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**AMERICAN RECOVERY AND REINVESTMENT  
TAX ACT OF 2009**

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# AMERICAN RECOVERY AND REINVESTMENT TAX ACT OF 2009

## Summary of Tax Provisions

On February 17, 2009 President Obama signed the American Recovery and Reinvestment Tax Act of 2009 into law. This article summarizes many of the more significant provisions of the legislation, many of which are effective as of the date of enactment (which we believe will be February 17, 2009) and identifies the provisions of the Internal Revenue Code affected by the legislation.

### TAX RELIEF FOR INDIVIDUALS AND FAMILIES

#### *Act Section 1001: Making Work Pay Credit*

The American Recovery and Reinvestment Tax Act of 2009 ("ARRTA" or the "Act") creates the Making Work Pay Credit, which provides eligible individuals with a tax credit of \$400 (\$800 in the case of a joint return). However, if the taxpayer's earned income is less than \$6,451.62 (\$12,903.24 in the case of a joint return) the Making Work Pay Credit is limited to 6.2 % of the taxpayer's earned income. Individuals eligible for the Credit include any individual with earned income other than (1) a nonresident alien, (2) an individual with respect to whom another individual may claim a dependency deduction, or (3) an estate or trust.

For purposes of the Making Work Pay Credit, earned income is defined in the same manner as it is for the Earned Income Tax Credit, with two distinctions. First, earned income for purposes of the Making Work Pay Credit does not include net earnings from self-employment which are not taken into account in computing taxable income. Second, the Credit includes combat pay. The Credit is phased-out at a rate of 2% of the individual's modified adjusted gross income in excess of \$75,000 (\$150,000 in the case of a joint return). An individual's modified adjusted gross income, for purposes of calculating the Credit, is the individual's adjusted gross income increased by any amount excluded from gross income under Sections 911, 931, or 933 of the Internal Revenue Code of 1986 as amended ("Code").

Once the amount of the Credit has been computed, it is reduced by any amount the taxpayer receives under Section 2201 of the Act (addressing economic recovery payments to recipients of Social Security, Supplemental Security Income, Railroad Retirement Benefits, and Veterans Disability Compensation or Pension benefits) or Section 2202 (addressing special credits received for certain government retirees).

*Effective Date:* Taxable years beginning after December 31, 2008.

*Sunset:* Taxable years beginning after December 31, 2010.

*Code Sections Affected:* Section 36A added; Section 6211(b)(4)(A) amended; Section 1324(b)(2) amended.

***Act Section 1002: Temporary Increase in Earned Income Tax Credit***

The Act increases the Earned Income Tax Credit (the "EITC") percentage for taxpayers with three or more qualifying children from 40% to 45% of earned income. This increase is only available for taxable years beginning in 2009 and 2010. The phase-out for taxpayers qualifying under this provision, however, remains the same as under prior law. As a result, the maximum amount of the EITC for families with three or more qualifying children remains at \$5,656.50.

Under Code Section 32(b)(2)(B) the EITC is phased out as the taxpayer's earned income for a particular tax year increases. As a relief provision for married taxpayers filing joint returns, the Code increases the threshold at which the phase-out begins by \$3,000 for taxable years beginning after 2007. The Act increases the \$3,000 amount to \$5,000 for 2009 and 2010. In addition, the Act provides an inflation adjustment for the \$5,000 amount beginning in 2010.

*Effective Date:* Taxable years beginning after December 31, 2008.

*Sunset:* Taxable years beginning after December 31, 2010.

*Code Sections Affected:* New Section 32(b)(3) added.

***Act Section 1003: Temporary Increase of Refundable Portion of Child Credit***

Code Section 25 allows individuals to claim a maximum Child Tax Credit (the "CTC") of \$1,000 for each qualifying child under age 17. A portion of the CTC may be refundable if the taxpayer's earned income is less than \$10,000. For 2009 and 2010, the Act reduces the \$10,000 amount to \$3,000.

*Effective Date:* Taxable years beginning after December 31, 2008.

*Sunset:* Taxable years beginning after December 31, 2010.

*Code Sections Affected:* Section 24(d)(4).

***Act Section 1004: American Opportunity Tax Credit***

The Act creates the American Opportunity Tax Credit which is, in effect, an alteration of the Hope Scholarship Credit for taxable years 2009 and 2010. The provision makes several changes to the Hope Scholarship Credit (the "HSC").

- The amount of the HSC is increased by doubling the allowance for qualified tuition and related expenses from \$2,000 to \$4,000.

- The computation of the HSC is changed so that the amount which may be claimed in any taxable year is 100% of the “qualified tuition and related expenses” paid by the taxpayer during the taxable year up to \$2,000 plus 25% of such expenses in excess of \$2,000 but not exceeding \$4,000.
- The number of years in which the HSC may be taken for post-secondary education is increased from 2 years to 4 years.
- Required course materials are expressly included within the term “qualified tuition and related expenses.”
- Adjusted gross income limits above which the HSC is phased-out have been increased by raising the denominator within the limitations formula from \$40,000 to \$80,000 (\$80,000-\$160,000 in the case of a joint return).
- For taxpayers subject to the Alternative Minimum Tax, special limitations are imposed.
- 40% of the Hope Scholarship Credit has been made refundable if the taxpayer is *not* a child to whom the “kiddie tax” of Code Section 1(g) applies.

