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AALU Bulletin No: 10-75

July 21, 2010

Subject: **Senators Kyl and Lincoln Introduce “Motion to Commit” H.R. 5297 (the “Small Business/Jobs” Bill) to the Senate Finance Committee With Phased-In \$5 Million Estate Tax Exemption and 35% Rate**

Major References: [*Motion to Commit H.R. 5297 to Senate Finance Committee \(July 14, 2010\)*](#)

Prior AALU Washington Reports: 10-68; 09-118

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In our Bulletins Nos. 10-60 and 10-68, we reported on the progress of H.R. 5486 (the “Small Business Jobs Tax Relief Act of 2010”) and H.R. 5297 (“Small Business Lending Fund Act of 2010”), which were moved simultaneously in the House and introduced in the Senate as a substitute amendment to H.R. 5297 (the “Small Business Jobs and Credit Act of 2010”). The principal focus of those Bulletins was to report on the GRAT provisions of the bills and to note the absence of the GRAT provision in the Senate substitute amendment.

Now, Sens. Kyl(R-AZ) and Lincoln (D-AK) have moved to commit H.R. 5297 to the Committee on Finance, with instructions regarding estate tax provisions to be included in the bill.

The text of the motion is as follows:

“Mr. Kyl (for himself and Mrs. Lincoln) moves to commit H.R. 5297 to the Committee on Finance with instructions to report the same back to the Senate within 1 day with changes to provide a 35 percent estate tax rate phased in over 10 years, a \$5,000,000 exemption amount phased in over 10 years and indexed for inflation, a stepped up basis for inherited assets, and, for decedents dying in 2010, an election under which no estate tax would be imposed and assets acquired from the decedent would receive a modified carryover basis. The Committee is further instructed to offset the difference in revenue loss between a permanent 45 percent estate tax rate with a \$3,500,000 exemption amount and the proposed changes described in the preceding sentence.”

The proposed 10-year phase-in of the higher exemption, from \$3.5 million to \$5 million, followed by indexing, and the phase-down of the top tax rate from 45% to 35% (approaches which have informally been propounded by Senator Kyl over a number of months going back at least to early 2009) are similar to part of H.R. 3905 (“Estate Tax Relief Act of 2009”) which was introduced by Rep. Berkeley (D-NV) on October 21, 2009. That bill was blocked in the House Rules Committee by a vote of 7-1. (*See* our Bulletin No. 09-118.)

The Kyl-Lincoln motion comes with no specific revenue offsets, and faces a serious obstacle in the “Pay-Go” legislation (P.L. 111-139), which was enacted in this Congress.

As you know, AALU has long publicly supported the adoption of a 3,500,000 lifetime exemption and a 45% estate tax marginal rate in lieu of the Kyl \$5,000,000/35% standard. At the moment neither proposal has received sufficient political support for enactment, with not much anticipation that the deadlock can be resolved before November's election -- if then. More recently, Senator DeMint (R-SC) has introduced yet another estate tax based amendment to H.R. 5297. This amendment would ultimately repeal that tax entirely -- a result which, at this point, would seem even less likely than current adoption of either of the above alternatives addressing the lifetime exemption and marginal rate.

Any AALU member who wishes to obtain a copy of the Motion to Commit H.R. 5297 may do so through the following means: (1) use hyperlink above next to “Major References,” (2) log onto the AALU website at www.aalu.org, enter the *Member Portal* and select *Current Washington Report* for linkage to source material or (3) email Anthony Raglani at raglani@aalu.org and include a reference to this *Washington Report*.

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