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"Review of Tax Provisions in the Economic Stimulus Package"

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Congress approved H.R. 1, the "American Recovery and Reinvestment Act of 2009" (the "Act"), on February 13, 2009. The President signed the Act into law on February 17, 2009.

Generally, the Act provides for various spending and tax provisions intended to stimulate growth in the U.S. economy, create jobs for American workers, and cut taxes for families and businesses. The tax-related provisions are broken down into four categories: tax provisions for businesses, energy incentives, tax provisions for individuals and families, and tax provisions benefiting state and local governments.

Tax Provisions for Businesses

Extension of Bonus Depreciation. The Act extends the 50% bonus depreciation previously allowed for certain depreciable property acquired in 2008 to such property acquired in 2009.

Election to Accelerate Recognition of Historic AMT/R&D Credits in Lieu of Bonus Depreciation. Previously, businesses were allowed to accelerate the recognition of a portion of their historic AMT or research and development (R&D) credits in lieu of bonus depreciation. The Act extends this benefit through 2009.

Extension of Enhanced Small Business Expensing. The Act extends until the end of 2009 small business expensing previously allowed for certain capital expenses of up to \$250,000. The phase-out threshold for such expenses incurred in 2009 begins once capital expenditures exceed \$800,000, the phase-out threshold amount for such expenses incurred in 2008.

Extension of Carryback of Net Operating Losses. The Act permits a taxpayer with average gross receipts of \$15 million or less to elect to increase the present two-year net operating loss carryback period to any whole number of years, which is more than two and less than six, for a net operating loss for any taxable year ending in 2008, or, if elected by the taxpayer, a net operating loss for any taxable year beginning in 2008. These provisions are denied to Fannie Mae, Freddie Mac and companies that received money from the Temporary Asset Relief Program ("TARP"), or any member in the same affiliated group as Fannie Mae, Freddie Mac or a company that received money from TARP.

Delayed Recognition of Certain Cancellation of Debt Income. The Act permits C corporations or any other person in connection with the conduct of a trade or business to elect to recognize cancellation of debt income ("CODI") over 10 years (defer tax on CODI for the first five taxable years for CODI occurring in 2009 or the first four taxable years for CODI occurring in 2010 and recognize this income beginning in 2014 ratably over the following five taxable years, i.e., 20% per year) for specified types of business debt "reacquired" by the business or a related person after December 31, 2008 and before January 1, 2011. Business debt is reacquired through (i) acquisition of the debt for cash, (ii) exchange of the debt instrument for another debt instrument (including an exchange resulting from a modification of a debt instrument), (iii) the exchange of corporation stock or a partnership interest for a debt instrument, (iv) the contribution of a debt instrument to the capital of the issuer, and (v) the complete forgiveness of a debt instrument by a holder of such instrument. The specified types of business debt covered by this provision are bonds, debentures, notes, certificates, or any other instrument or contractual arrangement constituting indebtedness [within the meaning of Code Section 1275(a)(1)]. The election is to be made on an instrument-by-instrument basis and is irrevocable.

Original Issue Discount

If a taxpayer makes an election above with respect to a debt-for-debt exchange in which the newly issued debt instrument is issued with original issue discount ("OID"), then the deduction otherwise allowed for OID with respect to such newly issued debt instrument that (i) accrues before the first year of the five-taxable-year period in which the deferred CODI will be included in the gross income of the taxpayer and (ii) does not exceed the related, deferred CODI, is deferred and allowed as

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a deduction ratably over the same five-year period. This rule can apply also in certain reacquisitions by the issuer of its debt for cash.

Acceleration of Deferred Items

CODI and other items deferred under this provision generally are accelerated and taken into income if the taxpayer dies, liquidates or sells substantially all of its assets (including in Title 11 bankruptcy), ceases to do business, or is in similar circumstances.

Special Rule for Partnerships

In the case of a partnership, any CODI deferred is allocated to the partners immediately before the discharge of indebtedness in the manner such amounts would have been included in the distributive shares of the partners if the income were recognized at the time of the discharge. Any decrease in a partner's share of liabilities as a result of the discharge is not taken into account to the extent it would cause the partner to recognize gain from a deemed distribution. Such deemed distribution is deferred to be taken into account at the same time, and to the extent remaining in the same amount, as deferred CODI is recognized by the partner.