*Effective Date:* Taxable years beginning after December 31, 2008.

*Sunset:* Taxable years beginning after December 31, 2010. The amendment to Section 24(b)(3)(B) is subject to the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001.

*Code Sections Affected:* Prior Section 25A(i) has been renamed 25A(j) and new Section 25A(i) has been added; Section 24(b)(3)(B) amended; Section 25(e)(1)(C)(ii) amended; Section 26(a)(1) amended; Section 25B(g)(2) amended; Section 904(i) amended; Section 1400C(d)(2) amended; Section 1324(b)(2) amended.

***Act Section 1005: Computer Technology and Equipment Allowed as a Qualified Higher Education Expense for Section 529 Accounts in 2009 and 2010.***

ARRTA amends Section 529 of the Code so that the term “qualified higher education expenses” includes “expenses paid or incurred in 2009 and 2010 for the purchase of any computer technology or equipment...or Internet access and related services if such technology, equipment, or services are to be used by the beneficiary and the beneficiary’s family during any of the years the beneficiary is enrolled at an eligible educational institution.” The Act expressly excludes from the term “qualified higher education expenses” those expenses for “computer software designed for sports, games, or hobbies unless the software is predominantly educational in nature.”

*Effective Date:* Effective for expenses paid or incurred after December 31, 2008.

*Sunset:* Ineffective for expenses incurred after December 31, 2010.

*Code Sections Affected:* Section 529(e)(3)(A) amended.

***Act Section 1006: Extension of and Increase in First-Time Homebuyer Credit; Waiver of Requirement to Repay***

ARRTA extends the sunset of the Code Section 36 First-Time Homebuyer Credit (the "FTHC") from July 1, 2009 to December 1, 2009. The Act also increases the maximum FTHC allowed from \$7,500 to \$8,000 (from \$3,750 to \$4,000 for married taxpayers filing separately) and waives recapture for those taxpayers purchasing a principal residence after December 31, 2008 but before December 1, 2009. Taxpayers who sell their principal residence within thirty-six months of the date of purchase will, however, be subject to immediate acceleration and recapture of the Credit. Additionally, the Act removes the prohibition against purchases financed by mortgage revenue bonds.

The Act also coordinates the first-time homebuyer credit for the District of Columbia provided by Code Section 1400C (the "D.C. Homebuyer Credit") with the FTHC under Code Section 36. Under the Act, the D.C. Homebuyer Credit is disallowed for taxpayers who purchase a residence after December 31, 2008 and before December 1, 2009 who claim the FTHC.

*Effective Date:* Effective for residences purchased after December 31, 2008.

*Sunset:* Ineffective for residences purchased after December 1, 2009.

*Code Sections Affected:* Section 36 amended; Section 1400C amended.

***Act Section 1007: Suspension of Tax on Portion of Unemployment Compensation***

The Act allows taxpayers to exclude up to \$2,400 of unemployment compensation collected during 2009 from gross income.

*Effective Date:* Effective for unemployment compensation collected after December 31, 2008.

*Sunset:* Ineffective for unemployment compensation collected during any taxable year beginning after December 31, 2009.

*Code Sections Affected:* Section 85(c) added.

***Act Section 1008: Additional Deduction for State Sales Tax and Excise Tax on the Purchase of Certain Motor Vehicles***

ARRTA creates a new deduction for “qualified motor vehicle taxes”, which include state or local sales and excise taxes imposed on the purchase of certain new passenger automobiles, light trucks, motorcycles, and motor homes. Passenger automobiles and light trucks must be treated as a motor vehicle for purposes of Title II of the Clean Air Act and have a weight rating of not more than 8,500 pounds. Motorcycles claiming the deduction must similarly have a weight rating of not more than 8,500 pounds. The deduction is limited to taxes imposed on the first \$49,500 of the vehicle’s purchase price and is reduced by a fraction based upon the taxpayer’s modified gross income over \$125,000 (\$250,000 in the case of a joint return).

The Act proscribes qualified motor vehicle taxes from being included in the cost of the vehicle purchased. Taxpayers electing under Code Section 164(b)(5) to deduct state and local sales taxes are also precluded from taking a deduction for qualified motor vehicle taxes.

The deduction allowed for qualified motor vehicle taxes may be taken by non-itemizers and is considered an addition to the basic standard deduction. The qualified motor vehicle tax may also be deducted in computing the Alternative Minimum Tax.

*Effective Date:* Effective for all purchases on or after the date of enactment in taxable years ending after such date.

*Code Sections Affected:* Section 164(a)(6) added; Section 164(b)(6) added; Section 63(c) amended; Section 56(b)(1)(E) amended.

**ALTERNATIVE MINIMUM TAX RELIEF**

***Act Section 1011: Extension of Alternative Minimum Tax Relief for Nonrefundable Personal Credits***

The Act provides an extension through 2009 of the Alternative Minimum Tax relief previously granted by Congress in the form of special rules for “nonrefundable personal credits” that had been set to expire at the end of 2008. These rules permit a taxpayer to reduce regular and alternative minimum tax liabilities by the amount of the Dependent Care Credit, the Credit for Elderly and Disabled, the Credit for Interest on Certain Home Mortgages, the Hope Scholarship and Lifetime Learning Credits, the Credit for Certain Nonbusiness Energy Property, and the D.C. First-time Homebuyer Credit). The Act extends the availability of these Credits for both regular and alternative minimum tax purposes through 2009.

