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May 15, 2009

Vol. 2, No. 8

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New Detail on Administration Budget Tax Proposals

The Obama Administration's detailed budget proposal, released May 11, includes several new tax proposals that could negatively impact the business of NAIFA members. A review of the four new proposals impacting insurance can be viewed online at http://www.naifa.org/advocacy/govwatch/20090512_budgettax.cfm. It also fleshes out proposals first offered this past February in the Administration's preliminary budget documents. Below is a summary of the most relevant proposals.

Company Interest Deductions:

Among the most potentially adverse of the new tax proposals to the business of NAIFA members is one that would negatively affect virtually every company that borrows money for business purposes (from any source) and also owns life insurance on the lives of the company's key persons. The provision is designed to help provide new revenue to pay for an Administration backed health care/insurance reform plan taking shape in Congress.

Key persons are defined as 20 percent or greater owners and a limited number of officers and/or employees. The new proposal significantly widens the number of companies that would face higher costs of credit and increased difficulty in managing risk as a result of reduced deductions for the interest they pay on their debt when companies also own life insurance. Generally, the proposal would force a company that owns life insurance on anyone other than a 20 percent (or greater) owner to reduce its deduction for interest paid on debt (not life insurance debt, but general borrowing) based on a statutory mathematical

formula that relates the level of unrelated debt to the amount of cash values in their life insurance policies.

Estate Tax:

While not in the [Green Book](#)— the Treasury Department's detailed explanation of its revenue proposals issued May 11, the Treasury Department's detailed explanation of its revenue proposals, there is a budget proposal to establish permanent estate rules at their 2009 levels. That means a \$3.5 million (indexed) per person exemption and a 45 percent top rate. When Congress acts on this issue, lawmakers are likely to add a provision to reunify the estate and gift tax systems.

In the Green Book are several new estate and gift tax proposals. First, the proposal would require that each piece of property be valued at the same amount whether it is for estate tax or gift tax purposes. Also, the proposal would modify the rules on valuation discounts. The modification adds a new category of restrictions that could not be used to value an interest in a family-controlled piece of property under certain circumstances. And, this set of proposals would impose a minimum 10-year term on GRATs (grantor retained annuity trusts).

Retirement Savings: The [Green Book](#) provides more details on the Administration's two retirement savings proposals, the expansion of the Saver's Credit, and creation of auto enroll IRA program.

- *Expanded Saver's Credit:* This proposal provides for a refundable tax credit that recipients can use as contributions to their employer-sponsored retirement savings plan, or to an IRA. It would act as a matching contribution (i.e., it would be available only if and when a worker contributes to his/her retirement plan or IRA). The credit would match 50 percent of an individual's annual contribution to a retirement plan or IRA, up to \$500 (indexed). It would phase out (at a five percent rate) at adjusted gross income (AGI) above \$65,000/married, \$48,750/head of household, \$32,500/single.
- *Auto Enroll IRA Program:* This proposal would require employers of fewer than 10 workers who do not offer a retirement plan to their employees to set up a program under which the employer would automatically contribute, via payroll deduction, to a worker's IRA. Workers would sign a participation or opt out form. For those who do not sign up or opt out, the rules would require the employer to contribute three percent of the employee's (employee money) compensation to a low-cost default investment. The employer could choose the IRA to which employee contributions are sent, or it could allow employees to choose their own IRAs. There would be a two-year \$250 tax credit for employers to help defray the cost of setting up the program.

Capital Gains and Dividends:

There are two proposals dealing with capital gains and dividends. One would eliminate capital gains tax liability on certain small business stock. The other would raise the tax rate, starting in 2011, on capital gains and dividends, from 15 percent to 20 percent, for taxpayers with adjusted gross incomes (AGIs) that equal or exceed \$250,000/married or \$200,000/individual.

(Net Operating Loss) Carrybacks:

The budget document states that the Administration "looks forward to working with Congress" on a proposal to make NOL carryback rules available to more taxpayers. This proposal could be helpful to the small business customers of NAIFA members. Currently,

NOL carrybacks are available for two years for all taxpayers and for five years to certain small business taxpayers. NOL carrybacks allow taxpayers to offset tax liability from previous years (two or five) with losses from 2008 and/or 2009.

Carried interest:

The administration proposed characterizing “carried interest” as ordinary income subject to ordinary income tax rates. Generally, under current law certain venture capital fund managers may characterize their expertise in managing the funds as capital contributions, and thus pay capital gains tax on their earnings from increases in the value of those funds. The proposal would recharacterize the earnings as ordinary income, subject to ordinary income tax rates.

