SBLC REPORT

SMALL BUSINESS LEGISLATIVE COUNCIL

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HAPPY NEW YEAR

As we kick off 2014, let's take a look at where things stand and what we can expect or hope for in the coming year.

BUDGET

In what has become a rare example of bi-partisanship, Congress passed a budget deal which President Obama signed into law on December 26th.

Although not the comprehensive bargain that both sides had once hoped for, this is the first budget that Congress has passed since 2009 and it sets federal spending levels for two years.

The budget reduces the automatic cuts caused by sequestration by allowing for increased spending in 2014 and 2015. The deal offsets these increases by raising revenue through higher airport security fees and the reduction of some federal retirement benefits and military pension benefits.

Although a deal was reached, both parties walked away with some dissatisfaction. Under the agreement, the Republicans were able to avoid tax increases, but were not able to meet their goal of significantly reducing the budget deficit. On the other hand, the Democrats obtained greater funding for education and other domestic programs, but were unable to extend long-term unemployment benefits. While the budget sets the overall spending levels and the blueprint for funding the government through 2015, Congress still needs to finish hammering out an omnibus appropriations bill before January 15 when the current continuing resolution expires. Although the passage of the budget bill has significantly eased this process there may still be some political skirmishes as the details are hammered out.

It is yet unclear whether the compromise that led to the budget bill's passage reflects a new era of bi-partisan cooperation or whether it was simply an aberration spawned by fears of another government shutdown. Unfortunately, based on the discussions surrounding the debt ceiling and other hot issue areas, we believe that it is most likely the latter.

DEBT CEILING

Although the budget has been set through 2015 and it is likely that an omnibus appropriations bill will soon follow, the fight over the nation's finances is far from resolved. The debt ceiling limit was suspended until February 7, 2014. The Department of Treasury will be able to use "extraordinary measures" to keep the government afloat for another month or two after February. Treasury Secretary Jack Lew wants this issue settled before February 7 if possible and has said that Congress should not plan on extraordinary measures being able to keep the government from hitting the debt ceiling past March.

President Obama is pushing for a clean bill to increase the debt ceiling. Representative Paul Ryan (R-WI), the primary negotiator behind the budget deal for the House, has said that the Republicans will decide on what they want in exchange for an increase to the debt ceiling limit during their retreat after the holidays. So look for another temporary impasse, but ultimately we expect the Republicans to fold on this issue – they just have too much to lose with another government shutdown and it is very unlikely they'll want to be there again.

The debt ceiling is likely to be at the top of everyone's agendas when both chambers reconvene this week. Congress has never failed to increase the debt ceiling when necessary. Economists and investors are predicting that a failure to increase the debt is likely to cause significantly greater damage to the national and global economy than the government shutdown did. In light of this, as well as the harsh criticism that the Republicans faced after the 2013 government shutdown, we predict that a compromise that favors the Democrats will emerge and that the debt ceiling issue will be resolved. The real question is for how long….

HEALTH CARE

As with 2013, it appears that in 2014 the world of health care will again be dominated by the implementation of the Affordable Care Act (ACA).

As we have all seen, the Administration has taken hit after hit as the rollouts of key provisiosn of the Affordable Care Act, including the insurance marketplace, have been far from smooth or ideal. On December 29th, the Administration announced that, since October 1, 2013, 1.1 million people have signed up for insurance plans through the website HealthCare.gov, a marked improvement from the past months' numbers.

Here are some things that we expect to see in 2014:

- The essential health benefits requirements, i.e. the ten categories of coverage that every qualified health plan will be required to have, go into effect in 2014. Thus, as was seen towards the end of 2013, health insurers may continue to drop people who have obtained coverage through the individual and small group market from existing plans that do not meet these requirements.

- The individual mandate, requiring that individuals obtain health coverage or pay a penalty tax, also goes into effect in 2014. The initial challenges raised by the individual mandate will carry over to 2015 when the IRS will have to determine the credits and penalties.

- Preparations will continue for the implementation of the employer mandate on January 1, 2015. The employer mandate was originally scheduled to go into effect on January 1, 2014, but was delayed a year, largely due to concerns about the reporting requirements for employers and insurers. New rules can be expected this year that will hopefully bring more clarity to exactly how the employer mandate will take form.

- Coverage premiums for many, including in particular the young and healthy covered by small business health plans, will increase, in some instances significantly. Under the Affordable Care Act, rules that are beginning to take effect for small business plans with under 100 participants – plans can no longer charge higher premiums for employees with preexisting health problems and can not charge older employees more than three times as much as they charge younger employees. Thus, while some older employees and employees with preexisting health conditions will see premium decreases, many other small businesses with younger and healthier employees will see their premiums increase significantly.

