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H.R. 5486—Small Business Jobs Tax Relief Act

**H.R. 5486—Small Business Jobs Tax Relief Act
 (Rep. Levin, D-MI)**

Order of Business: The House will consider H.R. 5486 on Tuesday, June 15, 2010, under a closed rule ([H.Res. 1436](#)). The rule waives all points of order against consideration of the bill except those arising under clause 9 (earmark rule) and 10 (“PAYGO”) of rule XXI. The rule provides one hour of debate equally divided between the chair and minority ranking member of the Ways and Means Committee.

The same rule also provides for consideration of H.R. 5297 (to be analyzed in a separate LB) under a structured rule. The rule provides for 30 minutes of debate equally divided between the chair and minority ranking member of the House Financial Services Committee, and 30 minutes equally divided and controlled by the chair and ranking member of the Committee on Small Business. The rule waives all points of order against consideration of the bill except those arising under clause 9 (earmark rule) and 10 (“PAYGO”) of rule XXI. The rule would substitute the text of H.R. 5297 with an amendment in the nature of a substitute, and would also make in order 17 other amendments.

The rule would further direct the Clerk to add the text of H.R. 5486 to the text of H.R. 5297 in engrossment of the bill (upon passage of both).

Finally, the rule waives the two-thirds majority requirement for same day rules through June 18, 2010 for any rule providing for consideration of “extenders” legislation. The rule also provides for consideration of legislation under suspension of the rules through June 18, 2010.

Summary:

COST TO TAXPAYERS: The legislation consists of \$3.6 billion of tax cut provisions, and \$7.1 billion of tax increase provisions. On net, the bill increases tax revenues by \$3.6 billion.

TAX CUT PROVISIONS

Exclusion of Capital Gains on Small Business Stock: The legislation eliminates the capital gains tax for qualifying small business stock (corporations with gross assets of \$50 million or less) between March 15, 2010 and the end of 2011. Under current law the exclusion for these companies is 75% through the end of 2010, and 50% thereafter. *This provision would save taxpayers \$1.96 billion over eleven years.*

Nonrecourse Debt: The legislation would allow small business investment company nonrecourse debt to be deductible in the case of property used or held by the company. *This provision would save taxpayers \$942 million over eleven years.*

Small Business Penalty Relief: The legislation reduces the penalties on small businesses for failing to disclose investments in “listed” tax shelter transactions. Many small businesses inadvertently violate this disclosure requirement and face penalties of \$100,000 for individuals and \$200,000 for businesses (per violation). This provision would change that penalty structure to the lesser of the penalty under current law or 75% of the tax savings achieved from the transaction. *This provision would save taxpayers \$176 million over eleven years.*

Higher Deduction of Small Business Start-Up Expenses: The legislation increases the amount that small businesses may expense (immediately deduct) for start-up expenses from \$5,000 to \$20,000, and increases the phase-out threshold from \$50,000 to \$75,000. *This provision would save taxpayers \$508 million over eleven years.*

TAX INCREASE PROVISIONS

Minimum Ten-Year Term for Grantor Retained Authority Trusts (“GRATS”): The intent of this provision is to increase tax liability under the gift tax. The gift tax is a double tax on income (since the same money was also previously taxed as it was earned), and many conservatives have fought to eliminate the tax altogether. Specifically, the provision would require a ten-year term for GRATs, in an attempt to make it harder to use these type of trusts in order to avoid the gift tax. *Tax increase of \$5.3 billion over ten years.*

Crude Tall Oil Ineligible for Cellulosic Biofuel Producer Credit: The provision would eliminate eligibility of the \$1.01 per gallon tax credit for production of biofuel from cellulosic feedstocks in the case of fuels that have an acid number greater than 25. *Tax increase of \$1.8 billion over ten years.*

Corporate Tax Timing Shift: This provision would increase the estimated tax payments that certain corporations must remit to the federal government. This legislation would increase the payment due for the third quarter of calendar-year 2015 by 7.75 percentage points. The payment due for the fourth quarter of calendar-year 2015 would be reduced accordingly. This provision is merely a revenue timing shift, a gimmick used to comply with the House’s PAYGO rule, yet would have real-world implications, as it forces certain companies to pay more of their tax payments earlier (\$5.0 billion). Given the time value of money, earlier payments harm the bottom line of employers.

Potential Conservative Concern: Some conservatives may be concerned that the legislation increases taxes by \$3.6 billion over ten years in a supposed attempt to facilitate the passage of H.R. 5297, the \$33 billion bailout bill, “TARP Jr.” The legislation also contains a harmful corporate estimate tax payment shift gimmick.

Committee Action: The legislation was introduced on June 9, 2010. It was referred to the House Ways and Means Committee on the same day, which took no further action.

Administration Position: No Statement of Administration Policy (SAP) is available at press time.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the legislation increases taxes by a total of \$3.6 billion over ten years.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No committee report citing any such mandates is available.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No committee report citing compliance with the House earmark rule is available.

Constitutional Authority: No committee report citing constitutional authority is available.

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