HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 679 Deepwater Horizon Oil Disaster/Federal Income Tax
SPONSOR(S): Ingram and others
TIED BILLS: **IDEN./SIM. BILLS:** SM 216

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee		Cyphers	Cyphers
2) Economic Affairs Committee			

SUMMARY ANALYSIS

This memorial urges Congress to enact legislation exempting from federal taxation as income, any claim payments arising from the Deepwater Horizon oil spill. It also requests that such legislation recognize any fishing or tourism-related business which has a qualified oil-spill loss as eligible to use the federal 5-year net operating loss carryback for federal tax purposes.

The House Memorial does not amend, create, or repeal any provisions of the Florida Statutes.

The House Memorial has no fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

On April 20, 2010 in the Gulf of Mexico, the Deepwater Horizon drilling rig experienced an explosion[1] that would take the lives of eleven people and mark the beginning of the largest environmental disaster in the history of the United States. By the end of April 22nd, eleven members of the crew of the Deepwater Horizon were missing and presumed deceased,[2] several other crew members were injured, the $350 million oil rig owned by Transocean[3] had sunk to the bottom of the Gulf of Mexico, and oil and natural gas were leaking from pipes attached to the failed blowout preventer at the well head.

Response and Aftermath

The location of the leaking well site, known as the Macondo well, is approximately 45 miles southeast of Louisiana. As it became clear that the built-in measures to stop the leak had failed and that oil was beginning to spread away from the site of the leak, Governor Charlie Crist declared a state of emergency on April 30th for Escambia, Santa Rosa, Okaloosa, Walton, Bay, and Gulf counties.[4] On May 3rd, the Governor's executive order was amended to add Franklin, Wakulla, Jefferson, Taylor, Dixie, Citrus, Hernando, Pasco, Pinellas, Hillsborough, Manatee, and Sarasota counties.[5]

After several failed attempts to stop the leak from the well, including a failed "top kill" effort between May 26 through 29, 2010;[6] leaking from the well was finally stopped on July 15, 2010.[7] A new "static kill" was successfully completed on August 4, 2010[8], and on September 19, 2010, after the relief well was finished and the well was cemented from beneath, Admiral Thad Allen announced that the well was "effectively dead."[9]

The official government estimate regarding the spill places the amount of oil released from the Macondo well to be approximately 4.9 million barrels or 205.8 million gallons of oil.[10] While 17 percent of the oil was captured at the wellhead (833,000 barrels), according to official oil budget reports, the remaining oil (4.2 million barrels) escaped immediate retrieval.[11]

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1 http://www.nytimes.com/2010/04/22/us/22rig.html?_r=1&scp=1&sq=oil+rig+explosion&st=nyt
2 http://www.tampabay.com/incoming/as-oil-rig-sinks-hope-fades/1089672
3 National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling: Report to the President, January 2011
4 Office of the Governor, Executive Order Number 10-99 (Emergency Management – Deepwater Horizon) April 30, 2010
5 Office of the Governor, Executive Order Number 10-100 (Emergency Management – Deepwater Horizon) May 3, 2010
6 http://www.nytimes.com/2010/05/30/us/30spill.html
7 http://abcnews.go.com/WN/gulf-oil-spill-bps-cap-success-oil-stops/story?id=11173330
8 http://www.nytimes.com/2010/08/05/us/05spill.html
9 http://www.cbsnews.com/stories/2010/09/19/national/main6881308.shtml
10 National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling: Report to the President, January 2011
11 http://www.noaanews.noaa.gov/stories2010/20101123_oilbudget.html

Oil Budget (Released Aug. 4)		Oil Budget Technical Report		
Category	**% of Total**	**Category**	**% of Total**	**Change**
Direct Recovery	17%	Direct Recovery	17%	None
Burned	5%	Burned	5%	None
Skimmed	3%	Skimmed	3%	None
Chemically Dispersed	8%	Chemically Dispersed	16%	+8%
Naturally Dispersed	16%	Naturally Dispersed	13%	-3%
Evaporated or Dissolved	25%	Evaporated or Dissolved	23%	-2%
Other	26%	Other	23%	-3%

According to a report by Secretary of the Navy Ray Mabus, at its peak, the response to oil spill included more than 47,000 personnel; 7,000 vessels; 120 aircraft; and many federal, state, and local agencies.[12] The final Situation Report by Florida's response team also noted the use of over 791,061 feet of boom, the removal of over 500,000 gallons of oil from Florida's shoreline, the deployment of 128 National Guardsmen; and the registration of 19,899 volunteers from all 50 states and 10 different countries.[13]

Responsible Parties

On June 1, 2010, the United States Attorney General Eric Holder announced the federal government would pursue all legal remedies to the disaster, including civil and criminal penalties in order to ensure accountability on the part any responsible party.