*Effective Date:* Taxable years beginning after December 31, 2008.

*Sunset:* Taxable years beginning after December 31, 2009.



*Code Sections Affected:* Section 26(a)(2) amended.

***Act Section 1012: Extension of Increased Alternative Minimum Tax Exemption Amount***

The Act extends and increases the Alternative Minimum Tax exemption amounts set to expire at the end of 2008 through 2009. For a surviving spouse or those filing a joint return, the \$69,950 exemption for 2008 is raised to \$70,950 for 2009. For unmarried individuals and those who are not a surviving spouse, the \$46,200 exemption for 2008 is raised to \$46,700 for 2009.

*Effective Date:* Taxable years beginning after December 31, 2008.

*Sunset:* Taxable years beginning after December 31, 2009.

*Code Sections Affected:* Section 55(d) amended.

## **ENERGY INCENTIVES**

***Act Section 1101: Extension of Credit for Electricity Produced from Certain Renewable Resources***

Code Section 45 allows a tax credit for electricity produced from certain renewable resources. Code Section 45(d) generally requires facilities to be placed in service prior to January 1, 2009. The Act extends the period for installation for wind facilities which produce electricity through December 31, 2012 and the period for biomass, geothermal energy, solar energy, landfill gas, trash combustion, and qualified hydropower facilities through December 31, 2013. Additionally, the Act extends the installation period for marine and hydrokinetic renewable energy facilities through December 31, 2013.

*Effective Date:* Effective for property placed into service after the date of the enactment.

*Code Sections Affected:* Section 45(d) amended.

***Act Section 1102: Election of Investment Credit in Lieu of Production Credit***

The Act coordinates the relationship between tax credits available under Code Section 45 for electricity produced from certain renewable resources (the "Production Credit") and the Energy Credit under Code Section 48. Generally, the Energy Credit is more advantageous inasmuch as the taxpayer is allowed to apply a tax credit equal to 30% of the taxpayer's cost basis in qualifying energy property placed in service during the taxable year.

The Act allows taxpayers to claim the Energy Credit in lieu of the Production Credit for certain property. In order to do this, the taxpayer must make an irrevocable election to

treat certain depreciable tangible property which is part of a qualified investment credit facility as energy property under Code Section 48. Such an election will preclude any Production Credit for the property under Section 45. The Act defines qualified investment credit facilities to which the property must be associated as (1) wind facilities placed into service between January 1, 2009 and December 31, 2012 and (2) closed-loop biomass facilities, open-loop biomass facilities, geothermal or solar energy facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities placed into service between January 1, 2009 and December 31, 2013.

*Effective Date:* Effective for facilities placed into service after December 31, 2008.

*Code Sections Affected:* Section 48(a)(5) added.

***Act Section 1103: Repeal of Certain Limitations on Credit for Renewable Energy Property***

Code Section 48 provides a tax credit for certain property identified in the statute equal to 30% of the cost of such property in the year in which it is placed in service. Included among the types of qualifying energy property under Code Section 48 are qualified small wind energy property (wind turbines) described in Code Section 48. Prior law limited the Energy Credit for this type of asset to \$4,000.

The Act removes this cap and also removes the provisions of prior law which reduce the cost basis of the property for purposes of computing the Credit if the property is financed by subsidized energy financing or with proceeds from private activity bonds.

*Effective Date:* Taxable years beginning after December 31, 2008.

*Code Sections Affected:* Section 48(c)(4)(B) deleted; Section 48(a)(4) amended; Section 25C(e)(1) amended; Section 25D(e) amended; Section 48A(b)(2) amended; Section 48B(b)(2) amended.

***Act Section 1104: Coordination with Renewable Energy Grants***

Under the spending provisions of the Act, the Secretary of Energy is authorized to provide grants to persons who place in service certain facilities for the production of electricity, as well as certain micro-turbines, heat and power systems, and geothermal heat pump devices that qualify for the Energy Credit under Code Section 48 or Code Section 45. The Committee Reports accompanying the Act indicate that these grants are intended to “mimic the operation of the credit under section 48. For example, the amount of the grant is not includable in gross income. However, the basis of the property is reduced by 50% of the amount of the grant. In addition some or all of each grant is subject to recapture if the grant eligible property is disposed of by the grant recipient within five years of being placed in service.”

The Act denies taxpayers receiving Department of Energy grants for purchase of property qualifying for Energy Credits the benefit of those Credits. If Energy Credits were claimed for progress expenditures for construction of such property before receipt of the grant, those tax credits are recaptured.

*Code Sections Affected:* Section 48(d) added.

***Act Section 1121: Extension and Modification of Credit for Nonbusiness Energy Property***

Code Section 25C(c) allows individual taxpayers who make “qualified energy efficiency improvements” to their homes as defined in Code Section 25C(c) or expend amounts for “residential energy property” satisfying the definition of Code Section 25C(d) to claim a tax credit for the full amount of the residential energy property expenditures and 10% of the amount paid for qualified energy efficiency improvements.