Coordination with Code Section 108

The exclusions provided in Code Section 108(a)(1)(A), (B), (C) and (D) (regarding exclusion of CODI from income for insolvent taxpayers, taxpayers in bankruptcy, and taxpayers cancelling certain types of debt) will not apply to the CODI deferred under this provision for the year in which the taxpayer makes the election or any subsequent year. Thus, for example, an insolvent taxpayer may elect to defer CODI rather than excluding such income and reducing tax attributes by a corresponding amount.

Suspension of Applicable High-Yield Discount Obligation ("AHYDO") Rules. The rules disallowing or suspending deductions for OID for AHYDOs issued by a corporate issuer will not apply to certain obligations issued in a debt-for-debt exchange, including an exchange resulting from a significant modification of a debt instrument, after August 31, 2008 and before January 1, 2010. The suspension of the AHYDO rules does not apply to any newly issued debt instrument (including any debt instrument deemed issued as a result of a significant modification of a debt instrument) that is issued for an AHYDO. Any newly issued debt instrument for which the AHYDO rules are suspended is not treated as an AHYDO for purposes of a subsequent application of the suspension rule provided in this provision. Additionally, the suspension does not apply to certain contingent debt or debt issued to a related person.

Incentives to Hire Unemployed Veterans and Disconnected Youth. The Act broadens the current work opportunity tax credit available to businesses that employ certain targeted groups of individuals to include unemployed veterans and disconnected youth. The work opportunity tax credit is equal to 40% of the first \$6,000 of wages paid to an employee that falls within one of the targeted groups of individuals.

Repeal of Internal Revenue Service Notice 2008-83. The Act nullifies Internal Revenue Service Notice 2008-83, which permitted banks to claim tax deductions for the built-in losses of other banks they acquired. The nullification applies to ownership changes occurring after January 16, 2009. However, Internal Revenue Service Notice 2008-83 will have the force and effect of law with respect to an ownership change occurring after January 16, 2009 if such change (i) is pursuant to a written binding contract entered into on or before January 16, 2009, or (ii) is pursuant to a written agreement entered into on or before January 16, 2009, and such agreement was described on or before January 16, 2009, in a public announcement or in a filing with the Securities and Exchange Commission required by reason of such ownership change.

Exception from Code Section 382 Limitation for Certain Ownership Changes. The Act provides that the Code Section 382 limitation that would otherwise apply in an ownership change under Code Section 382 to limit the use of a corporation's net operating losses will not apply to an ownership change that occurs pursuant to a restructuring plan of a taxpayer which is required under a loan agreement or commitment for a line of credit entered into with the Department of the Treasury

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under the Emergency Economic Stabilization Act of 2008. This exception does not change the fact that an ownership change has occurred for other purposes of Code Section 382, including, for example, for purposes of determining the testing period.

Exclusion of Gain on Sale of Qualified Small Business Stock. The Act increases the exclusion of gain from dispositions of qualified small business stock from 50% to 75% effective for stock issued after the date of the enactment of the Act and before January 1, 2011.

Temporary Reduction of Built-In Gains Tax Period for S Corporations. For any taxable year beginning in 2009 and 2010, no tax is imposed on an S corporation with respect to built-in gain that arose prior to the conversion of a C corporation to an S corporation (arising from assets held by the S corporation while it was a C corporation, prior to its S election) if such built-in gain is recognized after the seventh taxable year the S corporation election is in effect.