These highlights do not even begin to address the number of rules clarifying and implementing the ACA that have still yet to be promulgated and that might see movement in 2014. Suffice it to say, even with the extreme heat it has been taking in recent months, the Administration's challenges with relation to the Affordable Care Act implementation are far from over. We foresee even more problems this year than last year in the implementation of the ACA. For instance, there has yet to be much focus on what it means to shift Medicare payments based on the number of procedures to "outcomes." To convert the way doctors and hospitals get paid may make sense but it is difficult to see what the long term implications of such a major change will be for the health care system.

Our job will be to make sure SBLC members are represented in the upcoming discussions on the implementation of the ACA.

SENATOR BAUCUS' EARLY EXIT

In April 2013, Senator Max Baucus (D-MT), chairman of the powerful Senate Finance Committee announced that he would not be seeking reelection in 2014. There was the hope that, without the pressures of reelection, Senator Baucus would have additional time and energy to invest in his stated goal of comprehensive tax reform. On December 20th, however, the White House officially confirmed that President Obama intends to nominate Senator Baucus as the

United State's next ambassador to China.

The formal nomination and confirmation are still yet to come. However, once his nomination is brought up for a vote, Senator Baucus is not expected to face significant confirmation challenges in the Senate, a body which has been historically kind to its own.

If, and when, Senator Baucus is confirmed, it will set off a domino effect across the Senate committee chairmanships.

The Finance Committee's second-ranking Democrat, Senator Jay Rockefeller (D-WV), is expected to pass up the Finance Committee chairmanship so as to retain his current chairmanship of the Commerce and Transportation Committee. This positions Senator Ron Wyden (D-OR) to take the helm of Finance. Should Senator Wyden take on the Finance chairmanship, which he appears to be eager to do, he will have to vacate his current chairmanship of the Energy and Natural Resources Committee. The second-ranking Democrat on this Committee is Senator Tim Johnson (D-SD). However, as Senator Johnson is already the chairman of the Senate Banking Committee and has announced that he plans to retire next year, it is unlikely that he will be interested in moving over to the Energy chairmanship. Next up in line for Energy is Senator Mary Landrieu (D-LA). Senator Landrieu is facing one of the most challenging reelection bids in 2014. Additionally, there has been some chatter about the White House's intent to pursue a series of executive actions on energy policy and climate change which could place the incoming Energy chair in a difficult position.

If Senator Landrieu declines the Energy chairmanship, next in line is Senator Maria Cantwell (D-WA). If Senator Landrieu does take on the position of Energy chair, she will have to vacate her position as chair of the Small Business Committee. This would leave Senator Cantwell to assume the chairmanship of the Small Business Committee vacated by Senator Landrieu, and Senator John Tester (D-MT) to take on the chairmanship of the Committee on Indian Affairs previously held by Senator Cantwell.

With so many moving pieces in play it is difficult to predict exactly where the chips will fall. However, when the dust settles it is a near certainty that Senator Wyden will be stepping forward as the chair of one of the Senate's most powerful committees – the Finance Committee.

While Senator Wyden is not as much of a known quantity as Senator Baucus has become, he is certainly not a newcomer to the tax reform arena. Like Senator Baucus, Senator Wyden favors a comprehensive overhaul of the tax system as opposed to simply reforming corporate taxes. In 2010, Senator Wyden joined with former Senator Judd Gregg (R-NH) to sponsor the Bipartisan Tax Fairness and Simplification Act of 2011, a broad tax code overhaul. In 2011, Senator Wyden, joined with Senator Dan Coats (R-IN) to sponsor a substantively similar bill of the same name. The reforms which Senator Wyden has promoted include eliminating the AMT, reducing the corporate tax rate to a flat 24%, eliminating half of the individual income tax brackets, and allowing corporations to bring profits to the U.S. at a low tax rate in exchange for being prohibited in the future from deferring taxes on overseas income.

At the helm of the Finance Committee, Senator Wyden can also be expected to make Medicare a top priority. He has been trying to reform Medicare since 1997 and is likely to jump at the opportunity to take further leadership on this issue. Demonstrative of his reputation of being willing to work across the aisle even at the risk of ruffling feathers in his own party, in 2011, Senator Wyden teamed up with Rep. Paul Ryan to author a report titled "Guaranteed Choices to Strengthen Medicare and Health Security for All: Bipartisan Options for the Future." The report promoted what its authors believed would be a bipartisan approach to Medicare reform. The approach included the introduction of private plans (typically favored by Republicans) while retaining traditional Medicare as an option, and including a number of consumer protections.

