

February 26, 2010

No. 10-08

STATE LEGISLATION UPDATE

Trust Bills. TBA's legislation (SB 3045 / HB 3862), which addresses the lack of federal estate taxes during 2010, passed in the House Judiciary and Calendar and Rules Committees this week and will go to the House floor on Monday, March 1, for a final vote. SB 3045 has already passed in the Senate.

Also passing in House committees this week and going to the full House on Monday for a final vote is SB 3529 / HB 3863. The bill, which authorizes married couples to transfer property to community property trusts, has not been set on the Senate's Commerce, Labor, and Agriculture Committee calendar yet.

TBA's third trust bill (SB 3522 / HB 3861), which makes updates and technical corrections to Tennessee's trust laws, passed unanimously in the Senate on Monday. HB 3861 is on the House Civil Practice Subcommittee's calendar for Wednesday, March 3.

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CONTRACTORS' BILL REGARDING PROMPT PAY ACT

TBA and several senior construction lenders met with the contractors' lobbyist as well as local construction attorneys on Thursday to discuss SB 3604 / HB 3159. The bill, brought by the Associated Builders & Contractors Association (ABC), would make banks subject the Prompt Pay Act, including provisions related to retainage being withheld from contractors.

According to the contractors' lobbyist, the reason for bringing this bill is that contractors and subcontractors do not always receive payment from owners/builders for their work when owners/builders default on their loans and fail to fund retainage accounts. They ultimately seek to (1) make lenders the party responsible for ensuring that owners/builders set up and fund retainage accounts when contracts between owners/builders and contractors provide for such, and

(2) make lenders liable for any work done by contractors and sub-contractors when an owner/builder defaults and does not pay for work already completed. To paraphrase their reason for the latter, “lenders get all the benefit of the work done but pay nothing for it, and that’s just not fair.”

The contractors view funds that are “allocated” or committed to a construction loan as funds that should be available to pay for construction work. They would be treated as quasi-trust funds to pay contractors even if the borrower (the owner or developer) were in default or if the bank had already advanced the funds to the borrower and the borrower had failed to pay contractors.

TBA hopes to negotiate a compromise with the contractors that will resolve their issues, but we are strongly opposed to their objectives and legislation as currently written.

Because this legislation will have a tremendous negative impact on the entire construction lending industry if it passes in current form, we strongly encourage you to *please* contact members of the Senate Commerce Committee to express your opposition to this bill. Committee members are: Chairman Jack Johnson, Vice Chairman Dewayne Bunch, Secretary Charlotte Burks, Mae Beavers, Tim Burchett, Bill Ketron, Steve Southerland, Eric Stewart, and Reginald Tate.

PURCHASE MONEY SECURITY INTEREST

This week, parties interested in the priority of purchase money security interest versus local government tax liens on personal property met with bill sponsors, Sen. Mark Norris and Rep. Joe McCord, to discuss the issue. The legislation would clarify the purchase money security interest in personal property, such as construction equipment, would take priority over a local business tax lien. The issue arose due to a court decision in which Caterpillar Financial and others lost a perfected security interest in equipment to Williamson County. Williamson and other counties have since taken an aggressive posture in assessing secured parties for failure of their lending clients to pay this local business tax on personal property. The Tennessee Chamber has taken the lead in promoting the legislation, but is supported by Caterpillar Financial, Roadbuilders Association, John Deere, TBA, and others. Both the county governments and the comptroller’s office are concerned that simply changing the priority would mean a significant loss of revenue for the counties. However, some lenders have suggested that without a clarification of the law, they would simply not make loans on equipment in the various counties, or possibly even in the State of Tennessee.

Clearly, the stakes are high in resolving the issue. One possible alternative discussed is to provide an allocation of the business tax which is apparently not permitted under current law. The allocation would permit a particular lender to pay tax on a portion of the property to have it released rather than having to pay the entire tax obligation of the business entity.

HOUSE WON’T ACT ON INTERCHANGE; MIXED MESSAGES ON WHETHER IT WILL ACT ON CREDIT UNION LENDING CAP

Interchange. House Financial Services Committee Chairman Barney Frank (D-MA) said Wednesday that his Committee will not take up interchange fee legislation this year. ABA, ICBA, the state bankers associations, and grassroots bankers have worked the past two years to

oppose several interchange bills.

Credit Unions Lending Cap. Chairman Frank also said yesterday that he will not push legislation that would increase the cap on credit union business lending (H.R. 3380, S. 2919) unless the Senate acts first. “Unless there is some prospect of the Senate acting, it will be very hard for me to persuade members of the House to vote on controversial issues, particularly as November approaches,” he said. Frank cited banks’ strong opposition to the legislation as the reason for his position.

Frank explained the banks’ argument that the increase is not needed because less than 1 percent of the nation’s credit unions are near the lending cap. Currently, only 41 out of the country’s 8,000 credit unions are near the 10 percent cap; in Tennessee, only three are above the 10 percent cap, and only seven are above the 5 percent cap.

Despite Frank’s announcement on Thursday, the ABA was informed this morning that Rep.’s Paul Kanjorski (D-PA), Ed Royce (R-CA), and Marcy Kaptur (D-OH) are seeking signatures from their colleagues on a letter to the House leadership in support of H.R. 3380.

