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AALU Bulletin No: 10-94

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Subject: **Minority Leader McConnell (R-KY) and Sen. Grassley (R-IA) Introduce Bill Including \$5 Million Estate Tax Exemption With 35% Marginal Rate, Reunification of the Estate and Gift Taxes, Portability, and Opt In Provision for 2010**

Major References: [*S. 3773 "Tax Hike Prevention Act of 2010" \(September 13, 2010\)*](#)

Prior AALU Washington Reports: 10-75; 09-118

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In a summary released by Sen. McConnell, the estate tax provisions of the bill (S. 3773) are described as being "comprised of the bipartisan Lincoln-Kyl estate tax reform proposal." (See our Bulletin No. 10-75.) As such, "it provides for a 35 percent estate tax rate; a unified estate/gift exemption amount of \$5 million (per individual), indexed for inflation; and a stepped-up basis for inherited assets. For the year 2010, estates can elect to retain the zero rate and carry-over basis of current law or opt into the Lincoln-Kyl structure."

With reference to the bill's estate tax provisions genesis in the Kyl (R-AZ)-Lincoln (D-AR) proposal, we note that many of the provisions of S. 3773 also are similar to parts of H.R. 3905 ("Estate Tax Relief Act of 2009") which was introduced in the House of Representatives 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.)

In addition to the estate tax provisions, S. 3773 would:

- Preserve the current 10%, 15%, 25%, 28%, 33%, and 35% income tax rates, rather than allowing the top rate to rise to 39.6%;
- Eliminate the planned 2011 phase-out of the personal exemption and the limitation on itemized deductions;
- Continue marriage penalty relief and the progressive child tax credit at \$1000 per child;
- “Patch” the individual Alternative Minimum Tax (AMT), and increased the AMT exemption amount so that only 3.9 million families will be subject to it in 2010 – and beyond; and
- Preserve the tax on capital gains and dividends at 15%.

AALU continues to advocate for permanent and sustainable reform at a \$2.5-3.5 million exemption with a 45% rate, and also supports reunification of the estate and gift taxes, portability of the exemption between spouses, and indexing for inflation. These last three items are included in S. 3773, although they are coupled with the higher exemption amount and lower rate.

As noted in CEO David Stertzger’s recent letter, AALU continues to believe that, if Congress does act this year, it will probably wait until after the mid-term elections to do so and will likely reinstate and extend the estate tax at \$3.5m/45% for one to two years. AALU also believes the tax will not be retroactive, but the estates of taxpayers who die in 2010 could be provided with the option - as appears in S. 3773 - to elect to pay their estate taxes under 2009 law (i.e., with an estate tax liability and an income tax stepped up basis) – or – under 2010 law, with no estate tax liability, but a carryover basis.

We will continue to monitor and report on S. 3773, which has 25 Republican co-sponsors as of this date.

Any AALU member who wishes to obtain a copy of *S. 3773* 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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