The Act amends Code Section 25C(a) to increase the amount of the tax credit to 30% of the amounts a taxpayer pays for qualified energy efficiency improvements and expenditures for residential energy property qualifying under the statute. In addition the aggregate amount of tax credits which may be claimed over the lifetime of a taxpayer is increased from \$500 to \$1500. The Act also amends the energy efficiency standards for electric heat pumps, central air conditioners, water heaters, wood stoves, natural gas, propane, and oil furnaces and water heaters, exterior windows, doors and skylights, and installation materials. Finally, the sunset of the statute is extended by one year.

*Effective Date:* Taxable years beginning after December 31, 2008.

*Sunset:* Taxable years beginning after December 31, 2010.

*Code Sections Affected:* Sections 25C(a) and (b) replaced; Section 25C(c)(2) amended; Section 25C(d) amended; Section 25C(g)(2) amended.

***Act Section 1122: Modification of Credit for Residential Energy Efficient Property***

Existing law provides individual taxpayers with a tax credit under Code Section 25D equal to 30% of qualified solar electric property, qualified solar water heating property, and qualified fuel cell property expenditures made by a taxpayer during the year. The tax credit under Code Section 25D for qualified solar electric property and qualified solar water heating property expenditures was capped at \$2,000. The Act eliminates these caps entirely and similarly eliminates caps on the maximum expenditures eligible for credit in the case of dwellings occupied by more than one individual.

*Effective Date:* Taxable years beginning after December 31, 2008.

*Code Sections Affected:* Section 25D(b)(1) amended; Section 25D(e)(4) amended.

***Act Section 1123: Temporary Increase in Credit for Alternative Fuel Vehicle Refueling Property***

Code Section 30C allows a 30% tax credit for the cost of “qualified alternative fuel vehicle refueling property” which satisfies the definition of Code Section 30C(c) and which is used in a trade or business of a taxpayer or installed in the taxpayer’s principal residence.

In the case of property not relating to hydrogen, the Act increases the amount of the tax credit from 30% to 50% and allows the credit to be taken with respect to as much as \$50,000 of depreciable property and \$2,000 of non-depreciable assets. In the case of property relating to hydrogen, the credit remains at 30% but the amount of eligible property in any taxable year is increased from \$30,000 to \$200,000.

*Effective Date:* Taxable years beginning after December 31, 2008.

*Sunset:* Taxable years ending after December 31, 2010.

*Code Sections Affected:* Section 30C(e)(6) added.

***Act Section 1141: Credit for New Qualified Plug-In Electric Drive Motor Vehicles***

The Act amends Code Section 30D which provided a tax credit for “qualified plug-in electric drive motor vehicles” described in Code Section 30D(d) by limiting the maximum credit to \$7,500 regardless of vehicle weight. Prior law limited the number of vehicles qualifying for the tax credit to 250,000 for all manufacturers. The Act increases the vehicle limitation to 200,000 per manufacturer for vehicles sold after December 31, 2009.

*Effective Date:* Effective for vehicles acquired after December 31, 2009.

*Code Sections Affected:* Section 38D amended; Section 30B(d)(3)(D) amended; Section 38(b)(35) amended; Section 1016(a)(25) amended; Section 6501(m) amended.

***Act Section 1142: Credit for Certain Plug-In Electric Vehicles***

The Act creates a new 10% tax credit for low speed vehicles, motorcycles, and three-wheeled vehicles. Under prior law these types of vehicles would not satisfy the criteria of “qualified plug-in electric drive motor vehicles.” The Act allows these types of vehicles to qualify for a 10% tax credit capped at \$2,500.

*Effective Date:* Effective for vehicles purchased after the date of the enactment of the Act.

*Code Sections Affected:* Section 30 amended; Section 24(b)(3)(B) amended; Section 25(e)(1)(C)(ii) amended; Section 25B(g)(2) amended; Section 26(a)(1) amended; Section 904(i) amended; Section 1400C amended.

***Act Section 1143: Conversion Kits***

The Act also creates a new 10% tax credit of up to \$4,000 for the cost of converting any motor vehicle into a “qualified plug-in electric motor vehicle” satisfying certain battery capacity requirements. The tax credit is taken as part of the Alternative Vehicle Motor Credit (described below) and is allowed in addition to other credits that may have already been taken for the vehicle. If the conversion triggers recapture of Alternative Vehicle Motor Credits previously taken, recapture is waived by the Act.

*Effective Date:* Effective for property placed into service after the date of the enactment of the Act.

*Sunset:* Ineffective for property placed into service after December 31, 2011.

*Code Sections Affected:* Sections 30B(h) and (i) redesignated as Sections 30B(i) and (j); Section 30B(h) added.

***Act Section 1144: Treatment of Alternative Motor Vehicle Credit as a Personal Credit Allowed Against AMT***

Code Section 30B allows taxpayers a tax credit for “qualified fuel cell motor vehicles” described in Code Section 30B(b)(3), “advanced lean burn technology vehicles” described in Code Section 30B(c)(3), “qualified hybrid motor vehicles” described in Code Section 30B(d)(3), and “qualified alternative fuel motor vehicles” described in Code Section 30B(e)(4) (collectively referred to as the “Alternative Motor Vehicle Credit”). Generally, the Credit ranges from \$8,000 to \$40,000 depending on the weight of the vehicle.