*****ACTION ALERT*****

We urge you to contact your House Member to express your strong opposition to this legislation (H.R. 3380) and urge him/her not to sign-on to the letter. Please see the list at the end of this Update for your House Member’s contact information.

SENATE PASSES “JOBS” BILL

The Senate passed a \$15 billion “jobs” bill (H.R. 2847) on Wednesday by a vote of 70-28 (Sen. Lamar Alexander (R-TN) voted “yes”; Sen. Bob Corker (R-TN) voted “no”).

The bill includes a “Build American Bond” provision; a one-year extension of the highway bill; an extension of a small business expensing provision; and a tax credit for businesses hiring new employees who have been unemployed for at least 60 days. These provisions are offset by a Foreign Account Tax Compliance provision (addressing tax havens). The bill does not include the extension of several popular tax credits that expired on December 31, 2009; a further delay in the effective date of the worldwide interest allocation rules; or the credit unions’ proposal to expand business-lending powers.

NO DEAL REACHED ON REGULATORY BILL

Treasury Secretary Timothy Geithner met Wednesday night with Senate Banking Committee Chairman Chris Dodd (D-CT) and panel member Sen. Bob Corker (R-TN) to discuss the progress of negotiations on the reg reform bill that Dodd was scheduled to introduce this week. After the meeting, Dodd told reporters that “no deal” has been reached in discussions on regulatory restructuring legislation and said only that a bill will be released “soon.”

ABA and ICBA’s Presidents Meet with Geithner. Yesterday, ABA President and CEO Ed Yingling, ICBA President and CEO Cam Fine, and the heads of other major financial services trade groups discussed financial regulatory reform in a candid give-and-take session with

Treasury Secretary Timothy Geithner.

Yingling and Fine told Geithner that any reg reform bill would almost certainly need broad bipartisan support to be enacted. Yingling and Fine said their groups support regulatory reform, including a strong resolution regime to end “too-big-to-fail” and the need for the Federal Reserve to continue having regulatory responsibilities, but both reiterated their strong opposition to the Consumer Financial Protection Agency. After the meeting, Fine said, “[a] wide range of issues were discussed, and we are gratified that the secretary’s views on too-big-to-fail and resolution authority are closely aligned with ICBA.”

Bernanke Thinks Fed Should Keep Bank Regulatory Powers. On a related note, Federal Reserve Chairman Ben Bernanke told the Senate Banking Committee yesterday that Congress should not strip the Fed of its bank regulatory powers, and to do so would be a “grave mistake.” Bernanke said the Fed would gladly surrender the authority it used in 2008 to arrange the sale of Bear Stearns and the bailout of other large financial firms. But he also pointed out that the Fed is uniquely positioned with its knowledge and expertise to provide “strong, consolidated supervision” of the biggest financial companies, securities dealers, and operational issues.

ABA GOVERNMENT RELATIONS SUMMIT

House Majority Leader Steny Hoyer (D-Md.) is the latest VIP to join the lineup of speakers at the ABA Government Relations Summit, March 16-18 in Washington, D.C. Other speakers include FDIC Chairman Sheila Bair, Senate Banking Committee ranking Republican Richard Shelby (R-Ala.), House Minority Leader John Boehner (R-Ohio), Comptroller of the Currency John Dugan and Office of Thrift Supervision Acting Director John Bowman. Attendees also will hear a panel of journalists discussing media coverage of the banking industry.

Hundreds of bankers have registered for what is shaping up to be the most important meeting of banking industry leaders in years. Why? The meeting will allow bankers and bank directors to blanket Capitol Hill offices around the time the Senate Banking Committee is likely to be considering still-to-be-released regulatory reform legislation -- legislation that will determine the future of the banking industry

Bankers are strongly encouraged to attend this free event, and to bring other bankers, employees or directors with them to help advocate for the industry. For more information, click <http://www.aba.com/Events/GRS.htm>.

ICBA NATIONAL CONVENTION

ICBA is hosting its 2010 National Convention & Techworld March 17-21, 2010, at the Gaylord Palms Resort and Convention Center in Orlando, Florida. Visit <http://www.icba.org/convention/> to register and for updates on speakers and the agenda.

YOUNG BANKERS DAY ON THE HILL SCHEDULED FOR MARCH 24

TBA's Young Bankers Day on the Hill program is scheduled for Wednesday, March 24, 2010. This annual gathering will allow future leaders from banks across the state to explore the inner workings of the Tennessee legislature and listen to speakers representing a wide variety of roles in the legislative process. Participants will also receive briefings on legislative issues pertinent to the banking industry and the importance of TBA's government relations program. Participants will also have an opportunity to visit with their legislators and watch committee meetings and floor sessions of the Senate and House.

Bank CEO's are encouraged to recommend future leaders within their banks to attend. The \$35.00 registration fee includes informational materials and lunch sponsored by the law firm of Bone McAllester Norton PLLC. For those driving in the night before, rooms are being held at the Doubletree Hotel at a special rate. To make reservations, call 1-800-222-8733 and mention that you are with the Tennessee Bankers Association.

Space is limited for this program, so please register your young bankers today! For more information, please contact Penny Powlas (ppowlas@tnbankers.org) or visit TBA's website at www.tnbankers.org.

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