Energy Incentives

Credit for Investment in Advanced Energy Property. Effective as of the date of enactment of the Act, the Act creates a 30% credit for investment in qualified property used in a qualified advanced energy manufacturing project. A qualified advanced energy project is a project that re-equips, expands or establishes a manufacturing facility for the production of:

- property designed to be used to produce energy from the sun, wind or geothermal deposits, or other renewable resources;
- fuel cells, microturbines or an energy storage system for use with electric or hybrid-electric motor vehicles;
- electric grids to support the transmission of intermittent sources of renewable energy, including storage of such energy;
- property designed to capture and sequester carbon dioxide;
- property designed to refine or blend renewable fuels (but not fossil fuels) or to produce energy conservation technologies (including energy-conserving lighting technologies and smart grid technologies);
- other advanced energy property designed to reduce greenhouse emissions as may be determined by the Secretary of the Treasury; or
- new qualified plug-in electric drive motor vehicles.

Qualified property must be depreciable (or amortizable) tangible personal property or other tangible property (not including a building or its structural components) used in a qualified advanced energy project and does not include property designed to manufacture equipment for use in the refining or blending of any transportation fuel other than renewable fuels. The basis of qualified property is reduced by the amount of tax credit received. Qualified advanced energy projects must be certified by the Secretary of the Treasury to be eligible for the tax credit and the maximum amount of credits allocated by the Secretary of the Treasury is \$2.3 billion.

A taxpayer seeking to qualify for this tax credit must submit a project application to the Secretary of the Treasury during the two-year period beginning on the date such certification program is established. An applicant for certification has one year from the date the Secretary of the Treasury accepts the application to provide the Secretary with evidence that the requirements for certification have been met. The applicant has three years from the date of issuance of the certification to place the project in service.

Long-term Extension and Modification of Renewable Electricity Production Tax Credit. For qualification for the renewable electricity production tax credit, the Act extends the placed-in-service date for wind facilities through December 31, 2012, and also extends the placed-in-service date through December 31, 2013, for certain other facilities: closed-loop biomass; open-loop biomass; geothermal; small irrigation; hydropower; landfill gas; waste-to-energy; marine renewable facilities; and marine and hydrokinetic facilities.

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Temporary Election to Claim Investment Tax Credit in Lieu of Production Tax Credit. The Act permits facilities eligible for the renewable electricity production tax credit that are placed in service in 2009 through 2012, in the case of wind facilities, and placed in service in 2009 through 2013, in the case of other facilities (closed-loop biomass; open-loop biomass; geothermal; small irrigation; hydropower; landfill gas; waste-to-energy; marine renewable facilities; and marine and hydrokinetic facilities), to elect to claim the investment tax credit in lieu of the production tax credit by treating such facilities as energy property.

Removal of Dollar Limitations on Certain Energy Tax Credits. For tax periods beginning after December 31, 2008, the Act repeals the current dollar caps on energy tax credits claimed for qualified small wind energy property. Qualified small wind property is eligible for energy tax credits if placed in service prior to January 1, 2017.

Repeal of Subsidized Energy Financing Limitation on Energy Tax Credit. Previously, the energy tax credit, as part of the investment tax credit, must be reduced if the property qualifying for the energy tax credit is also financed with industrial development bonds or through any federal, state or local subsidized financing program. The Act repeals this subsidized energy financing limitation.

Renewable Energy Grants in Lieu of Certain Tax Credits. The Act provides that the Secretary of Energy will make renewable energy grants to qualifying persons for:

- wind facilities eligible for the renewable electricity production tax credit placed in service during 2009 and 2010, or after 2010 and before January 1, 2013, if the construction of such property began during 2009 or 2010,
- certain other facilities eligible for the renewable electricity production tax credit (closed-loop biomass; open-loop biomass; geothermal; small irrigation; hydropower; landfill gas; waste-to-energy; and marine and hydrokinetic renewable facilities) placed in service during 2009 and 2010, or after 2010 and before January 1, 2014, if the construction of such property began during 2009 or 2010, or
- qualified fuel cell property, solar property, qualified small wind energy, geothermal property, qualified microturbine property, combined heat and power system property, or geothermal heat pump property eligible for the energy tax credit placed in service during 2009 and 2010, or after 2010 and before January 1, 2017, if the construction of such property began during 2009 or 2010,

in each case, equal to 30% of the taxpayer's basis in such facility (subject to dollar limitations for qualified fuel cell property, qualified microturbine property, and combined heat and power system property) and 10% of the taxpayer's basis in the case of any other property. The Act provides that no investment tax credit or production tax credit is allowed in a taxable year for a taxpayer that receives a renewable energy grant.