Economic Substance Doctrine: This proposal would write into the law the judicial doctrine that finds that there must be a non-tax business purpose to a transaction in order to avoid characterizing it as a tax shelter.

Top Income Tax Rates:

The budget proposes a restoration of the 36 and 39.6 percent income tax brackets, in 2011.

PEP and Pease:

President Obama has proposed reinstating the limits (repealed in the 2001 tax cut bill called EGTRRA) on personal exemptions and the value of deductions. Restoration of “PEP” and “Pease” rules would apply to taxpayers earning more than \$250,000 (married) or \$200,000 (single). It would be effective as of 2011.

PEP stands for “personal exemption phase-out”—and as the label suggests, the rule would phase down and ultimately phase out the ability of high-income taxpayers to take the personal exemption accorded to all taxpayers under current tax law. “Pease” is the label given to a limit on deductions—it refers to the limit’s author, then-Rep. Don Pease (D-OH). Pease rules phase down the value of deductions taken by high-income taxpayers.

Deduction Limitations:

The Administration restated its proposal to limit all deductions taken by high-income taxpayers: This proposal has been widely rejected by Congress since it was offered in February as a way to pay for health reform. Under the proposal, the value of the deductions taken by those with AGI of \$250,000 (married) or \$200,000 (single) could not exceed 28 percent. This limitation would be in addition to the Pease limits described above.

Other Tax Proposals:

President Obama also proposed continuation of the Making Work Pay tax credit, certain expiring tax provisions (e.g., the research and development tax credit, and the Subpart F exception for active financing—a provision important to many life insurance companies), the lowest marginal tax rate brackets, the child tax credit, certain education tax credits, and five years of patches (the last three requiring offsets) to the alternative minimum tax (AMT). Most of the Administration’s tax cut proposals will have to be fully offset (the big exception is the first two years worth of AMT patches). The Administration is also calling for making the pay-as-you-go budget rules (which require offsets for new tax cuts and new spending) to be written into the law.

The Administration specified in its budget proposal that the revenue from some of these tax offset proposals would be allocated to a reserve fund set up to pay for health reform. Others are offered as a way to achieve deficit reduction.

Congress will take up tax issues later this year. Some of these provisions will be debated in the context of health reform. That debate is likely to start next month. Others will come into play later this year, when Congress addresses expiring tax provisions, including estate tax issues.

NAIFA Staff Contact: [Michael Kerley](#), Senior Vice President – Federal Government Relations at (703) 770-8155 or; [Dani Kehoe](#), NAIFA Outside Counsel.

NAIFA Meets with Top SEC Official

Earlier this month NAIFA President Cliff Wilson, NAIFA CEO John Healy and NAIFA Government Relations staff met with Jennifer McHugh, Senior Advisor to Securities and Exchange Commission Chair Mary Schapiro. This was the first of what is planned as a continuing series of meetings and discussions with SEC and FINRA officials.

The purpose of these meetings will be to educate the SEC and FINRA about who NAIFA is and what our members do for a living and for their clients, and to establish an ongoing dialogue with the regulators on securities-related issues of interest and concern to NAIFA and its members.

The main purpose for this initial meeting was essentially to introduce NAIFA to the SEC and to familiarize the agency with who we are and what we do. After providing background information about NAIFA's history and federation structure, Cliff Wilson gave the producer's perspective of what his practice consists of and the types of services he provides to his clients on a daily basis. Having a practitioner at the meeting was invaluable in terms of giving a real-world perspective to who we are and the value that NAIFA members bring to their clients, and we will attempt to include other NAIFA leaders at future meetings. The meeting concluded with a discussion of several securities issues of interest and concern to NAIFA.

In the past, the level of engagement between NAIFA and the SEC/FINRA has primarily consisted of (i) NAIFA submitting comment letters to the SEC and FINRA on issues and proposals of concern to NAIFA and our members and (ii) grassroots activity through GovAlerts encouraging our members to submit their own comments to the regulators on these issues. We will, of course, continue to submit comments when appropriate, and to encourage our members to do so through GovAlerts. The meeting with Ms. McHugh represents the start of an enhanced level of engagement and scope for our relationship with both FINRA and the SEC, which will enable us to better represent our member's interests before these important regulators.

NAIFA Staff Contact: [Gary Sanders](#), Vice President – Securities and State Government Relations, at (703) 770-8192.

