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R STREET SHORTS NO. 2

November 2012

THE FIVE "DON'TS"

- Don't raise taxes
- Don't dismantle the sequester
- Don't pass half-baked tax reform
- Don't pass a long-term Farm Bill
- Don't pass harmful Internet sales tax collection legislation

THE FIVE "DOS"

- Do pursue specific defense spending reductions to better target resources
- Do raise the credit union member business lending cap
- Do pass the Renewable Fuel Standard Flexibility Act
- Do pass the Wireless Tax Fairness Act
- Do pass the Mobile Workforce Income Tax Simplification Act

THE "DOS AND DON'TS" OF THE FISCAL CLIFF

By Andrew Moylan

With the end of the year fast approaching, the conversation about how Congress should address the "fiscal cliff" is heating up. If Washington fails to act, the New Year will bring with it dramatically higher taxes that could threaten a weak economic recovery.

In order to reduce the potential negative impact on the economy, Congress is in negotiations on a slate of tax and spending reforms that most observers consider a "must-pass" piece of legislation before the end of the year. The must-pass nature of the package has attracted dozens of special interests seeking to attach their favorite language to the proverbial last-train-out-of-town. Attaching it to the fiscal cliff bill would ensure that virtually any provision would be shielded from debate on its merits, overshadowed by trillions of dollars in changes to taxes, spending, and future deficits.

Here are five "dos" and five "don'ts" for Congress, starting with the policies they should resist including in any package.

DON'T RAISE TAXES

A simple proposition, fully consistent with principles advocated by essentially the entire conservative movement, is that Congress should not hike taxes. Current law provides for hikes in marginal income tax rates, investment taxes (particularly on dividends, on which the top rate will rise above 43 percent), and payroll taxes, among many others. Congress should stop these tax increases and instead focus on reforming spending to better live within its means.

It should also avoid eliminating credits and deductions without commensurate and fully offsetting reductions to marginal rates. While there are dozens of provisions deserving of serious scrutiny and potential elimination, that process should not be used as a way to scare up more money for Washington politicians.

DON'T DISMANTLE THE SEQUESTER

Congress should maintain the automatic spending restraint built into last year's Budget Control Act, for both defense and non-defense programs. Earlier this month, 22 conservative groups signed a letter to Congress[1] to send the message that the sequester "would represent merely a mod-

1. National Taxpayers Union, "An Open Letter to Congress: Respect the Sequester's Goals," November8, 2012. http://www.ntu.org/news-and-issues/l12-11-8-sequester-coalition-letter-final.pdf

est first step toward fixing our debt crisis." After the failure of last year's so-called "supercommittee" process, it is the only thing that will ensure that Congress lives up to at least part of its Budget Control Act commitment to address our debt and deficit problems.

In particular, Congress should resist the urge to shield the Pentagon budget from the scrutiny that it deserves. As the largest share of discretionary spending, the U.S. Department of Defense is home to huge amounts of waste and inefficiency that have long gone unchallenged. While a strong national defense is vital, there is nothing conservative about wasting money or conflating a program's total funding with its effectiveness. The sequester is imperfect, but it is a necessary element in encouraging defense spending reform.

DON'T PASS ILL-CONCEIVED TAX REFORM

While a complete overhaul of our nation's tax code is long overdue, the lame duck session is the wrong legislative window in which to conduct it. The frenzied nature of an end-of-year session does not lend itself to the careful contemplation required for successful fundamental tax reform. That process would be better conducted throughout 2013 so that Congress can spend more time considering its options. In addition, if a process is established by which tax reform will be conducted next year, it should avoid doing so under ill-fitting or restrictive rules like some of those ensconced in budget reconciliation.

DON'T PASS A LONG-TERM FARM BILL

Fiscal cliff legislation is likewise the wrong vehicle for a food and farm welfare bill that spends just shy of $1 trillion over the next decade. A bill that spends as much as the Affordable Care Act deserves significant time for committee hearings, floor debates, and a full and open amendment process, so that each chamber has opportunities to pursue additional reforms to bloated farm subsidy programs. An end-of-year package would render such a robust process impossible, as 13 prominent fiscal conservative organizations underscored in a joint letter[2] earlier this month.

Republican leaders in the House of Representatives committed to conduct the chamber's business in a more open and transparent way than their predecessors in both parties. Including in a fiscal cliff package a $1 trillion long-term Farm Bill that hasn't been subject to debate and amendment would be a sure sign that those commitments were hollow.

DON'T PASS MISGUIDED INTERNET SALES TAX COLLECTION LEGISLATION

Congress should reject any attempts to attach controversial Internet sales tax collection legislation to a fiscal cliff package. Bills like the Marketplace Fairness Act in the Senate and the Marketplace Equity Act in the House dramatically undermine bedrock taxpayer protection principles by allowing states to extend their tax authority to businesses located outside their borders. They also countenance a decidedly unlevel playing field between brick-and-mortar and remote retail sales, where the rules and requirements for online sales are enormously more complicated and expensive than those for traditional sales.

Backed by a multi-million dollar public relations campaign, supporters of these bills have been desperately trying to insert their legislation into year-end discussions. Conservatives should oppose those efforts because they are profoundly bad policy and because controversial legislation that couldn't otherwise pass through regular order is inappropriate for fiscal cliff negotiations.

