



WASHINGTON REPORT

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Subject: **A Closer Look at Baucus Bill Particularly As It Attempts To Freeze 2009 Estate Tax & Reunify Gift and Estate Tax Exemptions**

Major References: [S. 722, "Taxpayer Certainty and Relief Act of 2009," March 26, 2009](#)

Prior AALU Washington Reports: [09-36](#)

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As reported in our Bulletin No. 09-36, Senate Finance Committee Chairman Max Baucus (D-MT) introduced legislation (S. 722) on March 26 that would make permanent many of the tax cuts enacted in 2001, particularly those devoted to the estate and gift taxes as well as those applicable primarily to the income tax as imposed on individuals. The bill would make permanent the estate tax levels (\$3.5 million exemption/45% top rate) in effect in 2009; index the exemption for inflation; provide so-called "portability"; and would unify estate and gift tax exemption levels at \$3.5 million. This Washington Report contains further information, based on the legislative text, about the broader bill, including its estate and gift tax provisions.

As noted above, the bill would maintain the current estate tax exemption of \$3.5 million, which would be indexed for inflation, in increments of \$10,000, in years following 2010. The amount of the gift tax exemption would be "reunified" with the basic \$3.5 million amount of the estate tax exemption plus the inflation adjustment. Reunification has been a goal of AALU's because it would greatly simplify estate planning and specifically help clients by increasing the effectiveness of life insurance trusts and removing an artificial and harmful barrier that discourages earlier intergenerational transfers. The fact that S.722 included the reunification provision (and appreciably increased the chances for enactment of that provision)

can be seen as a recognition of and a testament to AALU's forcefully leading the efforts to place this unification subject on the Congressional agenda.

The top marginal estate and gift tax rate would be frozen at 45 percent, which is the rate currently in effect.

The bill also would make the unified credit/exemption “portable” by the decedent's surviving spouse. Portability would permit the unified credit effective exemption amount that remains unused, as of the death of a spouse (or several spouses) (the “deceased spousal unused exclusion amount”), to be utilized by the surviving spouse, in addition to such surviving spouse’s own exemption amount. The aggregate amount of unused exemption equivalent (the “aggregate deceased spousal unused exclusion amount”) that would be available for use by a surviving spouse from all predeceased spouses could not exceed the basic exclusion amount in effect at any given time (e.g., \$7 million in 2010). To claim the deceased spousal exclusion amount, the estate of the deceased spouse would have to file a federal estate tax return and make an irrevocable election to do so. The statute of limitations for examination of the estate of the deceased spouse would also be extended.

The aggregate reduction in fair market value of “special use” property available to certain farm and other real property used in a trade or business would be increased to \$3.5 million (which would be adjusted for inflation after 2010) so that the reduction would match the amount of the federal estate and gift tax exemption going forward.

Other significant features of the bill include the following proposed changes which, for the most part, are otherwise scheduled to “sunset” in 2011:

- Increase the exemption from the alternative minimum tax. The exemption amount for taxable years beginning after 2009 would be increased to \$70,950 for married taxpayers filing jointly (or half that amount for married taxpayers filing separately) and surviving spouses, and \$46,700 for single taxpayers. Both amounts would be indexed for inflation going forward.
- Install the 10, 25, and 28 percent individual tax rates, as established by the Economic Growth and Tax Relief Reconciliation Act of 2001.
- Give families up to \$1,000 in the child tax credit income eligibility threshold for every child under age 17.
- Reduce tax rates on capital gains and dividends for taxpayers in the 10, 15, 25, and 28 percent tax brackets, as established in the Jobs and Growth Tax Relief Act of 2003 and extended by the Tax Increase Prevention and Reconciliation Act of 2005.
- Provide that married couples would not be taxed more severely filing jointly than they would be as two single persons filing separately.
- Provide a 45 percent credit rate for the refundable earned income tax credit for lower wage taxpayers with three or more children, as passed in American Recovery and Reinvestment Act of 2009.
- Expand assistance for families that adopt a child by providing a \$10,000 tax credit per eligible child.
- Install the 35 percent credit rate for child care expenses up to \$3,000 for one child and \$6,000 for two or more children.

The bill also would repeal the sunset on expansion of the dependent care credit and adoption credit (and adoption assistance programs).

As noted in our prior Bulletin on this proposed legislation (see our Bulletin No. 09-36), there is considerable work to be done, but its introduction represents significant progress toward AALU's goal of reasonable, sustainable estate and gift tax reform that will enable clients to plan with certainty. We will continue to monitor and report on S. 722 and other proposals, as they arise, with respect to the estate and gift taxes.

Any AALU member who wishes to obtain a copy of S. 722 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 and 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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