Clean Renewable Energy Bonds ("CREBs"). The Act authorizes an additional \$1.6 billion of new clean renewable energy bonds to finance facilities that generate electricity from the following resources: wind; closed-loop biomass; open-loop biomass; geothermal; small irrigation; hydropower; landfill gas; marine renewable; and trash combustion. This \$1.6 billion is subdivided into the following amounts: 1/3 available for qualifying projects of state, local or tribal governments; 1/3 available for qualifying projects of public power providers; and 1/3 available for qualifying projects of electric cooperatives.

Qualified Energy Conservation Bonds. The Act authorizes an additional \$2.4 billion of qualified energy conservation bonds to finance state, municipal and tribal government programs and initiatives designed to reduce greenhouse gas emissions. The Act also expands the use of such bonds to finance loans and grants for green community programs (such as to assist homeowners in retrofitting existing housing). The use of bond proceeds for such loans and grants will not cause the bond to be treated as a private activity bond for purposes of the private activity bond restrictions contained in the qualified energy conservation bond provisions.

Tax Credits for Residential Energy Property. The Act extends the current tax credits for improvements to energy-efficient existing homes through 2010. The Act (a) increases the tax credit from 10% to 30% for the sum of (i) amounts paid or incurred by the taxpayer for qualified energy efficiency improvements during the taxable year and (ii) residential energy

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property expenditures paid or incurred by the taxpayer, (b) eliminates the property-by-property dollar caps on this tax credit, and (c) provides an aggregate \$1,500 cap on the tax credit on all qualifying property placed in service in 2009 or 2010. Additionally, the Act modifies the efficiency standards on property qualifying for this tax credit.

Modification of Tax Credits for Residential Energy Efficient Property. The Act eliminates the credit caps for solar hot water, geothermal and wind property expenditures made for such property for use in a home. The Act also eliminates the reduction in such tax credits for property using subsidized energy financing.

Modification of Tax Credits for Alternative Fuel Pumps. For 2009 and 2010, the Act increases the alternative refueling property tax credit for businesses from 30% (capped at \$30,000 of tax credit) to 50% (capped at \$50,000 of tax credit) and for individuals from 30% (capped at \$1,000 of tax credit) to 50% (capped at \$2,000 of tax credit). The tax credit for businesses for hydrogen refueling pumps remains at 30%, but the cap on the tax credit is increased from \$30,000 to \$200,000.

Modification of Tax Credits for Carbon Dioxide Sequestration. The Act modifies the tax credit for qualified carbon dioxide captured by the taxpayer at a qualified facility and used by such taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project. The Act provides that carbon dioxide captured after the date of enactment of the Act and used as a tertiary injectant must be sequestered by the taxpayer in a permanent geological storage (defined as oil and gas reservoirs, unminable coal seams, and deep saline formations).

Extension and Modification of Tax Credits for Plug-In Electric Drive Motor Vehicles. The Act creates a new 10% tax credit, up to \$2,500 of tax credit, for low-speed vehicles, motorcycles and three-wheeled vehicles that would otherwise meet the criteria of a qualified plug-in electric drive motor vehicle but for the fact that they are low-speed vehicles or do not have at least four wheels. The Act also creates a new 10% tax credit, up to \$4,000 of tax credit, for converting any motor vehicle into a qualified plug-in electric drive motor vehicle placed into service after December 31, 2008 and before January 1, 2012. The converted motor vehicle must have a qualified plug-in traction battery module with capacity of at least 4 kilowatt-hours. For vehicles acquired after December 31, 2009, the Act modifies the plug-in electric drive motor vehicle credit by limiting the maximum credit to \$7,500 and eliminating the credit for vehicles weighing 14,000 pounds or more. The Act imposes a 200,000 plug-in vehicles per manufacturer limitation.

Alternative Motor Vehicle Tax Credit as a Personal Credit Against the Alternative Minimum Tax. For taxable years beginning after January 1, 2009, the Act provides that the alternative motor vehicle tax credit is a personal credit allowed against the alternative minimum tax.

