FEBRUARY 2009

AMERICAN RECOVERY AND REINVESTMENT TAX ACT OF 2009

Description of Key Business Provisions

TOPICS COVERED:

Debt Workouts and Loss Carrybacks
Energy Incentives
Government Finance Incentives
Miscellany

Legislative Materials: References to "**ARRTA**" or the "**Act**," signed into law on February 17, 2009, are to Division B, Title I, Subtitles A-H, of the final Conference Report version of H.R.1 dated February 12, 2009, which can be found at http://appropriations.house.gov/pdf/Recovery__Bill__Div__B.pdf. References to "**JES**" are to the Joint Explanatory Statement of the Committee of Conference dated February 12, 2009, which can be found at http://appropriations.house.gov/pdf/Recovery__JS__DivB.pdf. References to the "**Code**" are to the Internal Revenue Code of 1986, as amended, and unless otherwise specified, references to "**Sections**" are to sections of the Code.

DEBT WORKOUTS AND LOSS CARRYBACKS

JES Div. B Title No.	JES Div. B Heading (Page No.)	Code Section No.	ARRTA Section No.	ARRTA Page No.	Commentary	Effective Date per ARRTA	Subject Matter	Responsible Attorney(s)
I.B.3	Five-year carryback of operating losses (of small businesses) (34-37)	172	1211	74-78	**Federal Tax Implications:** Taxpayers that meet a $15 million gross receipts test are permitted under the Act a liberalized net operating loss ("NOL") carryback for NOLs incurred for any taxable year ending in 2008, or if elected by the taxpayer, the NOL for any taxable year beginning in 2008. In lieu of the generally applicable carryback period of two years, such taxpayers may elect to carry back an NOL up to five years. However, such an election may be made only with respect to one taxable year. *Example*: Smallco is a C corporation that meets the $15 million gross receipts test. In each year 2003 through 2007, Smallco had taxable income of $100,000 and paid income taxes. In 2008, Smallco had an NOL of $500,000. Under the old law, Smallco would have been permitted a carryback only to 2007 and 2006 of $100,000 for each such year, with no current tax benefit for the remaining $300,000. Under the Act, Smallco may now elect to carry back the NOL up to an additional three years. In Smallco's case, the remaining $300,000 NOL could be carried back to years 2003 through 2005 to generate a larger current refund. **State and Local Tax Implications:** Many states do not allow NOL carrybacks at all, and instead carry forward NOLs as if the federal carryback period had been relinquished. Moreover, in difficult budgetary times, state NOL carry forwards may be suspended.	In general, this provision is effective for NOLs arising in taxable years ending after December 31, 2007, but affects only NOLs for any taxable year ending in 2008 or, if the taxpayer makes the applicable election, NOLs for any taxable year beginning in 2008.	Debt Workouts and Loss Carrybacks	Ridgway, Boyce, Wagatsuma SALT Team
I.B.6	Clarification of regulations related to limitations on certain built-in losses following an ownership change (44-49)	382(m) (see also Notice 2008-83)	1261	95-97	**Federal Tax Implications:** The Act repeals prospectively IRS Notice 2008-83, which advised that banks' deductions for bad debts and loan losses incurred after an ownership change would not be treated as "built-in losses" subject to limitation under Section 382. For acquisitions after January 16, 2009 (subject to transition rules), banks will be unable to rely on the Notice to determine whether their post-acquisition bad debts or loan losses were "built-in," but will have to make that determination in some other way. **State and Local Tax Implications:** In states that fully conform to the federal rules, the limitations on built-in losses should follow this federal regime.	This provision is effective for acquisitions after January 16, 2009, other than acquisitions pursuant to a binding written contract entered into on or before such date, or a written contract for which there was a public announcement or an SEC filing on or before such date.	Debt Workouts and Loss Carrybacks	Ridgway, Boyce, Wagatsuma SALT Team
I.B.7	Treatment of certain ownership changes for purposes of limitations on net operating loss carryforwards and certain built-in losses (49-52)	New 382(n)	1262	97-99	**Federal Tax Implications:** The Act provides that ownership changes resulting from Treasury-mandated restructuring programs pursuant to loans or lines of credit provided under the Emergency Economic Stabilization Act of 2008, if intended to "rationalize" the recipients' costs, capitalization, and capacity with respect to manufacturing workforce and suppliers of the loss company, will not be subject to the limitations on losses imposed by Section 382(a) as long as no person (including related persons treated as one person), except a voluntary employees' beneficiary association under Section 501(c)(9), owns 50% or more of the vote or value of the company's stock. Any subsequent ownership change of the loss corporation would not be exempt unless it independently qualified for the exemption. **State and Local Tax Implications:** In states that automatically conform to the federal definition of income, the relief provision of Section 382(n) should obtain for state tax purposes as well. However, many states have adopted NOL limitations that differ from the federal rules.	This provision applies to ownership changes occurring after February 17, 2009.	Debt Workouts and Loss Carrybacks	Ridgway, Boyce, Wagatsuma SALT Team