Although there will clearly be an adjustment period, there are reasons to be optimistic about the prospect of Senator Wyden as Finance chair. He has frequently shown himself to be willing and able to work across the aisle, including specifically with Rep. Ryan who has his sight set on becoming chair of the House Ways and Means Committee in 2015. Nonetheless, Senator Wyden has still retained favorability among his own party as, unlike Senator Baucus at times, he has reliably voted the party line on issues near and dear to the party's base, including, most recently, gun control. Finally, Senator Wyden has a reputation of being a "wonk," who enjoys and does not shirk away from the complex or less glamorous issues, a trait which is clearly an asset for anyone hoping to take on the tax reform.

TAX REFORM

Despite the expressed hopes of Senator Baucus and Rep. David Camp (R – MI), chair of the House Ways and Means Committee, the prospects of a comprehensive bi-partisan tax reform being passed in 2014 appear slim.

Rep. Camp has been pushing to have tax reform included as part of the Republican's economic growth package. However, reports from a December meeting between Rep. Camp and the Republican House leadership suggest that the leadership is less than enthusiastic about bringing Rep. Camp's tax reform legislation up for a markup. With Congressional approval ratings at historic lows and serious criticisms being leveled at both chambers for their inability to pass legislation, the GOP leadership in the House is said to be attempting to move away from failed big ticket items, like tax reform, in favor of a "new direction."

Without the support of the House leadership, Rep. Camp's chances of moving a tax reform bill forward will be quashed and, along with it, the hope that the House and Senate might meet in the middle having passed their own tax reform bills and be able to reach a deal. This does not necessarily mean that Rep. Camp will abandon the issue. Rep. Camp's term as chair of Ways and Means expires at the end of 2014 and it is unlikely that his term limit will be waived. In December, Rep. Ryan publically stated for the first time that it is his goal to succeed Rep. Camp as chairman.

Interestingly, some pundits believe that the departure of Senator Baucus and eventually Representative Camp will completely derail tax reform and will cause the work done to date to be scrapped. Representative Ryan's 10 mile high vision is not that dissimilar to Rep. Camp's. It's too early to tell how Senator Wyden's ideas on tax reform compare to those of Senator Baucus'. Of course, the devil with tax reform has always been in the details.

The SBLC will be monitoring tax reform very carefully – if done in such a way that small business is not hurt and comes out with an effective tax rate that is at least equal to the current effective tax rate then we'll be all for it. If, on the other hand, it is an exercise that takes away flexibility (for instance in the Sub-S area), or creates additional burdens (for instance by requiring professional service corporations to use the accrual method of accounting if gross receipts are over $10 million), or increases the effective tax rate (by eliminating most of the deductions and credits used by small business and not reducing the tax rates sufficiently to make up for the loss of the deductions or credits), then we will work to make the tax reform fair to our members.

With limited time left as Chair of Ways and Means, Rep. Camp may still continue to pursue tax reform, which, even if not achieved in 2014, could lay the groundwork for a Wyden-Ryan tax reform effort in 2015. However, we are not going to hold our breath for tax reform in 2014.

TAX EXTENDERS

Even if there is little hope for comprehensive tax reform, Congress is likely to take action to preserve at least some of the over fifty tax provisions that expired on December 31st. These expired provisions include the Research and Development Credit, the investment incentives - partial expensing for investment property and Section 179 expensing allowances, the deduction for mortgage insurance premiums, deductions for state and local taxes, the option to claim a 50% bonus depreciation and the 15-year depreciation schedule for qualified real estate improvements.

Senate Majority Leader, Harry Reid (D-NV) recently introduced legislation which would extend all of the provisions listed above as well as a number of others through December 31, 2014.

It is possible that some of these provisions will be renewed as part of the omnibus appropriation bills while others may not be addressed until later in the year. Although the expiration date for these provisions has passed, it is likely that many if not most of the provisions will be extended retroactively back to January 1, 2014. As we know this has been done before.

IMMIGRATION

In his year end news conference on December 20th, President Obama referred to immigration reform as "probably the biggest thing that I wanted to get done this year."

The interest in moving immigration reform forward appears to continue across the aisle, offering a glimmer of hope that immigration reform could be a reachable goal in 2014.

After a disappointing showing in the 2012 elections, particularly among Hispanic voters, a number of Republican leaders called for the party to reevaluate its approach to appealing to minority voters, including its positions on issues related to immigration.

In June 2013, the Senate passed an immigration bill by a vote of 68 to 32. This bill, which received the President's support, would, among other things, increase security on the U.S.'s southern border and offer millions of illegal immigrants a path to citizenship. Despite the bi-partisanship support that the bill received in the Senate and the belief that it would likely pass in the House, the House leadership has yet to bring the bill up for a vote. This has caused tension between different factions of the Republican Party. Dissatisfaction about the handling of the bill, particularly among business leaders and prominent conservative donors, has some in the party concerned about the impact on campaign contributions for the upcoming election in 2014.