Parity for Qualified Transportation Fringe Benefits. For months beginning after the date of enactment of the Act and for tax years beginning before December 31, 2010, the Act increases the monthly exclusion for employer-provided transit and vanpool benefits to \$230 per employee (indexed for inflation), which is the same level as the exclusion for employer-provided parking.

Tax Provisions for Individuals

New "Making Work Pay" Tax Credit. For 2009 and 2010, the Act provides a new refundable tax credit of up to \$400 for working individuals (excluding nonresident aliens, dependents, estates and trusts) and \$800 for working families. This tax credit is calculated at a rate of 6.2% of earned income and is phased out for taxpayers with adjusted gross income in excess of \$75,000 (\$150,000 for married couples filing jointly). Taxpayers can receive this benefit through a reduction in the amount of income tax that is withheld from their paychecks or through claiming the tax credit on their tax returns.

Increase in Earned Income Tax Credit. For 2009 and 2010, the Act increases the earned income tax credit for working families with three or more children and increases the beginning point of the phase-out range for all married couples filing jointly (a "reduction of marriage penalty" provision). The earned income tax credit is increased from 40% to 45% of a family's first \$12,570 of earned income, subject to a phase-out for families with adjusted gross income in excess of \$16,240 (\$19,450 for married couples filing jointly). The beginning point of the phase-out range for the earned income tax credit for

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all married couples filing jointly (regardless of the number of children) is increased by \$1,880 to \$5,000 (with an inflation adjustment for 2010).

Increased Eligibility for the Refundable Child Tax Credit. For 2009 and 2010, the Act increases the eligibility for the refundable child tax credit by eliminating the current floor on the tax credit based on earned income. For 2008, the child tax credit is refundable to the extent of 15% of the taxpayer's earned income in excess of \$8,500. The Act reduces this floor to \$3,000 for 2009 and 2010.

New "American Opportunity" Education Tax Credit. For 2009 and 2010, the Act provides a new "American Opportunity" tax credit of up to \$2,500 of the cost of tuition and related expenses paid during the taxable year for each of the first four years of the student's post-secondary education in a degree or certificate program. Taxpayers will receive a tax credit based on 100% of the first \$2,000 of tuition and related expenses (including books) paid during the taxable year and 25% of the next \$2,000 of tuition and related expenses paid during the taxable year. 40% of the tax credit is refundable and the tax 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).

Computers and Computer Technology as Qualified Education Expenses in 529 Education Plans. The Act provides that computers and computer technology qualify as qualified education expenses for 529 Education Plans.

Modification of Refundable First-time Home Buyer Tax Credit. Previously, for homes purchased on or after April 9, 2008 and before July 1, 2009, first-time buyers are provided with a tax credit equal to 10% of the purchase price of the home (up to \$7,500 of tax credit). The buyers receiving this tax credit are required to repay any amount received under this tax credit to the government over 15 years in equal installments, or, if earlier, when the home is sold. The tax credit is subject to a phase-out for taxpayers with adjusted gross income in excess of \$75,000 (\$150,000 for married couples filing jointly). The Act eliminates the repayment obligation for first-time buyers that purchase homes after December 31, 2008 and before December 1, 2009, increases the maximum value of the credit to \$8,000, removes the prohibition on financing by mortgage revenue bonds, and extends the availability of the credit for homes purchased before December 1, 2009. The Act retains the tax credit recapture if the home is sold within 3 years of purchase.

Temporary Suspension of Taxation of Unemployment Benefits. Under prior law, all federal unemployment benefits were subject to taxation. The Act suspends federal income tax on the first \$2,400 of unemployment benefits per recipient for 2009. Any unemployment benefits over \$2,400 will be subject to federal income tax.

Sales Tax Deduction for Vehicle Purchases. The Act provides all taxpayers with an above-the-line deduction for state and local sales and excise taxes paid on the purchase of new cars, light trucks and motorcycles after the date of enactment of the Act and before January 1, 2010. The deduction is limited to the tax on up to \$49,500 of the purchase price and is subject to a phase-out for taxpayers with modified adjusted gross income between \$125,000 and \$135,000 (between \$250,000 and \$260,000 in the case of married couples filing jointly).