Lounds Nominated for Children's Health Insurance Program Working Group

AHIA Legislation Committee Chair and Past President Lawrence E. Lounds, CLU, ChFC, LUTCF has been nominated to serve on the newly established Children's Health Insurance Program (CHIP) Working Group.

With more than 40 years of experience, Larry serves as a principal of Security First Insurance Agency and CEO of Security First Benefits Corporation in Flint, Michigan. He specializes in providing executive benefit and employee benefit programs for companies with 25 or more employees.

The Secretary of Health and Human Services and the Secretary of Labor signed the charter establishing the CHIP Working Group on April 2, 2009. The Working Group shall consist of not more than 30 members, jointly appointed by the Secretaries. The purpose of the Working Group shall be to:

- Develop a model coverage coordination disclosure form for plan administrators of group health plans to complete for purposes of permitting a State to determine the availability and cost-effectiveness of coverage available under group health plans to employees who have family members who are eligible for premium assistance
- Identify the impediments to the effective coordination of coverage available to families
- Submit to the Secretary of HHS and Secretary of Labor by August 5, 2010 the model disclosure form along with a report containing recommendations for appropriate measures for addressing impediments to the effective coordination of coverage.

NAIFA Staff Contact: [Diane Boyle](#), AHIA Executive Vice President, at (703) 770-8252.

Maryland Insurance Department to Consider Commission Disclosure

NAIFA and NAIFA–Maryland have recently learned that an article from the MD edition of *Insurance and Financial Advisor* indicates that the state's Insurance Department will be taking a look at commission disclosure.

The article indicates that a hearing will be planned some time in the future for interested parties to give their views. NAIFA Senior Counsel Ron Panneton will be talking in depth with our MD lobbyist to further discuss the issue and think of the best strategy for NAIFA-MD moving forward.

NAIFA will keep you apprised of developments. If you hear of anything similar being considered in your state, please let your NAIFA Government Relations staff know.

NAIFA Staff Contact: [Ron Panneton](#), NAIFA Senior Counsel, at (703) 770-8187.

Senior Vice President Bill Anderson Represents NAIFA at NAIC E-Reg Conference

Bill Anderson attended the 2009 NAIC E-Reg Conference which was held from April 27 – April 30 in Kansas City.

This yearly conference brings together state licensing directors, vendors and others involved in the producer licensing process and provides an excellent opportunity to learn about NAIC and NIPR processes and products. The conference also provides excellent networking opportunities not only in the producer licensing area but in the company licensing and market conduct arenas. A number of insurance commissioners attend and address the conference and the theme of uniformity in producer licensing, which has occupied top priority with the NAIC, was frequently emphasized.

Bill participated in a panel with Nicole Allen of CIAB and David Eppstein of PIA. The panel addressed federal legislative issues from the producers' point of view. The panel discussed the concept of a federal systemic regulator, NARAB II, OFC, and fingerprint requirements.

This was a valuable opportunity to showcase the relationship that NAIFA has with NAIC and NIPR and also enabled NAIFA to interact with individuals in the producer licensing community.

NAIFA Staff Contact: [Bill Anderson](#), Senior Vice President – State Government Relations, at (703) 770-8193.

Senate Banking Committee Holds Hearing on Institutions “Too Big to Fail”

The Senate Banking Committee (Chairman Christopher Dodd, D-CT) held a hearing on May 6 titled “Regulating and Resolving Institutions Considered Too Big to Fail.” The hearing examined the regulation of financial institutions which are so systemically significant that failure of such institutions could lead to a financial markets meltdown.

The hearing focused on: (1) the creation, function, and format of a systemic risk regulator; (2) resolution authority for non-bank financial institutions and bank holding companies; and (3) how to determine the characteristics that make a firm “too big to fail.” Testifying at the hearing were the following two panels:

Panel 1

- **Honorable Sheila C. Bair**, Chairman – Federal Deposit Insurance Corporation
- **Mr. Gary Stern**, President – Federal Reserve Bank of Minneapolis

Panel 2

- **Mr. Peter Wallison**, Arthur F. Burns Fellow – American Enterprise Institute
- **Honorable Martin Baily**, Senior Fellow, Economic Studies – The Brookings Institution
- **Mr. Raghuram G. Rajan**, Eric J. Gleacher Distinguished Service Professor of Finance, - University of Chicago Booth School of Business

To view a complete report of the hearing, please visit here. **[[link to Report on Senate Banking Committee Hearing.pdf](#)]**

NAIFA Staff Contact: [Jill Edwards](#), Assistant Vice President – Federal Government Relations, at (703) 770-8158.