Under the provisions of Oil Pollution Act of 1990 (OPA), all "responsible parties" are liable for recovery costs and other damages as the result of an unpermitted release of oil into the navigable waters of the United States. The OPA, however, limits the damages to be paid by responsible parties at $75 million per incident. However, according to a U.S. Coast Guard document on Oil Spill Liability Trust Fund Funding for Oil Spills, this limitation of liability disappears if the incident is found to have been caused by gross negligence; willful misconduct; or a violation of federal operating, construction, or safety regulations. BP has said that it would not claim protection under the $75 million limit under OPA.[14]

Claims Process

In June 2010, at the request of President Obama, BP announced that it would create a trust that would total $20 billion to pay all "legitimate claims".[15] The claims would include all recovery and damages related to individuals, governments and natural resources. Until August 23, 2010, BP administered the payment of claims out of the trust fund, but the process was subsequently turned over to an independent claims facility managed by Kenneth Feinberg with the opening of the Gulf Coast Claims Facility (GCCF).[16]

As of March 2, 2011, the total number of claimants to the GCCF reached 802,411. Of these claimants, 263,054 have been paid a total of $3.46 billion thus far. Florida makes up 32% of all claims (254,557 claims) and 35.6% of all claims paid to date (97,271 claims paid totaling $1.23 billion).[17]

[12] America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill, September 2010
[13] Deepwater Horizon Response: Situation Report #114 (Final) August 26, 2010
[14] http://www.bloomberg.com/news/2010-05-21/bp-waiver-of-75-million-spill-damage-cap-may-recognize-liability-reality.html
[15] http://www.bp.com/genericarticle.do?categoryId=2012968&contentId=7062966
[16] http://www.gulfcoastclaimsfacility.com/
[17] Gulf Coast Claims Facility website; Overall Program Statistics; February 28, 2011

Historical Tax Relief Measures

On several occasions, Congress has passed legislation aimed at providing tax relief to both businesses and individuals affected by natural disasters. One of the most recent instances relates to taxpayers affected by Hurricanes Katrina, Rita, and Wilma in 2005.[18] The other is related to individuals and businesses affected by the declared disaster areas of the Midwest in 2008.[19]

The subjects addressed by these historical tax relief measures include:[20]

- Charitable Giving Incentives;
- IRAs and Other Retirement Plans;
- Net Operating Losses;
- Specific Tax Relief for Individuals; and
- Specific Tax Relief for Businesses

In the summer of 2010, a similar effort to provide tax relief was begun in Congress in response to the Deepwater Horizon Oil Spill. In the House of Representatives, Representatives Miller, Bonner and Boyd sponsored the Gulf Oil Spill Recovery Act of 2010.[21] In the Senate, Senators Wicker and Vitter sponsored the Gulf Coast Oil Recovery Zone Tax Relief and Economic Recovery Act, or Senate Bill 3934.[22]

The following provisions represent a subset of the tax relief suggested for taxpayers in areas affected by the Deepwater Horizon Oil Spill that can also be found in Katrina Relief Act of 2005, the Gulf Opportunity Act of 2005, and the Heartland Disaster Relief Act of 2008.[23]

Exempting Payouts from Federal Taxation

Under current law, payouts from insurance payments, whether they are for damages or loss of income or wages, are not considered to be taxable income by the Internal Revenue Service.[24] However, damages for loss of income and profit, like those that are currently being paid by BP, are considered taxable income because they are considered a replacement of monies which would typically be taxed.[25] This form of tax relief is not found in the hurricane or Midwest disaster relief packages. However, it is provided for in the Senate bill that was introduced in the Senate in 2010.[26]

Senate Bill 3934 by Senators Wicker and Vitter would make all payouts, whether they are for damages or lost income and profits, non-taxable if the payout is related to the Deepwater Horizon Oil Spill. It should be noted that this provision is found only in the Senate relief package and is not found in the House's Gulf Oil Spill Recovery Act of 2010.