Extension of AMT Relief for 2009. For taxable years beginning in 2009, the Act allows an individual to offset the entire regular tax liability and alternative minimum tax liability by the nonrefundable personal tax credits and increases the AMT exemption amount to \$70,950 for joint filers and \$46,700 for individuals.

Economic Recovery Payment to Recipients of Social Security, SSI, Railroad Retirement and Veterans Disability Compensation Benefits. The Act provides a one-time payment of \$250 to retirees, disabled individuals and SSI recipients receiving benefits from the Social Security Administration, Railroad Retirement beneficiaries, and disabled veterans receiving benefits from the U.S. Department of Veterans Affairs. The one-time payment is a reduction to any allowable "Making Work Pay" credit.

Refundable Credit for Certain Federal and State Pensioners. The Act provides a one-time refundable tax credit of \$250 in 2009 to certain government retirees who are not eligible for Social Security benefits. This one-time credit is a reduction to any allowable "Making Work Pay" tax credit.

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Tax Provisions Benefiting State and Local Governments

Application of Certain Labor Standards to Projects Financed with Certain Tax-Favored Bonds. The Act provides that any project financed by CREBs, qualified energy conservation bonds, QZABs (qualified zone academy bonds), qualified school construction bonds, or recovery zone economic development bonds is subject to Title 40, Chapter 31, Subchapter IV of the United States Code (imposes a prevailing wage requirement).

De Minimis Safe Harbor Exception for Tax-Exempt Interest Expense for Financial Institutions. Previously, financial institutions were not permitted to take a deduction for the portion of their interest expense that is allocable to such institution's investments in tax-exempt municipal bonds. In determining the portion of interest expense that is allocable to investments in tax-exempt municipal bonds, the Act excludes investments in tax-exempt municipal bonds issued during 2009 and 2010 to the extent these investments constitute less than 2% of the average adjusted bases of all the assets of the financial institution.

Elimination of Costs Imposed on State and Local Governments by the Alternative Minimum Tax. The Act excludes interest from all categories of tax-exempt private activity bonds from the alternative minimum tax if the bonds are issued in 2009 and 2010. For these purposes, a refunding bond is treated as issued on the date of the issuance of the refunded bond. Additionally, interest from tax-exempt private activity bonds issued in 2009 and 2010 to refund a private activity bond issued after December 31, 2003 and before January 1, 2009, is excluded from the alternative minimum tax.

Modification to High-Speed Intercity Rail Facility Bonds. The Act modifies the requirement that high-speed intercity rail transportation facilities use vehicles that are reasonably expected to operate at speeds in excess of 150 miles per hour. Instead, such facilities must use vehicles capable of attaining a maximum speed in excess of 150 miles per hour.

Temporary Expansion of Availability of Industrial Development Bonds. Previously, industrial development bonds would be issued to finance private business manufacturing facilities for tangible personal property. For bonds issued after the date of enactment of the Act and before January 1, 2011, the Act expands availability of such development bonds to any facility that is used in the manufacturing, creation or production of tangible property or intangible property. Intangible property means any patent, copyright, formula, process, design, know-how, format or other similar item.

Modification of Small Issuer Exception to Tax-Exempt Interest Expense Allocation Rules for Financial Institutions. Previously, bonds that were issued by a "qualified small issuer" were not taken into account as investments in tax-exempt municipal bonds for purposes of determining a financial institution's interest expense that is allocable to investments in tax-exempt municipal bonds. The Act increases the dollar threshold for a "qualified small issuer" from \$10,000,000 to \$30,000,000 when determining whether a tax-exempt obligation issued in 2009 and 2010 qualifies for the small issuer exception. The small issuer exception also applies to an issue if all of the ultimate borrowers in such issue separately qualify for the exception. Qualified 501(c)(3) bonds issued in 2009 or 2010 are treated as issued by the 501(c)(3) organization for whose benefit they were issued (and not by the actual issuer of such bonds).