StateChat Helps State Associations Share Vital Information

NAIFA members across the country continue to lead their state associations' efforts to be actively involved in state legislative and regulatory issues of interest and concern to the membership. The National Government Relations team assists its state leaders by providing analysis of legislation and regulatory proposals, assisting in the development of strategies to support or oppose specific proposals, helping in the formation of coalitions, and providing a broader national perspective on the topics in question.

To further assist the state associations, the government relations team is expanding the State Legislative Intelligence Network (SLIN) originally created by AHIA-NAIFA Health & Employee Benefits to address the health issues. This expanded strategic program allows states to share and advance ideas, research, and policy solutions to help each other with state legislative challenges. SLIN stimulates dialogue and develops a workable exchange of intelligence on state insurance issues through the network.

SLIN has an online presence as the new StateChat blog at www.naifa.typepad.com/statechat.

Taking advantage of StateChat is as easy as 1, 2, 3.

Step 1: State association leadership simply sends an email to NAIFA at statechat@naifa.org. Please clearly state the insurance issue of concern.

Step 2: National Headquarters will facilitate getting the message to other state leaders by posting the question on the StateChat blog at www.naifa.typepad.com/statechat

Step 3: State leaders will respond directly to the inquiring association and, if they would like to share their experience with a wider audience, post their comments on the [StateChat](#) blog. To comment on an article or question posted on [StateChat](#), click on the "Comments" link listed under every article, then complete the online comment form.

Associations will provide the status of the initiative in their state, convincing arguments used to sway legislators, unexpected questions, coalition partners, as well as effective and ineffective strategies.

As the bridge to intelligence sharing, we are certain that the network will position the state associations as the strongest advocates on behalf of the interests of insurance advisors in the state legislatures and with state insurance departments.

NAIFA Staff Contact: [Jen Piantedosi](#), Legislative Assistant – Government Relations, at (703) 770-8153; or for technical assistance, contact [Vicky Dobbins](#) at (703) 770-8113.

NAIFA Leaders Answer Tough Questions

In response to questions that NAIFA leadership and staff have been fielding from the Federation, the Executive Committee decided the best way to answer them was a Q&A video addressing current issues important to NAIFA members.

See the video at www.naifa.org/newsevents/podcasts/firesidechat.cfm

Lawmakers Need Better Understanding of Advisor-Client Relationships

Congress is considering a number of concerning health reform [options](#) including replacing the professional service of a licensed professional with a government-run 800 number, developing standardized marketing requirements modeled after Medicare Advantage and establishing rate schedules for broker commissions. The misperception that the advisor simply does a sales job on constituents is beyond alarming.

NAIFA has [alerted](#) its membership that lawmakers need a better understanding of the advisor-client relationship that is built upon years of trust. Agents and their clients are being called upon to help the President and Members of Congress comprehend the critical role of the advisor.

Thousand of agents, clients and concerned citizens are writing, calling and setting up meetings during the May 25-29 Congressional Recess to share the one-on-one service that advisors provide and consumers depend upon.

Help debunk the myth by [responding](#) to and [forwarding](#) the GovAlert to your colleagues. Also, begin educating your colleagues, clients and business associates and ask them to [share their concerns](#). Professional licensed advisors are held accountable for providing quality assistance to consumers. Exchanging relationships that have been built over years for some nameless, faceless "call center" to obtain information and service is not an improvement.

NAIFA Staff Contact: [Diane Boyle](#), AHIA Executive Vice President, at (703) 770-8252.

May 1 GovTalk Poll Results

Which of the following licenses do you hold?

- Series 6: 252 (49%)
- Series 6 and 7: 119 (23%)
- None of the above: 88 (17%)
- Series 7: 58 (11%)

Did You Know...?

On its way, coming soon...

Look What People Are Saying:

"Great job in communicating my feelings [on insurance regulatory reform.] Couldn't have said it better... Having been in the business 20 years, I've had clients move away. However, we'd established relationships that have continued. Each state is somewhat different in their requirements, so I can see how the situation can be improved... Thanks for working for me."

– NAIFA Member Wayne Hilchen

Have you found ways in which NAIFA GovTalk, GovWatch, and GovAlert publications have been helpful to you and your clients? Can you think of ways in which these communications tools can be more effective for you? Let us know. Contact us at governmentrelations@naifa.org with your thoughts and comments today!

– NAIFA Member Wayne Hilchen