The Act provides that the Alternative Motor Vehicle Credit of Code Section 30B is a personal credit allowed for both alternative minimum tax as well as regular tax purposes. This treatment removes the prior reduction in the Credit for AMT purposes.

*Effective Date:* Taxable years beginning after December 31, 2008.

*Code Sections Affected:* Section 30B(g)(2) amended; Section 24(b)(3)(B) amended; Section 25(e)(1)(C)(ii) amended; Section 25B(g)(2) amended; Section 26(a)(1) amended; Section 904(i) amended; Section 1400C(d)(2) amended; Section 30C(d)(2)(A) amended; Section 55(c)(3) amended.

***Act Section 1151: Increased Exclusion Amount for Commuter Transit Benefits And Transit Passes***

ARRTA increases the exclusion amount for commuter transit benefits and transit passes to an amount equal to the exclusion amount for qualified parking.

*Effective Date:* Effective for months beginning on or after the date of enactment of the Act.

*Sunset:* Ineffective for months beginning on or after January 1, 2011.

*Code Sections Affected:* Section 132(f)(2) amended.

**BUSINESS TAX INCENTIVES**

***Act Section 1201(a): Special Depreciation Allowance for Certain Property Acquired During 2009***

Existing law allows an additional first year depreciation deduction equal to 50% of the adjusted basis of qualified property placed in service during 2008 for both regular tax and alternative minimum tax purposes (commonly referred to as “Bonus Depreciation”). The term “qualified property” refers to MACRS property with an applicable recovery period of 20 years or less, certain computer software, certain leasehold improvements, and certain other property qualifying under Code Section 168(k)(2).

ARRTA Section 1201(a) extends the additional first year depreciation deduction so that it applies to property purchased and placed in service during the 2009 calendar year. All of the prior law’s requirements with respect to this deduction have been retained.

For certain types of long-lived property described in Code Sections 168(k)(2)(B) and (C), the time limits for the Bonus Depreciation are extended through 2010.

*Effective Date:* The amendments apply to property placed in service after December 31, 2008, in taxable years ending after that date, except for the amendments to Code Section 168(k)(4)(D) (relating to the definition of “eligible qualified property”), which apply to taxable years ending after March 31, 2008.

*Code Sections Affected:* Section 168(k) amended, Section 168(l)(5) amended; Section 1400N(d)(3) amended.

***Act Section 1201(b): Extension of Election to Accelerate the AMT and Research Credits in Lieu of Bonus Depreciation***

Prior law allowed a taxpayer otherwise eligible for the Bonus Depreciation to elect to claim additional research or alternative minimum tax credits in lieu of the Bonus Depreciation. The election applied to “eligible qualified property” placed in service after March 31, 2008 and before January 1, 2009.

Taxpayers making the election to forego Bonus Depreciation will claim a refundable credit. The credit is limited to the less of (i) 20% of the foregone Bonus Depreciation, (ii) 6% of the taxpayer’s AMT and R & D credit carryforwards arising from taxable years beginning before 2006, or (iii) \$30 million. The taxpayer must depreciate the remaining adjusted basis of the “eligible qualified property” using the straight-line method.

The Act permits taxpayers making the election to forego Bonus Depreciation under Code Section 168(k)(4) to do so for certain property placed in service in calendar year 2009. AARTA adds Code Section 168(k)(4)(H), which introduces the concept of “extension property”, and defines it as property which is “eligible qualified property” (as defined in amended Code Section 168(k)(4)(D)) solely because of the extension of Bonus Depreciation by AARTA Section 1201(a).

Those taxpayers who had already made the election under Code Section 168(k)(4) to increase the research or minimum tax credits for its first taxable year ending after March 31, 2008 are given the opportunity to choose not to make the election for “extension property” placed into service for the first taxable year ending after December 31, 2008 and each subsequent year (the “Extension Period”). Those taxpayers who have not made an election under section 168(k)(4) for the first taxable year ending after March 31, 2008 may make the election for property placed into service during the Extension Period.

*Effective Date:* The amendments apply to property placed in service after December 31, 2008, in taxable years ending after that date.

***Act Section 1202: Temporary Increase in Limitations on Expensing of Certain Depreciable Business Assets***

Prior law provided that a taxpayer may elect to expense under Code Section 179 the costs of acquiring qualifying property placed in service in a taxable year up to a maximum amount of \$250,000. Further, prior law reduced the \$250,000 maximum Code Section 179 expense deduction (but not below zero) by the amount by which the total cost of qualifying property placed in service during a taxable year exceeded \$800,000.

Prior law reduced the \$250,000 and \$800,000 thresholds to \$125,000 and \$500,000, respectively, (with those amounts indexed for inflation beginning in 2009) for calendar years 2009 and 2010. Other rules applied to calendar years beginning after 2010.

AARTTA Section 1202 extends the \$250,000 and \$800,000 thresholds to taxable years beginning in 2009 only.

*Effective Date:* Taxable years beginning after December 31, 2008.

*Sunset:* Taxable years beginning after December 31, 2009.

*Code Sections Affected:* Section 179(b)(7) amended.

