

MEMO# 23318

March 13, 2009

March 17 Conference Call To Discuss "Tax Haven" Legislation

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TO: TAX COMMITTEE No. 7-09 RE: MARCH 17 CONFERENCE CALL TO DISCUSS "TAX
HAVEN" LEGISLATION

A conference call of the Tax Committee will be held on Tuesday, March 17, at 2:00 p.m. (Eastern) to discuss legislative proposals addressing concerns arising from offshore investments. Specifically, the discussion will focus on the "Stop Tax Haven Abuse Act" -- introduced last week in the House (as H.R. 1265) and in the Senate (as S. 506) -- and on a "discussion draft" prepared by the staff of the Senate Finance Committee.

To participate in the call, please complete the attached response form and return it to Ezella Wynn by e-mail (ewynn@ici.org) or fax (202-326-5841) no later than 2:00 p.m. on Monday, March 16, 2009. The dial-in number for the call is 800-857-9796 and the passcode is 51716.

The most significant provision of H.R. 1265/S. 506 would treat certain foreign corporations "managed and controlled in the U.S." as U.S. corporations for income tax purposes. (pages 18-22 of S. 506 [\[1\]](#) (attached)). The bill directs the Treasury Department to draft regulations defining management and control; "such regulations shall also provide that the management and control of a corporation shall be treated as occurring primarily within the United States if (i) the assets of such corporation (directly or indirectly) consist primarily of assets being managed on behalf of investors, and (ii) decisions about how to invest the assets are made in the United States" (page 22).

Other provisions of possible interest in H.R. 1265/S. 506 would:

- treat dividend equivalents and substitute dividend payments as dividends and source these payments to the U.S. if paid with respect to stock of domestic corporations (pages 34 – 39);
- modify reporting requirements for investments in passive foreign investment companies ("PFICs") (page 39);
- amend the securities laws to create a "fourth tier" penalty of up to \$1 million for "knowing failures to disclose any holding or transaction involving equity or debt instruments of an issuer and known by such person to involve a foreign entity . . . and which would have been otherwise subject to disclosure by such person under [the securities laws]" (pages 40 - 42);
- improve the enforcement of foreign financial account reporting (pages 50 – 51); and
- prevent tax planning inventions from being patented (pages 55 - 57).

The Senate Finance Committee staff discussion draft (attached), among other things, would:

- require financial institutions transferring more than \$10,000 to a financial account outside the United States for a U.S. customer (other than an entity the ownership interests of which are regularly traded on an established securities market) to file an information return (pages 2 – 5);
- require that foreign bank and financial account reports ("FBARs") be filed with income tax returns (pages 6 – 9); and
- double penalties on underpayments related to certain offshore financial arrangements (pages 10 - 13).

Keith Lawson
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[Attachment](#)

endnotes

[\[1\]](#) All page references to the introduced legislation are to S. 506.

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