DO PURSUE SPECIFIC DEFENSE SPENDING CUTS

While Congress should resist efforts to reduce or eliminate the total savings associated with the sequester, it could instead endeavor to identify specific reductions to wasteful weapons programs and other unnecessary costs in the Department of Defense as something of a middle ground. Many conservatives have expressed consternation about reducing the rate of growth in the Pentagon's budget, but the fiscal cliff could provide an opportunity to address the well-documented low-hanging fruit of waste and mismanagement identified by watchdogs and members of Congress. Such a plan would substitute targeted spending cuts for the indiscriminate reductions associated with the sequester.

Sen. Tom Coburn, R-Okla., recently highlighted nearly $68 billion in non-essential spending on things like grocery stores[3]. Taxpayers for Common Sense identified more than $670 billion in reforms to national security spending[4]. The National Taxpayers Union pointed out nearly $450 billion in ineffective expenditures[5]. From these and many other reports, Congress could craft a package of targeted reductions that would ensure that the sequester is focused on tackling lower-priority expenditures first.

DO RAISE THE CREDIT UNION MEMBER

2. R Street, "An Open Letter to the House: No Farm Bill in the Lame Duck," November 13, 2012. http://rstreet.org/wp-content/uploads/2012/11/L12-11-13-No-Farm-Bill-in-Lame-Duck.pdf
3. Sen. Tom Coburn, "Department OF EVERYTHING," November 2012. http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File_id=00783b5a-f0fe-4f80-90d6-019695e52d2d
4. Taxpayers for Common Sense, "Sliding Past Sequestration," October 2012. http://www.taxpayer.net/user_uploads/file/FederalBudget/2012/TCS_Budget_Cuts_SlidingPastSequestration_October1a.pdf
5. U.S. PIRG, "Toward Common Ground," September 2011. http://www.ntu.org/news-and-issues/budget-spending/uspirg_toward_common_ground.pdf

BUSINESS LENDING CAP

Two companion bills in Congress – S. 2231, sponsored by Sen. Mark Udall, D-Colo., and H.R. 1418, sponsored by Rep. Ed Royce, R-Calif. – would raise the current cap on credit union member business lending from its current 12.25 percent of assets to as much as 27.5 percent. As R Street wrote in a recent study[6], this common sense proposal could free up as much as $13 billion of capital, much of which would be accessed in relatively small amounts by small businesses, without costing taxpayers a dime, by simply eliminating a regulatory barrier.

DO PASS THE RENEWABLE FUEL STANDARD FLEXIBILITY ACT

Passing H.R. 3097 or S. 3428, the Renewable Fuel Standard Flexibility Act introduced by Rep. Bob Goodlatte, R-Va., and Sen. Ben Cardin. D-Md., respectively, would help to rationalize America's damaging policy that requires we burn large percentages of our food supply each year. The current Renewable Fuel Standard forces us to burn 13.2 billion gallons of biofuels, mostly corn-based ethanol, despite the fact that this year's severe drought dwindled crop yields substantially. H.R. 3097 would allow the RFS requirement to better reflect actual corn supplies, easing its strictures in bad crop years.

After the Environmental Protection Agency rejected a request to waive the RFS[7] in the face of tight corn supplies earlier this month, it is clear that Congress will have to take action to ensure that the negative impacts of the standard are mitigated moving forward.

DO PASS THE WIRELESS TAX FAIRNESS ACT

The "Wireless Tax Fairness Act," introduced in the House by Rep. Zoe Lofgren, D-Calif., as H.R. 1002 and in the Senate by Sen. Ron Wyden, D-Ore., as S. 543, would prevent states from imposing discriminatory taxes on wireless services. This common sense bill passed the House unanimously on a voice vote earlier this year and simply awaits action in the Senate, where it enjoys bipartisan support.

Despite being touted as a vital technology upon which our economic future will be built, many states levy punitive tax rates on wireless service. All but two have discriminatory rates that are higher for wireless service than they are for ordinary services, and fully 26 states levy double-digit rates.

The Wireless Tax Fairness Act would put a stop to those practices for five years, allowing states to reform their communications tax systems.

DO PASS THE MOBILE WORKFORCE INCOME TAX SIMPLIFICATION ACT

Introduced as H.R. 1864 by Rep. Howard Coble, R-N.C., and as S. 3485 by Sen. Sherrod Brown, D-Ohio, the Mobile Workforce Income Tax Simplification Act is a no-brainer piece of legislation that would establish ground rules under which states can require individuals to withhold and file income taxes. The bill sets out a logical standard that a state can only demand income tax filing from employees that reside within its borders or work there for more than 30 days per year. This would prevent abusive tactics targeting employees that travel and only work in a state for a few days with burdensome income tax filing obligations.

Like the Wireless Tax Fairness Act, the Mobile Workforce bill passed the House unanimously on a voice vote earlier this year and awaits Senate action.

CONCLUSION

A bill on which passage is a foregone conclusion provides Congress with both temptations to enact bad policy and opportunities to make positive changes. By following these straightforward guidelines, Congress can avoid obvious mistakes while ushering to passage several non-controversial and bipartisan pieces of legislation.

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6. R Street, "Small business credit still a problem," September 2009. http://rstreet.org/wp-content/uploads/2012/09/small-business-credit.pdf
7. Marlo Lewis, "The EPA vs. State Economies," National Review Online, November 19, 2012. http://www.nationalreview.com/blogs/print/333604