***Act Section 1211: 5-Year Carryback of Operating Losses***

Generally, present law allows net operating losses to be carried back two years and forward twenty years. Certain exceptions apply to net operating losses arising under various circumstances, and those losses may be eligible for carryback periods longer than two years. However, net operating losses can not reduce the taxpayer's alternative minimum taxable income by more than 90%.

ARRTA allows an "eligible small business" incurring a net operating loss in its taxable year ending in 2008 to elect to increase its carryback period for those losses from two years to either three, four, or five years, in the taxpayer's discretion. Further, a taxpayer may elect to apply these provisions to taxable years beginning in 2008, rather than the one ending in 2008.

The election to lengthen the carryback period must be made by the due date (including extensions of time) to file the taxpayer's return for the taxable year of the net operating loss arises, using procedures established by the IRS. An election once made is irrevocable and may be made only with respect to one taxable year.

The term "eligible small business" means a taxpayer whose average gross receipts for taxable years ending in 2005, 2006, and 2007 do not exceed the sum of \$15,000,000.

The IRS is instructed to prescribe certain anti-abuse rules including anti-stuffing rules, anti-churning rules (including rules relating to sale-leasebacks), and rules relating to losses from wash sales which are similar to the rules under Code Section 1091.

*Effective Date:* Except as otherwise noted, taxable years ending after December 31, 2007.

*Transitional Rules:* ARRTA allows Taxpayers who have already filed income tax returns which recognized a net operating loss for a taxable year either ending in the calendar year 2008 or beginning in the calendar year 2008 (*see* Code Section 172(b)(1)(H) as amended by the Act as discussed above) transition rules which permit return positions previously taken with respect to those net operating losses to be amended. Such taxpayers must make an affirmative election to use these transition rules within sixty calendar days after the date of enactment. Taxpayers who previously elected to forego the net operating loss carryback period under Code Section 172(b)(3) may elect to change that decision, thereby allowing the extended carryback provisions of the Act to apply. Those taxpayers



may then make a second election to increase their carryback period. Finally taxpayers may file an application for a quick adjustment and refund of the tax benefit arising from the 2008 calendar year net operating loss under Code Section 6411(a).

*Code Sections Affected:* Section 172(b)(1)(H) is amended; Section 172(k) is deleted; and Section 172(l) is redesignated as Section 172(k).

***Act Section 1212: Decreased Required Estimated Tax Payments in 2009 for Certain Small Businesses***

Code Section 6654 requires taxpayers to make estimated tax payments. These provisions apply to individuals, non-resident aliens, decedent's estates, and trusts. Under prior law the required annual estimated tax payment was the lower of (a) 90% of the tax shown on the return for the current year or (b) 100% of the tax shown on the return for the preceding tax year (increased to 110% if the taxpayer's adjusted gross income exceeded \$150,000 in the preceding tax year).

ARRTA Section 1212 revises the foregoing requirement for calendar year 2009 for eligible individual taxpayers who earn at least 50% of their adjusted gross income from a small business to reduce their estimated tax requirements to 90% of the tax liability for 2008. Individual taxpayers are eligible for this relaxed estimated tax payment rule if their 2008 adjusted gross income was less than \$500,000. For a married person filing separately, the threshold is \$250,000. For a decedent's estate or a trust, adjusted gross income is determined under the rules of Code Section 67(e).

*Effective Date:* Effective for taxable years beginning after December 31, 2008.

*Sunset:* Ineffective for taxable years beginning after December 31, 2009.

*Code Sections Affected:* Section 6654(d)(1)(D) added.

***Act Section 1221: Incentives to Hire Unemployed Veterans and Disconnected Youth***

Under prior law the Work Opportunity Tax Credit ("WOTC") is available to employers on an elective basis who hire employees from one or more of nine targeted groups.

ARRTA creates two additional classes of individuals who, if hired by an employer, make that employer eligible for WOTC. Those classes are described as "unemployed veterans" and "disconnected youth".

The Act defines the term "veteran" as "having served on active duty (other than active duty for training) in the Armed Forces of the United States for a period of more than 180 days, or having been discharged or released from active duty in the Armed Forces of the United States for a service-connected disability." To be classified as an "unemployed veteran" the veteran must be certified as "having been discharged or released from active duty in the Armed Forces at any time during the 5-year period ending on the hiring date"

and “being a recipient of unemployment compensation under State or Federal law for not less than 4 weeks during the 1-year period ending on the hiring date.”

Disconnected youths must be certified as (1) “having attained age 16 but not age 25 on the hiring date,” (2) “not regularly attending any secondary, technical, or post-secondary school during the 6-month period preceding the hiring date,” (3) “not regularly employed during such 6-month period,” and (4) “not readily employable by reason of lacking a sufficient number of basic skills.” The Conference Committee Report explains “it is intended that a low-level of formal education may satisfy the requirement that an individual is not readily employable by lacking a sufficient number of skills.”

*Effective Date:* Applicable for individuals who begin work for the employer after December 31, 2008.

*Sunset:* Inapplicable for individuals who begin work for the employer after December 31, 2010.

*Code Sections Affected:* Section 51(d)(14) added.