Net Operating Loss Carryback Period

[18] Emergency Tax Relief Act of 2005 and the Gulf Opportunity Zone Act of 2005
[19] Heartland Disaster Tax Relief Act of 2008
[20] Internal Revenue Service Publication 4492 (January 2006) and 4492-B (January 2010)
[21] H.R. 5699; 111th Congress, July 1, 2010
[22] S. 3934; 111th Congress, September 29, 2010
[23] Internal Revenue Service Publication 4492 (January 2006) and 4492-B (January 2010)
[24] Internal Revenue Service Notice 1412, January 2011
[25] Internal Revenue Service Publication 4873, July 2010
[26] S. 3934; 111th Congress, September 29, 2010

Legislation proposed in the U.S. House of Representatives would allow any taxpayer who has a qualified oil-spill loss to use a federal 5-year net operating loss carryback for federal tax purposes.[27] Under current law, the net operating loss carryback period allows businesses to amend tax returns from the previous 2 years to account for losses and receive a refund for past taxes paid.

The Senate legisalation sought to enact law that would allow fishing and tourism-related businesses to carry back their losses from the oil spill for an additional 3 taxable years ("Gulf Coast net operating loss carryback").[28] The Gulf Coast net operating loss carryback would allow Gulf Coast fishing- and tourism-related businesses with $5 million or less in revenue to look back 5 years. Losses otherwise eligible for the carryback period would be reduced by any amounts the business receives from BP for lost profits and earning capacity.

Congress previously enacted a similar rule for businesses following Hurricane Katrina in 2005 and the Midwestern storms, tornadoes, and floods in 2008. Farming losses permanently qualify for a 5-year carryback period.

Effects

Though no specific bill is mentioned by this memorial, it does urge Congress to enact legislation which exempts from federal taxation as income, any claim payments arising from the oil spill. It also requests that such legislation recognize any fishing or tourism-related business which has a qualified oil-spill loss as eligible to use the federal 5-year net operating loss carryback for federal tax purposes.

Copies of the memorial are to be sent to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and to each member of the Florida delegation to the United States Congress.

The legislation also includes whereas clauses in order to support the memorial. The whereas clauses include:

WHEREAS, there was an explosion at the Deepwater Horizon oil rig the night of April 20, 2010, and

WHEREAS, the explosion caused hundreds of millions of gallons of oil to spill into the Gulf of Mexico and wash up on the coastlines of the five Gulf Coast states, and

WHEREAS, this man-made disaster has spoiled Florida's coastline and waterways and devastated its fishing and tourism industries, and

WHEREAS, this man-made disaster has directly resulted in the loss of jobs and business for Floridians, and

WHEREAS, in June 2010, a preliminarily study by the University of Central Florida predicted job losses of 195,000 and spending losses of $10.9 billion if Florida's 23 counties along the Gulf Coast lose 50 percent of their tourism and leisure jobs and spending, and

WHEREAS, that preliminary study also predicted job losses of 39,000 and spending losses of $2 billion if those same counties lose 10 percent of their tourism and leisure jobs and spending, and

WHEREAS, under the Oil Pollution Act of 1990 and other applicable laws, BP has been designated as a responsible party and is accountable for processing and paying all costs and applicable damages incurred by individuals, businesses, the state, and local governments as a result of the disaster, and

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[27] H.R. 5699; 111th Congress, July 1, 2010

[28] Senator Nelson introduced an amendment ot H.R. 4213 to achieve this purpose; see also, S. 3934; 111th Congress, September 29, 2010

WHEREAS, in late August, a neutral fund administrator took over claims for costs and damages incurred as a result of the oil discharges due to the Deepwater Horizon oil disaster through the Gulf Coast Claims Facility, to be paid from an escrow account to which BP has agreed to contribute $20 billion over a 4-year period, and

WHEREAS, the Gulf Coast Claims Facility evaluates claims for removal and clean-up costs, damage to real or personal property, lost earnings or profits, loss of subsistence use of natural resources, or physical injury or death, and

WHEREAS, the Internal Revenue Service has determined that claims paid for lost wages, income, and profits, as well as claims paid for certain property damage, are subject to federal income tax…

B. SECTION DIRECTORY:

Not Applicable

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable

2. Other:

   None

B. RULE-MAKING AUTHORITY:

Not Applicable

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES