

BNA Analysis of the American Taxpayer Relief Act of 2012

By the Tax Management Staff, Arlington, VA

On January 1, the House and Senate passed the "Fiscal Cliff" legislation to prevent tax hikes from affecting over 98% of American taxpayers. President Obama is expected to sign the American Taxpayer Relief Act of 2012. The Act, in essence, is a permanent extension of the 2001/2003 Bush-era tax cuts (EGTRRA). Also, the legislation permanently fixes the AMT and estate tax, but increases income tax rates and long-term capital gains rates on higher earning taxpayers. The Act incorporates many business and individual extensions of the so-called "annual extenders."

TITLE I—GENERAL EXTENSIONS

Permanent Extension of 2001 Tax Relief [Act §101]

The Act, by repealing the sunset provision in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), §901, permanently extends, the following provisions (primarily Titles I through V of EGTRRA):

Reduction in income tax rates for individuals

Under pre-Act law, the 10% individual income tax bracket was set to expire at the end of 2012. Upon expiration, the lowest tax rate would have been 15%. The Act permanently extends the 10% individual income tax bracket. Under pre-Act law, the 25%, 28%, 33%, and 35% individual income tax brackets would have expired at the end of 2012. Upon expiration, the rates would have become 28%, 31%, 36%, and 39.6% respectively.

The Act permanently extends the 25%, 28%, 33% and 35% tax brackets on income at or below \$400,000 (individual filers), \$425,000 (heads of households), \$450,000 (married filing jointly and surviving spouses), and \$225,000 (married filing separately).

For taxpayers above the threshold amounts, which will be adjusted for inflation, the Act reinstates the 39.6% bracket.

Effective for taxable years beginning after December 31, 2012. [Code §1]

Repeal of phaseout for personal exemptions

Prior to EGTRRA, §151(d) provided a phase out of the personal exemption for certain higher income individuals. For 2006 through 2009, EGTRRA reduced the phase out amount and then repealed the personal exemption phase-out (PEP) for 2010. The 2010 TRA extended the repeal through 2012.

The Act permanently extends the repeal of PEP on income at or below \$250,000 (individual filers), \$275,000 (heads of households), \$300,000 (married filing jointly and surviving spouses), and \$150,000 (married filing separately). These amounts are adjusted for inflation.

For taxpayers with adjusted gross income above the threshold amounts, the PEP reduction applies.

Effective for taxable years beginning after December 31, 2012. [Code §151]

Phaseout of overall limitation on itemized deductions

Prior to EGTRRA, the amount of itemized deductions that a taxpayer could claim was reduced, to the extent the taxpayer's AGI is above a certain amount (known as the "Pease limitation"). EGTRRA phased out this reduction for 2006 through 2009 and then repealed this limitation on itemized deductions for 2010. The 2010 TRA extended the repeal through 2012.

The Act permanently extends the repeal of the Pease limitation on income at or below \$250,000 (individual filers), \$275,000 (heads of households), \$300,000 (married filing jointly and surviving spouses), and \$150,000 (married filing separately). These amounts are adjusted for inflation.

At income levels above the thresholds, the Pease limitation applies to reduce itemized deductions by the lesser of (1) 3% of the excess of adjusted gross income above the threshold amounts, or (2) 80% of the amount of itemized deductions otherwise allowable.

Effective for taxable years beginning after December 31, 2012. [Code §68]

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Modifications to child tax credit

Generally, taxpayers with income below certain threshold amounts may claim the child tax credit to reduce federal income tax for each qualifying child under the age of 17. EGTRRA increased the credit from \$500 to \$1,000 (which was phased in over time). The credit is allowable against the regular tax and, for taxable years beginning before January 1, 2011, is allowed against the alternative minimum tax. EGTRRA also expanded the refundability of the child tax credit. The 2010 TRA extended the \$1,000 child tax credit amount, extended the allowance against the regular tax/AMT and maintained the refundability provisions (subject to the special rules discussed below at Act §103) through 2012.

The Act permanently extends such provisions.

Effective for taxable years beginning after December 31, 2012. [Code §24]

Expansion of adoption credit and adoption assistance programs

EGTRRA increased the adoption credit and the employer-provided adoption assistance exclusion from \$5,000 (\$6,000 for a special needs child) to \$10,000, adjusted for inflation. The Patient Protection and Affordable Care Act of 2010 (2010 PPACA) extended these benefits to 2011 and made the credit refundable (in making it refundable, the 2010 PPACA also redesignated the credit from §23 to §36C). The 2010 PPACA also increased the credit to \$13,170 (adjusted for inflation, the 2011 amount was \$13,360). The 2010 TRA extended for an additional year, through 2012, the increased adoption credit amount and the exclusion for employer-assistance programs as enacted in EGTRRA. However, the PPACA refundable credit expired at the end of 2011. The nonrefundable pre-2010 PPACA §23 replaced it for 2012 (with the \$10,000 deduction/exclusion—adjusted for inflation to \$12,170).

The Act permanently extends the EGTRRA amendments to the adoption credit and employer-provided adoption assistance exclusion.

Effective for taxable years beginning after December 31, 2012. [Code §§23, 36C, 137]

Dependent care credit

The dependent care credit allows a taxpayer a credit for an applicable percentage of eligible care expenses for children under 13 and disabled dependents. EGTRRA increased the amount of eligible expenses from \$2,400 for one qualifying child/disabled dependent and \$4,800 for two or more children/disabled dependents to \$3,000 and \$6,000, respectively. EGTRRA also increased the applicable percentage from 30% to 35% and the dollar amount at which the phaseout of the percentage begins from \$10,000 to \$15,000. The 2010 TRA extended the changes made by EGTRRA for an additional two years, through 2012.

The Act permanently extends the EGTRRA changes.

Effective for taxable years beginning after December 31, 2012. [Code §21]

Allowance of credit for employer expenses for child care assistance

EGTRRA added §45F to provide employers with a credit of up to \$150,000 per year for acquiring, constructing, rehabilitating or expanding property which is used for a child care facility, and for the operation of such facility. Set to expire at the end of 2010 under the EGTRRA sunset, the 2010 TRA extended the credit provided for in §45F for an additional two years, through 2012.

The Act permanently extends the credit.

Effective for taxable years beginning after December 31, 2012. [Code §45F]

Elimination of marriage penalty in standard deduction

EGTRRA increased the basic standard deduction for married couples filing joint returns to twice the basic standard deduction for an unmarried individual filing a single return (phased in between 2005-2009). The 2010 TRA extended the marriage penalty relief for the standard deduction for an additional two years, through 2012.

The Act permanently extends the relief.

Effective for taxable years beginning after December 31, 2012. [Code §63]

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Phaseout of marriage penalty in 15-percent bracket

EGTRRA increased the size of the 15% regular income tax bracket for married couples filing joint returns to twice the corresponding bracket for an unmarried individual filing a single return (phased in between 2005-2008). The 2010 TRA extended the marriage penalty relief for the 15% bracket for an additional two years, through 2012.

The Act permanently extends the relief.

Effective for taxable years beginning after December 31, 2012. [Code §1]

Marriage penalty relief for earned income credit; earned income to include only amounts includible in gross income; simplification of earned income credit

EGTRRA ultimately increased the earned income credit phaseout amount for married couples filing joint returns by \$3,000 (adjusted for inflation). EGTRRA also simplified certain aspects of the credit (eliminating a modified adjusted gross income calculation and only including as earned income compensation amounts that are includible in gross income). The 2010 TRA extended the marriage penalty relief the earned income credit for an additional two years, through 2012.

The Act permanently extends the relief.

Effective for taxable years beginning after December 31, 2012. [Code §32]

Modifications to education individual retirement accounts (now Coverdell education savings accounts)

Coverdell education savings accounts are tax-exempt savings accounts used to pay the higher education expenses of a designated beneficiary. EGTRRA increased the annual contribution amount from \$500 to \$2,000 and expanded the definition of education expenses to include elementary and secondary school expenses. The 2010 TRA extended the changes to Coverdell accounts for an additional two years, through 2012.

The Act permanently extends the changes.

Effective for taxable years beginning after December 31, 2012. [Code §530]

Extension of exclusion for employer-provided educational assistance

An employee may exclude from gross income up to \$5,250 for income and employment tax purposes per year of employer-provided education assistance. Prior to EGTRRA, this incentive was temporary and only applied to undergraduate courses. EGTRRA expanded this provision to graduate education and extended the provision for undergraduate and graduate education to the end of 2010. The 2010 TRA extended the changes for an additional two years, through 2012.

The Act permanently extends the changes.

Effective for taxable years beginning after December 31, 2012. [Code §127]

Elimination of 60-month limit and increase in income limitation on student loan interest deduction

Certain individuals who have paid interest on qualified education loans may claim an above-the-line deduction for such interest expenses up to \$2,500. Prior to EGTRRA, this benefit was only allowed for 60 months and phased-out for taxpayers with income between \$40,000 and \$55,000 (\$60,000 and \$75,000 for joint filers). EGTRRA eliminated the 60-month rule and increased the income phase-out to between \$50,000 and \$65,000 (\$100,000 and \$130,000 for joint filers) with adjustments for inflation beginning in 2003. The 2010 TRA extended the changes to this provision for an additional two years, through 2012.

The Act permanently extends the changes.

Effective for taxable years beginning after December 31, 2012. [Code §221]

Exclusion of certain amounts received under the National Health Service Corps Scholarship Program and the F. Edward Hebert Armed Forces Health Professions Scholarship and Financial Assistance Program

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The National Health Service Corps Scholarship Program and the F. Edward Hebert Armed Forces Health Professions Scholarship and Financial Assistance Program provide education awards to participants on the condition that the participants perform certain services. EGTRRA allowed the §117 scholarship exclusion to apply to these programs. The 2010 TRA extended the income exclusion for these programs through 2012.

The Act permanently extends the changes.

Effective for taxable years beginning after December 31, 2012. [Code §117]

Additional increase in arbitrage rebate exception for governmental bonds used to finance educational facilities

EGTRRA increased the small-issuer arbitrage rebate exception for school construction from \$10 million to \$15 million. The 2010 TRA extended the \$15 million arbitrage rebate exception for school construction through 2012.

The Act permanently extends the changes.

Effective for taxable years beginning after December 31, 2012. [Code §148]

Treatment of qualified public educational facility bonds as exempt facility bonds

EGTRRA expanded the definition of a private activity for which tax-exempt bonds may be issued to include bonds for qualified public educational facilities. Bonds issued for qualified educational facilities are not counted against a state's private-activity volume cap. Instead, these bonds have their own volume capacity limit equal to the lesser of \$10 per resident or \$5 million. The 2010 TRA extended the allowance to issue tax-exempt private activity bonds for public school facilities through 2012.

The Act permanently extends the changes.

Effective for taxable years beginning after December 31, 2012. [Code §141]

Deduction for higher education expenses

EGTRRA created an above-the-line deduction for qualified tuition and related expenses. Currently, subject to income phase-outs, taxpayers are allowed to deduct a maximum of \$4,000. As originally enacted by EGTRRA, this provision was to expire on December 31, 2005. Subsequent legislation, including the 2010 TRA, pushed the expiration to December 31, 2011. The EGTRRA sunset provision repeal simply keeps this provision in the Code even though it terminated after 2011. *Editor's Note:* See Act §207 below for discussion of a temporary extension.

[Code §222]

Tax treatment and information requirements of Alaska Native settlement trusts

EGTRRA allowed an election in which Alaska Native settlement trusts can elect to pay tax at the same rate as the lowest individual marginal rate, rather than the higher rates that generally apply to trusts. Beneficiaries of the trust do not pay tax on the distributions of an electing trust's taxable income. Finally, contributions by an Alaska Native corporation to an electing trust will not be deemed distributions to the corporation's shareholders. The 2010 TRA extended the elective tax treatment for Alaska Native settlement trusts through 2012.

The Act permanently extends the changes.

Effective for taxable years beginning after December 31, 2012. [Code §646]

Modifications of Estate Tax

Permanent Estate and GST Tax; Increase in Rate. By repealing §901 of EGTRRA and §304 of the 2010 TRA, the Act makes permanent the estate and generation-skipping transfer taxes.

The Act now makes permanent the increase in the amount exempted by the estate and gift tax unified credits by keeping the exemption (applicable exclusion amount) at \$5 million (as adjusted for inflation in multiples of \$10,000 after 2011).

The Act amends §2001(c) to create a maximum estate and gift tax rate of 40% for taxable estates over

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\$1 million. For estates with taxable income over \$500,000 but not over \$750,000, a 37% rate applies. For estates with taxable income over \$750,000 but not over \$1 million, a 39% rate applies.

For generation-skipping transfers made during 2010, the Act treats (in a non-Code provision) the applicable rate determined under §2641(a) as being zero.

With the repeal of the sunset provisions, to reflect the differences in the unified credit resulting from different estate and gift tax rates, the 2010 TRA amendment to §2001(b)(2) and addition of §2001(g) permanently provides that, in applying §2001(b)(2) to one or more gifts, the tax rates in effect at the decedent's death (rather than the rates in effect at the time of the gifts) are used to calculate the gift tax and the gift tax unified credit allowed. In addition, the 2010 TRA added a sentence to §2505(a) specifying that, in applying §2505(a)(2) for a calendar year, the gift tax rates for that year (rather than the rates in effect for prior years) are to be used in determining the gift tax unified credit allowable for preceding years.

Applicable Exclusion Amount Increased by Unused Exclusion Amount of Deceased Spouse. After the amendments to §2010(c) described above, the Act makes permanent the 2010 TRA amendments to §2010(c)(2) and addition of §2010(c)(3) to: (1) provide for the portability of spouses' unified credits by defining the applicable exclusion amount as the "basic exclusion amount" plus, in the case of a surviving spouse, the "deceased spousal unused exclusion amount"; (2) set the basic exclusion amount at \$5 million; and (3) adjust the basic exclusion amount for inflation in multiples of \$10,000 after 2011.

For surviving spouses of decedents dying after 2010, the Act makes permanent the definition (in §2010(c)(4), with a technical amendment) the deceased spousal unused exclusion amount as the lesser of: (1) the applicable exclusion amount; or (2) the excess of the basic exclusion amount of the last deceased spouse of the surviving spouse over the amount as to which the tentative tax is determined under §2001(b)(1) on the deceased spouse's estate.

For a surviving spouse's estate to take into account the deceased spousal unused exclusion amount, the Act makes permanent the requirement (in §2010(c)(5)) that the deceased spouse's executor file an estate tax return computing such amount and making an irrevocable election allowing such amount to be taken into account. The election is not allowed if this return is filed after the due date (including extensions). Notwithstanding any §6501 statute of limitations, the Secretary is allowed to examine a deceased spouse's return to make determinations about the unused exclusion amount after the expiration of the §6501 period for assessing estate or gift tax relating to the unused exclusion amount.

The Act makes permanent the requirement (in §2010(c)(6)) that the Secretary issue regulations to carry out these provisions.

The Act makes permanent a conforming amendment under the 2010 TRA to §2505(a)(1) providing that, in determining the amount exempted by the gift tax unified credit, the §2010 applicable credit amount is that which would apply if the donor died at the end of the calendar year.

The Act makes permanent a conforming amendment to the generation-skipping transfer tax exemption by replacing the reference to the §2010(c) applicable exclusion amount in §2631(c) with a reference to §2010(c) basic exclusion amount.

The Act makes permanent a similar conforming amendment to §6018(a)(1), replacing the reference to the applicable exclusion amount with a reference to the basic exclusion amount.

Effective for estates of decedents dying, generation-skipping transfers and gifts made after 2012. [Code §§2001, 2010],

Permanent Extension and Modification of 2003 Tax Relief [Act §102]

The Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA) enhanced the preferential treatment of long-term capital gains and included qualifying dividends within the realm of capital gain tax rates. The 2010 TRA extended this treatment through December 31, 2012.

The Act permanently extends but modifies the 2003 JGTRRA; these provisions included in the extension include:

Reduction in capital gains rates for individuals; repeal of 5-year holding period requirement

JGTRRA, and subsequently the 2010 TRA, lowered the long-term capital gains rates for taxpayers below the 25% bracket to its 2012 level of 0%. For those in the 25% bracket and above, the capital gains rates were lowered to 15%. Under the 2010 TRA, these rates were set to expire at the end of 2012.

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The Act permanently extends the 15% (0%) capital gains rates for taxpayers below the 39.6% tax bracket. For taxpayers in the 39.6% bracket, the long-term capital gains rate will be set at 20%. These changes also apply for AMT purposes. Note that such income will be considered net investment income for the §1411 3.8% tax which is effective beginning in 2013 under the health care reform law.

Effective for taxable years beginning after December 31, 2012. [Code §1]

Dividends of individuals taxed at capital gain rates

JGTRRA allowed qualifying dividends to be considered within the definition of "net capital gain" and be taxed at the preferential rates for capital gains. As extended by the 2010 TRA, for taxpayers below the 25% bracket a 0% rate applies, and for taxpayers in the 25% bracket and above, the rate is 15%. Under the 2010 TRA, these rates were set to expire at the end of 2012.

The Act permanently extends the current rates for taxpayers below the 39.6% tax bracket. For taxpayers in the 39.6% tax bracket, rate that qualifying dividends will be taxed at is 20%. Similar rules apply for AMT. Note that such income will be considered net investment income for the §1411 3.8% tax.

Effective for taxable years beginning after December 31, 2012. [Code §§1, 55]

Conforming Amendments

Certain Internal Revenue Code provisions similarly use a 15% tax rate as is used for long-term capital gains for certain tax brackets. With the change to 20% under the Act, conforming amendments to these provisions were necessary: (1) accumulated earnings tax under §531; (2) personal holding company tax under §541; (3) withholding on certain dispositions of U.S. real property under §1445(e)(1); and (4) nonqualified withdrawals from merchant marine capital construction funds under §7518(g)(6)(A).

Extension of 2009 Tax Relief [Act §103]

The Act extends and modifies the following provisions first enacted in 2009 American Reinvestment and Recovery Act (2009 ARRA) and extended through 2012 by the 2010 TRA:

American Opportunity Tax Credit

The 2009 ARRA created the American Opportunity Tax Credit as a temporary replacement of the Hope Scholarship credit for 2009 and 2010. Generally, the credit is for up to \$2,500 of the cost of tuition and related expenses paid during the taxable year. The credit is allowable for the first four years of post-secondary education. Taxpayers receive a tax credit based on 100% of the first \$2,000 of tuition and related expenses (including course materials) paid during the taxable year and 25% of the next \$2,000 of tuition and related expenses paid during the taxable year. Further, 40% of the credit is refundable. However, the credit is subject to a phase-out for taxpayers with adjusted gross income in excess of \$80,000 (\$160,000 for married couples filing jointly). The 2010 TRA extended the American Opportunity Tax Credit for an additional two years, through 2012.

The Act further extends the credit for an additional five years, through 2018.

Effective for taxable years beginning after December 31, 2012. [Code §25A]

Child Tax Credit

Generally, taxpayers with income below certain threshold amounts may claim the child tax credit to reduce federal income tax for each qualifying child under the age of 17. EGTRRA expanded the refundability of the child tax credit. The amount that may be claimed as a refund was 15% of earnings above \$10,000. The 2009 ARRA increased the refundability of the credit by providing that earnings above \$3,000 would count towards refundability for 2009 and 2010. The 2010 TRA extended the \$3,000 refundability threshold for an additional two years, through 2012.

The Act further extends the \$3,000 amount for an additional five years, through 2018.

Effective for taxable years beginning after December 31, 2012. [Code §24]

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Earned Income Tax Credit

The 2009 ARRA increased the earned income tax credit to 45% of a working family's first \$12,570 of earned income for families with three or more children and increased the beginning point of the phase-out range for all married couples filing a joint return (regardless of the number of children). The 2010 TRA extended for an additional two years, through 2012, the 2009 ARRA provisions that increased the credit for families with three or more children and increased the phase-out.

The Act further extends the increased credit for an additional five years, through 2018.

Effective for taxable years beginning after December 31, 2012. [Code §32]

Refunds Disregarded in the Administration of Federal Programs and Federally Assisted Programs

EGTRRA provided that the refundable components of the EITC and the child tax credit do not make households ineligible for means-tested benefit programs and stated that these tax credits do not count as income in determining eligibility (and benefit levels) in means-tested benefit programs, and also do not count as assets for specified periods of time. The 2010 Act continued to disregard all refundable tax credits and refunds as income for means tested programs through 2012.

The Act permanently extends this benefit.

Effective for taxable years beginning after December 31, 2012.

Permanent Alternative Minimum Tax Relief [Act §104]

For a joint return or a surviving spouse, the Act sets the AMT exemption amount to \$78,750 for tax years beginning in 2012. For an individual who is not married and is not a surviving spouse, the Act sets the AMT exemption amount to \$50,600 for tax years beginning in 2012. For married taxpayers filing separate returns, the AMT exemption amount is set at \$39,375 for tax years beginning in 2012 (1/2 the amount of married taxpayers filing jointly). The Act, beginning in 2013, adjusts these amounts for inflation.

The Act repeals the general rule limiting the aggregate amount of certain nonrefundable personal credits to the excess of the taxpayer's regular tax over the tentative minimum tax. The Act makes permanent the AMT patch provision that allows all of the nonrefundable personal credits to be taken to the full extent of both regular tax and AMT liability. In addition, the Act removes separate limitations on certain credits so that all nonrefundable personal credits would be subject to the same limitation.

Effective for taxable years beginning after December 31, 2011. [Act §104; Code §§26, 55]

TITLE II—INDIVIDUAL TAX EXTENDERS

Extension of Deduction for Certain Expenses of Elementary and Secondary School Teachers

The Act extends through 2013 the \$250 above-the-line deduction for professional expenses incurred by elementary and secondary schoolteachers. The deduction, currently available for taxable years beginning in 2002-2011, is now available for taxable years beginning in 2002-2013.

Effective for taxable years beginning after December 31, 2011. [Act §201; Code §62]

Extension of Exclusion from Gross Income of Discharge of Qualified Principal Residence Indebtedness

The Act extends through 2013, the current-law exclusion from taxable income of debt forgiven in a foreclosure proceeding or write-down of principal on a mortgage.

Effective for taxable years beginning after December 31, 2011. [Act §202; Code §108]

Parity for Exclusion from Income for Employer-Provided Mass Transit and Parking Benefits

Prior to February 17, 2009, \$100 per month could be excluded as qualified transportation fringe benefits in combined vanpooling and transit pass benefits and \$175 per month in qualified parking benefits. All limits were adjusted annually for inflation. In 2009, the combined monthly exclusion for employer-provided vanpool and transit pass benefits was increased temporarily to the same level as the exclusion for employer-provided parking (\$230 for 2010, as indexed for inflation). This provision, set to expire on

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December 31, 2010, was extended by the 2010 TRA through the December 31, 2011. In 2011, the amount was set at \$230. Given the expiration of parity after 2011, in 2012, the IRS set the exclusion for qualified parking at \$240 per month and the exclusion for transit passes and transportation in a commuter highway vehicle at \$125 per month.

The Act extends the parity through 2013. Thus, the 2012 amounts will be the same.

Effective for months after December 31, 2011. [Act §203; Code §132]

Extension of Mortgage Insurance Premiums Treated as Qualified Residence Interest

Taxpayers may itemize the cost of mortgage insurance on a qualified personal residence. The deduction is phased-out ratably by 10% for each \$1,000 by which the taxpayer's adjusted gross income (AGI) exceeds \$100,000, so that the deduction is unavailable for a taxpayer with an AGI in excess of \$110,000. The deduction, set to expire December 31, 2010, was extended through December 31, 2012 by the 2010 TRA.

The Act extends this provision for two years, through 2013.

Effective for amounts paid or accrued after December 31, 2011 [Act §204; Code §163]

Extension of Deduction of State and Local General Sales Taxes

The Act extends the election available to taxpayers who itemize their deductions to deduct state and local sales taxes in lieu of state and local income taxes. The election, currently available for taxable years beginning in 2004-2011, is now available for taxable years beginning in 2004-2013.

Effective for taxable years beginning after December 31, 2011. [Act §205; Code §164]

Extension of Special rule for Contributions of Capital Gain Real Property Made for Conservation Purposes

The increased contribution limitations and carryover period of §170(b)(1)(E) and (b)(2)(B) for charitable contributions of certain conservation property, set to expire on December 31, 2009, were extended by the 2010 TRA to include contributions made before January 1, 2012.

The Act further extends the contribution limitations and carryover periods for contributions of conservation property made before December 31, 2013. This extension similarly applies to corporate farmers and ranchers

Effective for contributions made in taxable years beginning after December 31, 2011. [Act §206; Code §170]

Extension of Above-the-Line Deduction for Qualified Tuition and Related Expenses

The Act extends the above-the-line deduction for qualified tuition and related expenses. The maximum deduction amount is \$4,000 in the case of a taxpayer whose adjusted gross income for the taxable year does not exceed \$65,000 (\$130,000 in the case of a joint return). The maximum deduction is \$2,000 the case of a taxpayer whose adjusted gross income for the taxable year does not exceed \$80,000 (\$160,000 in the case of a joint return). The deduction, currently available for taxable years beginning before 2012, is now available for taxable years beginning before 2014.

Effective for taxable years beginning after December 31, 2011. [Act §207; Code §222]

Extension of Tax-Free Distributions from Individual Retirement Plans for Charitable Purposes

Through 2013, the Act allows taxpayers age 70 1/2 or older to make tax-free distributions to charities from their traditional individual retirement accounts (IRAs) and Roth IRAs up to \$100,000 per taxpayer, per taxable year. This provision had expired at the end of 2011. Thus, in order to, in effect, retroactively reinstate this provision, the Act permits individuals to make charitable transfers during January of 2013 as if they were made on December 31, 2012.

Effective for distributions made in taxable years beginning after December 31, 2011. [Act §208; Code §408]

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Improve and Make Permanent the Provision Authorizing the Internal Revenue Service to Disclose Certain Return and Return Information to Certain Prison Officials

The Act amends the language regarding the restrictions on disclosure of tax returns and return information of prisoners in the prison system. The restriction applies to any officer and employee of the Federal Bureau of Prisons and of any State agency charged with the responsibility for administration of prisons. Under the Act, disclosure made be made to contractors responsible for the operation of a Federal or State prison on behalf of such Bureau or agency. Returns or return information received can only be used for taking administrative action to prevent the filing of false and fraudulent returns. Such officer, employee or contractor can only redisclose the information to another officer, employee of contractor personally and directly engaged in the administration of prison facilities on behalf of such Bureau or agency, or to the duly authorized legal representative of the prison or an incarcerated individual accused of filing false or fraudulent returns.

Effective on the date of enactment. [Act §209; Code §6103]

TITLE III—BUSINESS TAX EXTENDERS

Extension and Modification of Research Credit

The §41 research credit for increasing research activities expired on December 31, 2011.

The Act extends the credit for amounts paid or incurred on or before December 31, 2013, applicable to amounts paid or incurred after December 31, 2011.

The Act modifies the rules for partial inclusion of pre-acquisition qualified research expenses and gross receipts by a person that acquires the major portion of a trade or business, or the major portion of a separate unit of a trade or business (the "acquiror") from another person (the "predecessor").

The acquiror increases the amount of qualified research expenses paid or incurred during the measurement period (any period of the acquiror preceding the credit year that is taken into account in determining the credit) by: (1) in the tax year of acquisition, the qualified research expenses paid or incurred by the predecessor during the measurement period, multiplied by the fraction of the tax year of acquisition during which the acquiror owned the property; and (2) in tax years after the year of acquisition, the qualified research expenses paid or incurred by the predecessor during the measurement period.

The acquiror increases its gross receipts during the measurement period by: (1) in the tax year of acquisition, the predecessor's gross receipts during the measurement period, multiplied by the fraction of the tax year of acquisition during which the acquiror owned the property; and (2) in tax years after the year of acquisition, the predecessor's gross receipts during the measurement period.

If the predecessor furnished the acquiror with the information (regarding its qualified research expenses and gross receipts) necessary for the acquiror to make the adjustments outlined above, then the amount of qualified research expenses paid or incurred by, and the gross receipts of, the predecessor during the measurement period, are likewise reduced by: (1) in the tax year of disposition, the amount of qualified research expenses paid or incurred by, and the gross receipts of, the predecessor during the measurement period, multiplied by the fraction of the tax year of disposition during which the acquiror owned the property; and (2) in tax years ending after the year of disposition, the amount of qualified research expenses paid or incurred by, and the gross receipts of, the predecessor during the measurement period.

The Act provides that the credit allowable to each member of a controlled group of corporations, or to each business under common control, is determined on a proportionate basis to its share of the aggregate of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, taken into account by the controlled group — or by all businesses under common control — for purposes of the credit.

Effective for tax years beginning after December 31, 2011. [Act §301; Code §41]

Extension of Temporary Minimum Low-Income Tax Credit Rate for Non-Federally Subsidized Buildings

The 2008 Housing Assistance Tax Act set a temporary applicable percentage of 9% for newly constructed non-Federally subsidized buildings placed in service after July 30, 2008, and before December 31, 2013,

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for purposes of calculating the low-income housing credit. The amount of the low-income housing credit for any taxable year in the credit period is the applicable percentage of the qualified basis of each qualified low-income building. The calculation of the applicable percentage is designed to produce a credit equal to 70% of the present value of the building's qualified basis in the case of newly constructed or substantially rehabilitated housing that is not Federally subsidized (the "70% credit"). These credit percentages are adjusted monthly by the IRS on a discounted after-tax basis (assuming a 28% tax rate) based on the average of the AFR for mid-term and long-term obligations for the month the building is placed in service.

The Act provides extends the temporary applicable percentage of 9% for newly constructed non-Federally subsidized buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2014.

Effective on the date of enactment. [Act §302; Code §42]

Extension of Housing Allowance Exclusion for Determining Area Median Gross Income for Qualified Residential Rental Project Exempt Facility Bonds

The 2008 Housing Assistance Tax Act provided that certain military housing allowances are not considered for purposes of the low-income housing credit income eligibility rules. In order to be eligible for the low-income housing credit, a qualified low-income building must be part of a qualified low-income housing project. In general, a qualified low-income housing project is defined as a project that satisfies one of two tests at the election of the taxpayer. The military provides a basic housing allowance, which, prior to the 2008 Housing Act, had to be included in income of the military personnel for purposes of satisfying one of the aforementioned tests. Pursuant to the 2008 Housing Act, the basic military housing allowance (i.e., payments under 37 USC §403) is not included in income for the low-income credit income eligibility rule. The Act provision is limited in application to qualified buildings. This change was effective for income determinations (1) made after the July 30, 2008, and before January 1, 2012, in the case of qualified buildings which received credit allocations on or before July 30, 2008, or qualified buildings placed in service on or before July 30, 2008, to the extent a credit allocation was not required with respect to such building by reason of §42(h)(4) (i.e. such qualified building was at least 50% tax bond financed with bonds subject to the private activity bonds volume cap) but only with respect to bonds issued before July 30, 2008; and (2) made after July 30, 2008, in the case of qualified buildings which received credit allocations after July 30, 2008, and before January 1, 2012, or qualified buildings placed in service after July 30, 2008, and before January 1, 2012, to the extent a credit allocation was not required with respect to such qualified building by reason of §42(h)(4) (i.e. such qualified building was at least 50% tax bond financed with bonds subject to the private activity bond volume cap), but only with respect to bonds issued after July 30, 2008, and before January 1, 2012.

The Act extends the January 1, 2012, date to January 1, 2014.

Effective as if included in the enactment of §3005 of the 2008 Housing Assistance Tax Act. [Act §303; Code §142]

Extension of Indian Employment Credit

The §45A Indian employment credit for employing members of Indian tribes expired for taxable years beginning after December 31, 2011.

The Act extends the credit for taxable years beginning on or before December 31, 2013.

Effective for taxable years beginning after December 31, 2011. [Act §304; Code §45A]

Extension of New Markets Tax Credit

The Act extends the national designated investment limitation for the §45D new markets tax credit of \$3.5 billion set for 2010 and 2011, to be used for 2012 and 2013, and permits unused credits to be carried over to 2018.

Effective for calendar years beginning after December 31, 2011. [Act §305; Code §45D]

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Extension of Railroad Track Maintenance Credit

The §45G railroad track maintenance credit for 50% of qualified railroad track maintenance expenditures expired for tax years beginning after December 31, 2012.

The Act extends the credit to taxable years beginning before January 1, 2014.

Effective for expenditures paid or incurred in taxable years beginning after December 31, 2011. [Act §306; Code §45G]

Extension of Mine Rescue Team Training Credit

The §45N mine rescue team training credit for 20% of the cost of training rescue team members expired for tax years beginning after December 31, 2011.

The Act extends the credit to taxable years beginning on or before December 31, 2013.

Effective for taxable years beginning after December 31, 2012. [Act §307; Code §45N]

Extension of Employer Wage Credit for Employees Who Are Active Duty Members of the Uniformed Services

The §45P activated military reservist wage payment credit for 20% of differential wage payments made to activated military reservists expired for payments made after December 31, 2011.

The Act extends the credit for payments made on or before December 31, 2013. [Act §308; Code §45P]

Extension of Work Opportunity Credit

Under pre-Act law, businesses are allowed to claim a work opportunity tax credit equal to 40% of the first \$6,000 of wages paid to new hires of one of nine targeted groups, including members of families receiving benefits under the Temporary Assistance to Needy Families (TANF) program, qualified veterans, designated community residents, and others. The program expired December 31, 2011 for most individuals but December 31, 2012, for qualified veterans.

The Act extends the work opportunity credit for all individuals who begin work for the employer on or before December 31, 2013.

Effective for individuals who begin work for the employer after the December 31, 2011. [Act §309; Code §51]

Extension of Qualified Zone Academy Bonds

Qualified Zone Academy bonds (QZABs) are a form of tax credit bond which offer the holder a federal tax credit instead of interest and can be used to finance renovations, equipment purchases, developing course material, and training teachers and personnel at a qualified zone academy. Generally, a qualified zone academy is any public school (or academic program within a public school) below college level that is located in an empowerment zone or enterprise community and is designed to cooperate with businesses to enhance the academic curriculum and increase graduation and employment rates. The QZAB program by providing an additional \$400 million for 2011, but none thereafter. The Act also repeals the direct subsidy feature created as part of the American Recovery and Reinvestment Act for 2011 and for any carryforward of unused allocation.

The Act provides a similar \$400 million national limitation for 2012 and 2013.

Effective with respect to obligations issued after December 31, 2011. [Act §310; Code §§54E, 6431]

Extension of 15-Year Straight-Line Cost Recovery for Qualified Leasehold Improvements, Qualified Restaurant Buildings and Improvements, and Qualified Retail Improvements

The Act extends the special 15-year cost recovery period for certain leasehold improvements, restaurant buildings and improvements, and retail improvements. The 15-year cost recovery period, which expired for qualified property placed in service after 2011, is made available for qualified property placed in service before 2014.

Effective for property placed in service after December 31, 2011. [Act §311; Code §168]

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Extension of 7-Year Recovery Period for Motorsports Entertainment Complexes

The Act extends the 7-year recovery period for motorsports entertainment complexes. The 7-year recovery period, which expired for property placed in service after 2011, is made available for property placed in service before 2014.

Effective for property placed in service after December 31, 2011. [Act §312; Code §168]

Extension of Accelerated Depreciation for Business Property on an Indian Reservation

The Act extends the accelerated depreciation rules for business property on an Indian reservation. While the deduction expired for qualified Indian reservation property placed in service after 2011, the accelerated depreciation rules are made available for qualified Indian reservation property placed in service before 2014.

Effective for property placed in service after December 31, 2011. [Act §313; Code §168]

Extension of Enhanced Charitable Deduction for Contributions of Food Inventory

The §170(e)(3)(C) special rule for charitable deductions for contributions of food inventory expired on December 31, 2011. The special rule applied to contributions made from the taxpayer's trade or business, and applied only to food that was "apparently wholesome" (as defined under §22(b)(2) of the Act Emerson Good Samaritan Food Donation Act of as in effect on September 23, 2005). When the special rule applied, the determination of whether the contribution was a "qualified contribution" was made without regard to whether the contribution was by a C corporation. If the taxpayer was not a C corporation, the aggregate amount of food contributions for any taxable year which could be taken into account was limited to 10% of the taxpayer's aggregate net income for the taxable year from all trades or businesses from which food contributions were made for the year, computed without taking into account charitable contribution deductions.

The Act extends the enhanced deduction to contributions made on or before December 31, 2013.

Effective for contributions made after December 31, 2011. [Act §314; Code §170]

Extension of Increased Expensing Limitations and Treatment of Certain Real Property as Section 179 Property

For taxable years beginning in 2012, after statutory amendments and IRS inflation adjustments, small businesses may elect to expense up to \$139,000 of capital investment, with the phase out beginning at \$560,000. In 2013, the amount was set to be \$25,000 with a \$200,000 limitation.

The Act provides a \$500,000 maximum cost of §179 property that may be expensed rather than depreciated in tax years beginning in 2012 and 2013; the phase out threshold is \$800,000. After 2013, the amounts would be \$25,000/\$200,000.

The Act extends the revocability of the election through 2013. The Act also extends the availability of asset expensing for off-the-shelf computer software through 2013.

The Act further reinstates the special rule for applying §179 to certain real property by allowing \$250,000 of such real property to be §179 property through 2013. No carryover after 2013 is permitted.

Effective for taxable years beginning after December 31, 2011. [Act §315; Code §179]

Extension of Election to Expense Mine Safety Equipment

The Act extends the election to expense mine safety equipment. The election is generally available for 50% of the cost of any qualified advanced mine safety equipment property. The election expired for property placed in service after December 31, 2011.

The Act extends the election for property placed in service before 2014.

Effective for property placed in service after December 31, 2011. [Act §316; Code §179E]

Extension of Special Expensing Rules for Certain Film and Television Productions

The Act extends the special expensing rules for certain film and television producers. The special expensing rules generally apply to the first \$15 million of costs of qualified television or film productions.

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The special expensing rules expired for qualified television and film productions commencing after December 31, 2011.

The Act extends the special expensing rules for qualified television and film productions commencing before 2014.

Effective for productions commencing after December 31, 2011. [Act §317; Code §181]

Extension of Deduction Allowable with Respect to Income Attributable to Domestic Production Activities of Puerto Rico

The domestic production activities deduction expired for activities in Puerto Rico after December 31, 2011.

The Act extends the deduction through December 31, 2013. The Act also allows the deduction for the first eight taxable years of the taxpayer beginning after December 31, 2005.

Effective for taxable years beginning after December 31, 2011. [Act §318; Code §199]

Extension of Modification of Tax Treatment of Certain Payments to Controlling Exempt Organizations

Under §512(b)(13)(E), certain payments made to an exempt organization by a controlled organization must be treated as unrelated business income. For payments received or accrued before January 1, 2012, the amount taken into income was limited to "excess payments" as determined under §482.

The Act extends this rule for excess payments to include payments received or accrued before January 1, 2014.

Effective for payments received or accrued after December 31, 2011. [Act §319; Code §512]

Extension of Treatment of Certain Dividends of Regulated Investment Companies

The exemption from the 30% withholding tax under §871(k)(1) and (2) for qualified interest-related dividends and short-term capital gain dividends received by a foreign person from a regulated investment company (RIC) expired on December 31, 2011.

The Act extends the exemption through December 31, 2013.

Effective for taxable years beginning after December 31, 2011. [Act §320; Code §871]

Extension of RIC Qualified Investment Entity Treatment Under FIRPTA

The inclusion of a regulated investment company (RIC) within the definition of a "qualified investment entity" for purposes of determining whether a distribution from a RIC is subject to FIRPTA tax and withholding pursuant to §§897 and 1445 expired for certain purposes after December 31, 2011.

The Act, effective January 1, 2012, extends the inclusion of a RIC within this definition through December 31, 2013, for those situations in which that inclusion would otherwise have expired. However, the provision does not apply to the withholding requirement for any payment made before the enactment date of the Act, though a RIC that withheld and remitted tax on post-2011 distributions before such enactment date is not held liable to the distributee for such amounts. [Act §321; Code §§897, 1445]

Extension of Subpart F Exception for Active Financing Income

The exceptions from current inclusion under the subpart F rules for certain income derived in the active conduct of a banking, financing or similar business, in the conduct of an insurance business, or as a securities dealer expired for tax years beginning after 2011.

The Act extends the exceptions for tax years of foreign corporations beginning before 2014, and for tax years of their U.S. shareholders with or within which such year.

Effective for taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of U.S. shareholders with or within which any such taxable year of such foreign corporation ends. [Act §322; Code §§953, 954]

Extension of Look-thru Treatment of Payments Between Related Controlled Foreign Corporations Under Foreign Personal Holding Company Rules

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The exception under §954(c)(6) from current inclusion as foreign personal holding company income for dividends, interest, rents, and royalties received by a controlled foreign corporation (CFC) from a related CFC, to the extent such amount was neither subpart F income nor treated as effectively connected income, expired for tax years beginning after 2011.

The Act extends the exception for tax years of foreign corporations beginning before 2014, and for tax years of their U.S. shareholders with or within which such years, effective for tax years beginning after December 31, 2011. [Act §323; Code §954]

Extension of Temporary Exclusion of 100 Percent of Gain on Certain Small Business Stock

Generally, non-corporate taxpayers may exclude 50% of the gain from the sale of certain small business stock acquired at original issue and held for more than five years. For stock acquired after February 17, 2009, and on or before September 27, 2010, the exclusion is increased to 75%. For stock acquired after September 27, 2010, and before January 1, 2012, the exclusion was temporarily increased to 100%, and the alternative minimum tax preference item attributable for the sale was eliminated. Qualifying small business stock is stock from a C corporation whose gross assets do not exceed \$50 million (including the proceeds received from the issuance of the stock) and that meets a specific active business requirement. The amount of gain eligible for the exclusion is limited to the greater of 10 times the taxpayer's basis in the stock or \$10 million of gain from stock in that corporation.

The Act extends the 100% exclusion of the gain from the sale of qualifying small business stock that is acquired before January 1, 2014, and held for more than five years. The Act looks to §1223 for acquisition date determinations.

Effective generally with respect to stock acquired after December 31, 2011. [Act §324; Code §1202]

Extension Basis Adjustment to Stock of S Corporations Making Charitable Contributions of Property

Section 1367(a)(2) (as amended in 2006) provided that an S corporation shareholder's §1367(a)(2)(B) basis reduction resulting from the corporation's charitable contribution of property equaled the shareholder's pro rata share of the adjusted basis of the contributed property. The purpose of the 2006 amendment was to bring the basis reduction rules for S corporation shareholders into conformity with those for partners. This special rule expired on December 31, 2011.

The Act extends the special basis-adjustment rule to contributions made on or before December 31, 2013

Effective for contributions made in taxable years beginning after December 31, 2011. [Act §325; Code §1367]

Extension of Reduction in S-Corporation Recognition Period for Built-in Gains Tax

A "small business corporation" (as defined in §1361(b)) may elect to be treated as an S corporation. Unlike C corporations, S corporations generally pay no corporate-level tax. Instead, items of income and loss of an S corporation pass through to its shareholders. Each shareholder takes into account separately its share of these items on its individual income tax return.

A corporate level tax, at the highest marginal rate applicable to corporations (currently 35%) is imposed on an S corporation's gain that arose prior to the conversion of the C corporation to an S corporation and is recognized by the S corporation during the recognition period, i.e., the 10-year period beginning with the first day of the first taxable year for which the S election is in effect.

The built-in gains tax also applies to gains with respect to net recognized built-in gain attributable to property received by an S corporation from a C corporation in a carryover basis transaction. In the case of built-in gain attributable to an asset received by an S corporation from a C corporation in a carryover basis transaction, the recognition period rules are applied by substituting the date such asset was acquired by the S corporation in lieu of the beginning of the first taxable year for which the corporation was an S corporation.

Gains recognized in the recognition period are not built-in gains to the extent they are shown to have

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arisen while the S election was in effect or are offset by recognized built-in losses. The amount of the built-in gains tax is treated as a loss taken into account by the shareholders in computing their individual income tax.

For any taxable year beginning in 2009 and 2010, no tax is imposed on an S corporation under §1374 (as amended by the 2010 Small Business Jobs Act) if the seventh taxable year in the corporation's recognition period preceded such taxable year.

For taxable years beginning in 2011, provides that for purposes of computing the built-in gains tax, the "recognition period" is the five-year period beginning with the first day of the first taxable year for which the corporation was an S corporation. For example, if a corporation converted from C corporation status to S corporation status effective on January 1, 2006, it can sell its built-in gain assets in 2011 without tax at the corporate level. Had the Act not reduced the recognition period from 10 to five years for 2011, however, the S corporation would have had to wait until 2016 to sell its built-in gain assets without corporate-level tax.

Effective for taxable years beginning after December 31, 2011. [Act §326; Code §1374]

Extension of Empowerment Zone Tax Incentives

The Act extends for two years (through 2013) the designation of certain economically depressed census tracts as Empowerment Zones, within which businesses and individual residents are eligible for special tax incentives.

The Act also extends the gain recognition period for the 60% exclusion under §1202 for stock in empowerment zone businesses to 2018.

Effective for periods after December 31, 2011. [Act §327; Code §§1391, 1202]

Extension of Tax-Exempt Financing for New York Liberty Zone

The time for issuing qualified New York Liberty Zone bonds expired after December 31, 2011.

The Act extends the time for two years, through December 31, 2013.

Effective for bonds issued after December 31, 2011. [Act §328; Code §1400L]

Extension of Temporary Increase in Limit on Cover over of Rum Excise Taxes to Puerto Rico and the Virgin Islands

The Act extends for two years (through 2013) the provision providing for payment of \$13.25 per gallon to cover over a \$13.50 per proof gallon excise tax on distilled spirits produced in or imported into the United States.

Effective with respect to distilled spirits brought into the United States after December 31, 2011. [Act §329; Code §7652]

Modification and Extension of American Samoa Economic Development Credit

The Act extends the possessions tax credit (also known as the " §30A" or " §936" credit) for companies with activity in American Samoa, if they earn §199 "qualified activities income" in American Samoa during years they will claim the credit. Companies that had been eligible for this credit in years before 2012 are allowed it for up to three years (tax years beginning after December 31, 2011, and before 2014), while companies that had not previously been eligible for the credit are allowed it for two years (essentially 2012 and 2013).

Effective for taxable years beginning after December 31, 2011. [Act §330; Tax Relief and Health Care Act of 2006, Div. A, §119(d)]

Extension and Modification of Bonus Depreciation

The Act extends for one additional year the current §168(k) 50% bonus depreciation provision that applied to qualified property acquired in 2008 through 2012. Thus, the Act extends bonus 50% depreciation to property acquired and placed in service before January 1, 2014. The placed-in-service deadline is extended to January 1, 2015, for certain aircraft and longer production period property.

The Act also extends for one additional year — to tax years beginning in 2013 — the provision allowing

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corporate taxpayers to elect to accelerate the AMT and research credits in lieu of bonus depreciation.

The Act designates property eligible for bonus depreciation as a result of the Act's extension as "round 3 extension property" and provides that the limitation on the general business credit based on the amount of tax does not apply to round 3 extension property. In addition, the Act provides that the business credit increase amount applicable to allocations of bonus depreciation does not apply to round 3 extension property.

Finally, the Act provides that all elections made under §168 will be respected when determining the amount allowable as a §168 deduction for purposes of applying the normalization rules.

Effective for property placed in service after December 31, 2012, in taxable years ending after such date. [Act §331; Code §168]

TITLE IV—ENERGY TAX EXTENDERS

Extension of Credit for Energy-Efficient Existing Homes

The Act extends the non-business energy property credit's placed in service date to property placed in service date from on or before December 31, 2011, to on or before December 31, 2013.

Effective for property placed in service after December 31, 2011. [Act §401; Code §25C]

Extension of Credit for Alternative Fuel Vehicle Refueling Property

The Act extends the alternative fuel vehicle refueling property credit to any non-hydrogen related property placed in service on or before December 31, 2013.

Effective for property placed in service after December 31, 2011. [Act §402; Code §30C]

Extension of Credit for 2- or 3-Wheeled Plug-in Electric Vehicles

The Act provides a credit for qualified two- or three-wheeled plug-in electric vehicles.

The amount of the credit equals the sum of the applicable amounts with respect to each qualified vehicle. The "applicable amount" for each qualified vehicle is the lesser of (i) 10% of the cost of the qualified two- or three-wheeled plug-in electric vehicle, or (ii) \$2,500.

A "qualified two- or three-wheeled plug-in electric vehicle" is any vehicle that (i) has two or three wheels, (ii) meets the requirements of §30D(d)(1)(A), (B), (C), (E), and (F) (with a kilowatt modification), (iii) is manufactured primarily for use on public streets, roads, or highways, (iv) can achieve a speed of at least 45 miles per hour, and (v) is acquired after December 31, 2011, and before January 1, 2014.

The Act also amends §30D(f)(2) to include qualified two- or three-wheeled plug-in electric vehicles among the vehicles that are denied double benefits by requiring the reduction of any deduction or other credit allowable for vehicles qualifying for credit under §30D(a) by the amount of the §30D(a) credit.