***Act Section 1231: Deferral and Ratable Inclusion of Income Arising from Business Indebtedness Discharged by the Reacquisition of a Debt Instrument***

Existing law generally requires cancellation of indebtedness income to be included in a debtor’s gross income unless certain exceptions set forth in Code Sections 108 or 102 are satisfied.

ARRTA introduces Code Section 108(i) which allows certain taxpayers to defer the recognition of a certain type of cancellation of indebtedness income for a certain number of years, then recognize that income ratably over the subsequent 5 years, subject to a number of restrictions.

Specifically, the Act allows cancellation of indebtedness income arising from the “reacquisition” of “an applicable debt instrument” to be deferred until either (1) the fifth taxable year following the taxable year in which the reacquisition occurs if the reacquisition occurs in 2009, or (2) the fourth taxable year following the taxable year in which the reacquisition occurs if the reacquisition occurs in 2010.

Once the deferral period is over, the deferred income is recognized ratably over a 5-year period. Only taxpayers reacquiring debt instruments between December 31, 2008 and January 1, 2011 may make the election.

An “applicable debt instrument” must be originally issued by a C corporation or “any other person in connection with the conduct of a trade or business by such person”, and includes any instrument or contractual arrangement constituting indebtedness.

A “reacquisition” occurs when an “applicable debt instrument” is acquired by (1) the debtor that issued the particular debt instrument, or (2) any person related to the debtor as set forth in Code Section 108(e)(4). Additional rules apply to debt-for-debt exchanges in which the newly-issued debt instrument has original discount.

The recognition of the deferred income will be accelerated if the electing taxpayer dies, liquidates, sells substantially all of the taxpayer’s assets (including in bankruptcy), ceases doing business, “or... similar circumstances” arise.

The IRS is instructed to issue regulations implementing this provision, including instructions regarding how the appropriate elections are to be made and the deferred income reported.

*Effective Date:* Applicable for taxable years ending after December 31, 2008.

*Code Sections Affected:* Section 108(i) added.

***Act Section 1241: Special Rules Applicable to Qualified Small Business Stock for 2009 and 2010***

Code Section 1202(a)(1) excludes 50% of any gain from the sale or exchange of qualified small business stock held for more than 5 years from the gross income of a taxpayer other than a corporation.

ARRTA adds Code Section 1202(a)(3) which increases the percentage set forth in Code Section 1202(a)(1) to 75% from 50% for qualified small business stock purchased in the calendar years 2009 and 2010 and held for more than five years.

*Effective Date:* Effective for qualified small business stock acquired after the date of the enactment of the Act.

*Sunset:* Ineffective for stock acquired after December 31, 2010.

*Code Sections Affected:* Section 1202(1)(3) added.

***Act Section 1251: Temporary Reduction in Recognition Period for Built-In Gains Tax***

S Corporations that were previously taxed as C Corporations may have built-in gains attributable to the period during which they were a C Corporation. If so, and if an asset with a built-in gain is sold by the S Corporation during the ten-year period beginning with the date of the corporation’s election to be taxed as an S Corporation (the “Recognition Period”), then the S Corporation pays tax at the highest marginal income tax rate which applies to C Corporations in the year the built-in gain is recognized (currently 35%).

ARRTA creates new Code Section 1374(d)(7) which provides that, if an S Corporation has completed its 7<sup>th</sup> taxable year in the Recognition Period, then that S Corporation will not recognize any built-in gains, and therefore pay no built-in gains tax, for assets sold in any taxable year beginning in 2009 or 2010.

Further, if the S Corporation received assets from a C Corporation in a carryover basis transaction, then no built in gains will be recognized and no built-in gains tax paid if the gain is recognized in a taxable year beginning in 2009 or 2010 and is the 8<sup>th</sup>, 9<sup>th</sup>, or 10<sup>th</sup> taxable year since the S Corporation acquired the asset from the C Corporation.

*Effective Date:* Taxable years beginning after December 31, 2008.

*Sunset:* Taxable years beginning after December 31, 2010.

*Code Sections Affected:* Section 1374(d)(7) amended.

***Act Section 1262: Treatment of Certain Ownership Changes for Purposes of Limitations on Net Operating Loss Carryforwards and Certain Built-In Losses***

Code Section 382 limits the ability of an acquiring corporation to deduct the net operating losses of an acquired corporation against its future income. These limitations are commonly referred to as “Section 382 limitations.”

The Act provides that the Section 382 limitations will not apply to an ownership change (1) which “is required under a loan agreement or a commitment for a line of credit entered into with the Department of the Treasury under the Emergency Economic Stabilization Act of 2008” and (2) which “is intended to result in a rationalization of the costs, capitalization, and capacity with respect to the manufacturing workforce of, and suppliers to, the taxpayer and its subsidiaries.” The relief provided by the Act is not extended to corporations in which a stockholder owns 50% or more of the stock of the corporation (by vote or value) immediately after such ownership change. For purposes of this 50% test, related parties under Code Sections 267(b) or 707(b) are aggregated with the stockholder.

*Effective Date:* Effective for ownership changes after the date of the enactment of the Act.

*Code Sections Affected:* Section 382(n) added.