Although no commitment has been made to bring the Senate bill to a vote in the House, House Speaker John Boehner has made moves that indicate that he is aware of the importance and prominence of the issue. In early December, Rep. Boehner announced his hiring of Rebecca Tallent, formerly the director of immigration policy at the Bipartisan Policy Center. Tallent is a well-known name in the world of immigration policy and has experience as a chief of staff in both the House and Senate where she worked for Republican members who supported approaches to immigration that included a path to citizenship for undocumented immigrants. Tallent's hiring has been interpreted by some as a positive sign that House leadership is seriously considering taking on the issue of immigration reform. It is not clear whether this will include bringing the Senate bill to a vote, as Rep. Boehner has indicated that he favors a more piecemeal approach to immigration reform.

2014 MID-TERM ELECTIONS

This year's legislative landscape will inevitably be colored by the upcoming 2014 mid-term elections.

As we have seen time and again, when it comes to electoral politics the winds can shift quickly. Just this October, the media was tallying the Republicans who might lose their seats because of their party's role in the government shutdown. Less than a month later, Democrats found themselves being buried under the responsibility for the troubled rollout of the federal health care exchange and other elements of the Affordable Care Act.

While it is difficult to do more than merely speculate this far in advance, the general outline of what this election season will bring has begun to take shape.

It is likely that the Republicans will maintain their majority in the House of Representatives. There are currently 232 Republicans and 201 Democrats in the House. Absent some extraordinary shift before November, it is very unlikely that the Democrats will be able to pick up the 17 seats they would need to reclaim the majority. Redistricting over the past twenty years has significantly reduced the number of swing seats in the House, making major gains and losses for either party in any single election year unlikely. Additionally, House Democrats are up against the "six-year itch" – the historical trend that the party that holds the White House during a president's second term will lose House seats during the intervening midterm election.

The Senate on the other hand is, at this time, up for grabs. The Senate currently boasts 45 Republicans, 53 Democrats and 2 Independents (both of whom caucus with the Democrats). This means that the Republicans will need to pick up six seats to win a majority. This November, the Democrats will be defending twenty seats, including four incumbents and three open seats in states carried by Mitt Romney in the 2012 Presidential Election (AK, AR, LA, MT, NC, SD, WV). On the other hand, the Republicans will only be defending thirteen seats and the only Republican seat up for grabs in a state carried by President Obama in 2012 is in Maine, where moderate Senator Susan Collins is expected to be a shoe in for re-election. At this time, the Democrat's best opportunity to gain ground appears to be to unseat Senate Minority Leader Mitch McConnell in Kentucky, which went just 60% for Mitt Romney in 2012. Senator McConnell will face both a tea-party challenger in the primary and the Kentucky Secretary of State in the general election. With one of the lowest home-state approval rates among Republican Senators, Senator McConnell's attention this year will clearly be turned to the campaign and to doing everything he can to increase his favorability.

As a whole, the mid-term elections are likely to dominate in 2014 as those members who are up for election attempt to walk the careful line of not doing or supporting anything that might jeopardize their electoral chances.

OTHER AREAS TO WATCH

- **Farm Bill** – One piece of legislation that we can expect to see sooner than later is a new farm bill. The most recent extension of the Food, Conservation and Energy Act of 2008 (the 2008 farm bill) expired at the end of 2013. This expiration means that, unless a new farm bill or extension of the 2008 farm bill is passed, the "permanent law" contained in the 1949 farm bill will go back into effect. As many provisions of the 1949 law are outdated, neither party has an interest in allowing its return, particularly as it would cause certain consumer costs, including the cost of milk, to increase significantly. The farm bill also includes funding for the food stamp program, which was an early sticking point between the parties. According to reports in December, the House and Senate negotiators are close to reaching an agreement on food stamps. The new farm bill is also expected to end the long standing system of direct payments to farmers replacing it with new support systems and insurance programs.

- **Highway Funding** – The highway and transit funding authorized under the Moving Ahead for Progress in the 21st Century Act signed by President Obama in 2012, will expire at the end of 2014. This year the transportation committees in both the House and Senate will be working on legislation to extend this funding. Concerns have been raised that, as currently funded, the Highway Trust Fund, which receives money from fuel taxes, will be unable to continue to meet funding demands. Increased gas taxes and additional fees are just two of the possible solutions that the committees are likely to consider to prevent a shortfall in 2015.

- **Minimum Wage** – This year will also likely see a push by the Administration and congressional Democrats to raise the federal minimum wage. The federal minimum wage has been set at $7.25 per hour since it was last raised in 2009. President Obama and Democratic leaders in Congress have publically expressed their support for a plan to increase the minimum wage to $10.10 per hour, and it is very likely that we will see proposed legislation to that effect within the year. A number of states have already raised their minimum wage levels, including thirteen states which increased their minimum wages effective January 1, 2014.