However, because the economy is currently in an economic downturn, with under-used economic resources, we expect that at least some of the investment responding to these incentives will be new investment. Also, the temporary nature of these incentives increases the amount of uncertainty associated with modeling the effects of these proposals on the economy. Further, there may be timing effects that affect output and employment in the short term but roughly cancel out over the budget horizon.

The projected net revenue losses from small business and infrastructure incentives in the bill are offset by tax increases, most of which are imposed on business income. To the extent that the business provisions decrease the after-tax return to business investment, they might have negative effects on output and employment. Notable among these revenue raisers are: limitations on treaty benefits; required information reporting for rental property expense payments; repeal of the 80/20 rules; and a minimum 10-year term for Grantor Retained Annuity Trusts ("GRATs").

Again, there is considerable uncertainty in quantifying the effect of these provisions. To the extent that these provisions level the playing field among different types of business activities, it is possible that they would enhance efficiency. The proposals affecting U.S. companies that are either controlled by foreign investors and/or conduct a substantial amount of their activity overseas potentially would affect a relatively small amount of aggregate international capital flows. The provision that limits treaty benefits has mixed effects on the relatively small amount of affected capital flows, in part because the provision generally would not affect a U.S. corporation that reinvests earnings from U.S. operations back into U.S. activity. With respect to the potential direct investment consequences of both provisions, other issues such as proximity to customers may tend to dominate the tax issues addressed in the legislation, thus providing incentives to interested foreign parties to restructure their offshore operations and/or work to extend or deepen the U.S. bilateral treaty network, rather than to withdraw or diminish their overall investment in the United States. But there is considerable uncertainty about the business and policy response of interested foreign parties. Finally, the provision affecting GRATs has the effect of increasing estate and gift taxation. There is considerable quantitative uncertainty about whether estate and gift taxes affect investment. Because the bill is approximately revenue neutral over the budget window, standard crowding-out effects on long-term borrowing costs seem likely to be minimal.

While there is considerable uncertainty about the net effect on output and employment, there is some likelihood that the positive effects of the targeted investment and business incentives are not fully offset by the negative effects of the revenue raisers. But as a result of the uncertainty of the effects of the bill, and the small size of the changes relative to the overall U.S. economy, its macroeconomic effects are incalculable within the context of a model of the aggregate economy.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Com-