Qualified School Construction Bonds. The Act provides a new category of tax credit bonds for the construction, rehabilitation or repair of public school facilities or for the acquisition of land on which a public school facility will be constructed. These qualified school construction bonds are subject to a national limitation that may be issued by state and local governments of \$22 billion (\$11 billion allocated initially in 2009 and \$11 billion allocated in 2010) and a national limitation that may be issued by Indian tribal governments of \$400 million (\$200 million allocated initially in 2009 and \$200 million allocated in 2010). This provision is effective for bonds issued after the date of enactment of the Act.

Extension and Increase in Authorization for Qualified Zone Academy Bonds ("QZABs"). The Act allows an additional \$1.4 billion of QZABs issuing authority to state and local governments in 2009 and 2010, which can be used to finance renovations, purchase equipment, develop course material, and train teachers and personnel at a qualified zone academy. This provision is effective for bonds issued after December 31, 2008.

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Build America Bonds for State and Local Governments. For bonds issued after the date of enactment of the Act and before January 1, 2011, the Act provides state and local governments with the option of electing to treat a tax-exempt governmental obligation bond as a tax credit bond (named “Build America Bonds”). Because the current market for tax credits is small given the economic conditions, the Act allows the state or local government to elect to receive a direct payment from the federal government equal to the subsidy (55% of the interest payable upon the bond) that would have otherwise been delivered through the tax credit for bonds issued in 2009 and 2010.

Delay of Three Percent Withholding on Government Contractors. The Act delays, until December 31, 2011, application of the Section 3402(t) of the Internal Revenue Code of 1986, as amended, which requires withholding at a 3% rate on certain payments to government contractors made after December 31, 2010.

Recovery Zone Bonds. The Act provides a new category of tax credit bonds for investment in economic recovery zones. A recovery zone means any area designated by the issuer as having significant poverty, unemployment, home foreclosures or general distress and any area for which a designation as an empowerment zone or renewal community is in effect. The Act authorizes \$10 billion in recovery zone economic development bonds (for expenditures promoting development or other economic activity in a recovery zone) and \$15 billion in recovery zone facility bonds (for acquiring depreciable property to be used in the taxpayer’s active conduct of a trade or business in a recovery zone), to be issued during 2009 and 2010.

Tribal Economic Development Bonds. The Act allows tribal governments to issue \$2 billion in tax-exempt bonds for projects without being subject to the “essential government function” requirement. The Act requires the Secretary of the Treasury to study whether this restriction should be repealed on a permanent basis.

Extension and Modification of the New Markets Tax Credit. Effective on the date of enactment of the Act, the Act increases the national limitation on the amount of qualified equity investments eligible for the new markets tax credit by \$1.5 billion (to \$5 billion each year).

Other Tax Provisions

Grants to States for Low-Income Housing in Lieu of Low-Income Housing Tax Credit Allocations. For 2009, the Act provides that the Secretary of the Treasury will make grants to the housing credit agency of each state equal to such state’s low-income housing grant election amount. The Act provides that the allocation of low-income housing tax credits to a state in a taxable year is reduced by the amount of such credits taken into account in determining the amount of low-income housing grants that such state receives.

More Information

Tax provisions of the Act are located in Division B, Title I of the Act, which is entitled the “American Recovery and Reinvestment Tax Act of 2009.” Tax provisions related to incentives for businesses are located in Division B, Title I, Subtitle C of the Act. Tax provisions related to energy incentives are generally located in Division B, Title I, Subtitle B of the Act. The Credit for Investment in Advanced Energy Property is located in Division B, Title I, Subtitle D of the Act entitled “Manufacturing Recovery Provisions.” Tax provisions related to incentives for individuals are located in Division B, Title I, Subtitle A of the Act. Tax provisions related to incentives for state and local governments are located in Division B, Title I, Subtitles E, F and G of the Act.

For the full text of Division B, Title I of H.R. 1, please see the following website:

http://appropriations.house.gov/pdf/Recovery_Bill_Div_B.pdf

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