Finally, the Act amends the §30D(f)(7) air quality and safety standard requirements so that it applies to "vehicles" rather than "motor vehicles."

Effective for vehicles acquired after December 31, 2011.

[Act §403; Code §30D]

Extension and Modification of Cellulosic Biofuel Producer Credit

The Act extends and modifies the cellulosic biofuel producer credit.

The application of the credit is extended by one year to cover qualified cellulosic biofuel production after December 31, 2008, and before January 1, 2014. Should §40(b)(6) cease to apply by reason of the expiration date, the Act provides for the application of rules similar to §40(e)(2), which does not allow carryovers to certain years after expiration. Effective as if included in §15321(b) of the Heartland, Habitat, and Horticulture Act of 2008.

The Act also includes in the definition of "cellulosic biofuel" liquid fuel derived by, or from, "qualified feedstocks" and meeting the requirements of §40(b)(6)(E)(i)(II). "Qualified feedstocks" includes any cultivated algae, cyanobacteria, or lemna along with the formerly-qualifying "cellulosic biofuel" described in §40(b)(6)(E)(i)(I). For fuel derived from such cultivated algae, cyanobacteria, or lemna and which the taxpayer sells to another person for refining into fuel meeting the requirements of §40(b)(6)(E)(i)(II) and not

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excluded under §40(b)(6)(E)(iii), such sale is treated as described in §40(b)(6)(C)(i), and such fuel in the hands of the taxpayer is treated as meeting the requirements of §40(b)(6)(E)(i)(II) and not excluded under §40(b)(6)(E)(iii), and except as provided, such fuel would not be taken into account under §40(b)(6)(C) with respect to the taxpayer or any other person.

Additionally, the Act amends §§40 and 4101(a)(1) by replacing the term "cellulosolic" with "second generation."

Effective for fuels sold or used after the enactment date. [Act §404; Code §40]

Extension of Incentives for Biodiesel and Renewable Diesel

The Act extends the termination date of credits for biodiesel and renewable diesel used as fuel from December 31, 2011, to December 31, 2013. Similarly, the Act extends the termination dates of excise tax credits for biodiesel and renewable diesel fuel mixtures from December 31, 2011, to December 31, 2013.

Effective for fuel sold or used after December 31, 2011. [Act §405; Code §§40A, 6426, 6427]

Extension of Production Credit for Indian Coal Facilities Placed in Service Before 2009

Legislation in 2005 added the Indian coal production facilities to the list of those facilities eligible for the §45 production credit. The credit was available for sales of Indian coal to an unrelated party from a qualified facility beginning January 1, 2006, and ending December 31, 2012. The credit was \$1.50 per ton during 2006 - 2009 and increased to \$2.00 per ton in 2110 - 2012; the credit amount for Indian coal was adjusted for inflation in calendar years after 2006.

The Act extends the \$2.00 per to credit an additional year through 2013.

Effective for coal produced after December 31, 2012. [Act §406; Code §45]

Extension and Modification of Credits with Respect to Facilities Producing Energy from Certain Renewable Sources

The Act extends the production tax credit for qualified wind facilities from January 1, 2013, to January 1, 2014.

Furthermore, the Act modifies the definition of a "qualified facility" by replacing "before January 1, 2014" with "the construction of which begins before January 1, 2014" in appropriate subparagraphs of §45(d).

The Act also clarifies that, for purposes of §45(d)(2)(A)(ii), a facility would be treated as modified before January 1, 2014, if construction of such modification begins before that date.

Similarly, the Act amends §45(d)(3)(A)(ii), regarding open-loop biomass facilities, to replace "is originally placed in service" before January 1, 2014, with "the construction of which begins" before January 1, 2014.

With regard to geothermal and solar energy facilities, the Act reorganizes the provision and clarifies that facilities using solar energy must be placed in service before January 1, 2006, while facilities using geothermal energy must begin construction before January 1, 2014.

The Act adds a special rule that an efficiency improvement or addition to capacity is treated as placed in service before January 1, 2014, if construction of the improvement or addition begins before that date. The Act also extends the election to treat qualified facilities as energy property. Wind facilities and other facilities that are placed in service after 2008 and the construction of which begins before January 1, 2014, are eligible for the §48(a)(5) election.

These amendments are effective beginning on the date of the enactment.

Additionally, the Act would provide that §45(c)(6)'s definition of "municipal solid waste" does not include "paper which is commonly recycled and which has been segregated from other solid waste." This amendment is effective for electricity produced and sold after the date of enactment, in taxable years ending after such date.

The Act adds as "qualified property" under §48(a)(5)(D) property which is constructed, reconstructed, erected, or acquired by the taxpayer, and property the original use of which commences with the taxpayer.

Furthermore, the Act amends §1603(a)(1) and (2) of Division B of the American Recovery and Reinvestment Act of 2009 by replacing "placed in service" with "originally placed in service by such person." These amendments are effective as if they were included in the enactment of the provisions of the

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American Recovery and Reinvestment Act of 2009 to which they relate.

[Act §407; Code §45]

Extension of Credit for Energy-Efficient New Homes

The Act extends the new energy efficient home credit for two year. Thus, to qualify, the new energy efficient home must be acquired from an eligible contractor on or before December 31, 2013. The Act updates the energy savings requirements to reflect use of the 2006 International Energy Conservation Code, as in effect on January 1, 2006.

Effective for homes acquired after December 31, 2011. [Act §408; Code §45L]

Extension of Credit for Energy-Efficient Appliances

The Act extends the applicable amounts used to determine the energy efficient appliance credit for dishwashers, clothes washers and refrigerators manufactured in calendar year 2012 and 2013 that meet specified energy-usage limits. Exceptions to the extension are for dishwashers which uses no more than 307 kilowatt hours per year and 5 gallons per cycle (5.5 gallons for dishwashers designed to hold more than 12 place settings) and top-loading clothes washers which meets or exceeds a 2.2 modified energy factor and does not exceed a 4.5 water consumption factor.

Effective for appliances produced after December 31, 2011. [Act §409; Code §45M]

Extension and Modification of Special Allowance for Cellulosic Biofuel Plant Property

The Act extends the placed in service date for qualified cellulosic biofuel plan property to qualify for an additional depreciation allowance to before January 1, 2014. The Act further adds algae as a qualified feedstock termed a "second generation biofuel."

Effective for property placed in service after the date of enactment. [Act §410; Code §168]

Extension of Special Rule for Sales or Dispositions to Implement FERC or State Electric Restructuring Policy for Qualified Electric Utilities

The Act, for qualified electric utilities, extends the definition of "qualifying electric transmission transaction" to any sale or disposition before January 1, 2014.

Effective for dispositions after December 31, 2011. [Act §411; Code §451]

Extension of Alternative Fuels Excise Tax Credits

The Act provides that the credits for alternative fuel and alternative fuel mixture (excepting, in both cases, liquefied hydrogen) and payments for non-taxable alternative fuel and alternative fuel mixture (excepting, in both cases, liquefied hydrogen) applies to such fuels sold or used on or before December 31, 2013.

Effective for fuel sold or used after December 31, 2009. [Act §412; Code §§6426, 6427]

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