***Act Section 1403: Increase in New Markets Tax Credit***

Code Section 45D provides a tax credit (the “New Markets Tax Credit”) to investors owning qualified equity investments made to acquire stock in a corporation or a capital interest in a partnership organized to provide certain services to low-income communities or persons (generally referred to as a “qualified community development entity”). The

maximum annual amount of qualified equity investments under prior law was limited to \$3.5 billion.

ARRTA increases the maximum annual amount of qualified equity investments to \$5.0 billion for the calendar years 2008 and 2009.

Section 1403(b) of the Act contains a transition rule which provides that the 2008 increase in the maximum annual amount of qualified equity investments is to be allocated by the Secretary of the Treasury pursuant to the provisions of Code Section 45D(f)(2) to qualified community development entities which (1) submitted an application for calendar year 2008 and (2) either did not receive an allocation for that year or received a lower allocation than requested. The provisions of ARRTA Section 1403(b) are not included in the Internal Revenue Code.

*Code Sections Affected:* Section 45D(f)(1) amended.

***Act Section 1511: Delay in Application of Withholding Tax on Government Contractors***

Section 511(b) of the Tax Increase Prevention and Reconciliation Act of 2005 ("TIPRA") Required the Federal government and the government of every state, political subdivision of a state, instrumentality of a state, or state subdivision making certain payments to a government contractor to deduct and withhold 3% of the amount to be paid to that person. The withheld amounts were to be paid over to the Internal Revenue Services as an estimated tax payment. The withholding requirement was to apply to payments made after December 31, 2010.

ARRTA delays the application of the 3% withholding tax regime from December 31, 2010 to December 31, 2011.

*Effective Date:* Effective on the date the Act is enacted.

***Act Section 1541: Regulated Investment Companies Allowed to Pass-Thru Tax Credit Bond Credits***

Under prior law, shareholders of regulated investment companies (of which most mutual funds are an example) are allowed the benefit of the tax credits derived from qualified tax credit bonds held by the company. Generally these are qualified forestry conservation bonds under Code Section 54B, new clean renewable energy bonds under Code Section 54C, qualified energy conservation bonds under Code Section 54D, and qualified zone academy bonds under Code Section 54E. Code Section 54A(h) provides that the Secretary of the Treasury is to issue regulations intended to govern allowance of the tax credits attributable to such bonds to the stockholders of the regulated investment companies holding the bonds. This guidance has not been forthcoming.

The Act allows regulated investment companies to elect to allocate the credits attributable to tax credit bonds to their shareholders. The Act defines “tax credit bonds” as either (1) “qualified tax credit bonds” as defined in Code Section 54A(d), (2) the Build America Bonds of new Code Section 54AA, or (3) any bond for which a credit is allowable under subpart H of part IV of subchapter A (generally, clean renewable energy bonds under Code Section 54 and the other types of tax credit bonds listed above).

The effect of the election is that the regulated investment company (1) is not allowed any of the tax credits passed-through to its shareholders, (2) must include in its gross income the amount of the tax credits that would have applied without the election, and (3) must increase the amount of its dividends paid deduction by the amount of such income. Each shareholder is allowed a share of the credits, but must include in gross income an amount equal to the shareholder’s proportionate share of the interest income attributable to the credits.

Prior to pass-thru of the credit to the regulated investment company’s shareholders, the company must mail a written notice to each shareholder not later than sixty days following the close of the regulated investment company’s taxable year. The notice must contain the shareholder’s proportionate share of the passed-through credits and the amount of gross income the shareholder must recognize as a result of the credit.

*Effective Date:* Taxable years ending after the date of the enactment of the Act.

*Code Sections Affected:* Section 853A added; Section 54(l) amended; Section 54A(h) amended.

**Additional Tax Sections of the American Recovery and Reinvestment Tax Act of  
2009 Not Addressed by this Summary**

*Act Section 1111: Increased Limitation on Issuance of New Clean Renewable Energy Bonds*

*Act Section 1112: Increased Limitation on Issuance of Qualified Energy Conservation Bonds*

*Act Section 1131: Application of Monitoring Requirements to Carbon Dioxide Used as a Tertiary Injectant*

*Act Section 1232: Modifications of Rules for Original Issue Discount on Certain High Yield Obligations*

*Act Section 1261: Clarification of Regulations Related To Limitations on Certain Built-In Losses Following an Ownership Change*

*Act Section 1301: Temporary Expansion of Availability of Industrial Development Bonds to Facilities Manufacturing Intangible Property*

*Act Section 1302: Credit for Investment in Advanced Energy Facilities*

*Act Section 1401: Recovery Zone Bonds*

*Act Section 1402: Tribal Economic Development Bonds*

*Act Section 1404: Coordination of Low-Income Housing Credit and Low-Income Housing Grants*

*Act Section 1501: De Minimis Safe Harbor Exception for Tax-Exempt Interest Expense of Financial Institutions*

*Act Section 1502: Modification of Small Issuer Exception to Tax-Exempt Interest Expense Allocation Rules for Financial Institutions*

*Act Section 1503: Temporary Modification of Alternative Minimum Tax Limitations on Tax-Exempt Bonds*

*Act Section 1504: Modification to High Speed Intercity Rail Facility Bonds*

*Act Section 1521: Qualified School Construction Bonds*

*Act Section 1522: Extension and Expansion of Qualified Zone Academy Bonds*

*Act Section 1531: Build America Bonds*

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