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I.B.8	Deferral of certain income from the discharge of indebtedness (52-57)	New 108(i)	1231	82-91	**Federal Tax Implications:** Many companies wishing to refinance or restructure their debt may suffer adverse tax consequences from resulting cancellation of debt ("COD") income. The Act permits taxpayers to defer COD income arising from an acquisition of business debt by the debtor or certain related parties in 2009 or 2010, including by the repurchase of debt or exchange of debt for new debt (including a deemed exchange resulting from a modification of the debt instrument) or equity, the contribution of debt to capital, or the complete forgiveness of debt. In lieu of current inclusion of such income, the debtor may irrevocably elect to include the income ratably over five years beginning in the fifth taxable year following cancellation in 2009, and in the fourth taxable year following cancellation in 2010. If a debt exchange subject to the deferral of COD income results in new debt with original issue discount ("OID"), the debtor's OID deductions are deferred to the same extent as the COD income. In addition, high rates of OID resulting from such transactions in 2009 would be exempted from the limitations on deduction under the "applicable high yield discount obligation" ("AHYDO") rules of Section 163(e)(5) and (i). (See ARRTA Section 1232 commentary below.) The deferral election is in lieu of exclusions available under Section 108. Thus, a taxpayer that is insolvent or in bankruptcy (or otherwise qualifies for an exclusion from Section 108) can elect deferral under the new regime, rather than experiencing attribute reduction for COD income under the pre-existing provisions of Section 108. Certain liquidations, sales of assets, cessation of business, acquisitions, or Title 11 bankruptcy filings will accelerate all as-yet untaxed COD income. *Example*: In 2007, a calendar year taxpayer raised working capital in exchange for notes in the aggregate principal amount of $10,000,000. In 2009, when the notes were trading at $5,000,000, the taxpayer reacquired the notes for new notes in the aggregate principal amount of $8,000,000, which traded at $6,000,000. Under prior law, the taxpayer would take into account taxable COD income of $4,000,000 in 2009 and future OID deductions of $2,000,000. Under the Act, the taxpayer can elect to defer the $4,000,000 COD income and report $800,000 of income in each of years 2014 through 2018, subject to acceleration upon the occurrence of certain events noted above. In addition, the portions of the $2,000,000 OID deductions that accrue during the COD-deferral period are also deferred, and the deferred deductions are taken into account ratably during 2014 through 2018, partially offsetting the COD inclusions. *(Commentary continued on next page.)*	This provision applies to taxable years ending after December 31, 2008, provided the debt discharge occurs during calendar years 2009 or 2010.	Debt Workouts and Loss Carrybacks	Ridgway, Boyce, Wagatsuma SALT Team

DEBT WORKOUTS AND LOSS CARRYBACKS

JES Div. B Title No.	JES Div. B Heading (Page No.)	Code Section No.	ARRTA Section No.	ARRTA Page No.	Commentary	Effective Date per ARRTA	Subject Matter	Responsible Attorney(s)
					Pass-Through Entities: This election is to be made at the partnership level. If the election is made, COD income deferred under this provision is to be allocated to the partners in the partnership immediately before the discharge. The deemed distribution under Section 752 resulting from the reduction in partnership debt is deferred with respect to a partner to the extent it exceeds such partner's basis in such partner's partnership interest, and generally, such deferred amounts are included in such partner's income when the partner recognizes the deferred COD income. Deferred COD income will be accelerated upon the sale, exchange, or redemption of an interest in a partnership, S corporation, or other pass-through entity that elected to defer COD income under this provision. **State and Local Tax Implications:** The state and local consequences of an election to defer COD income may be complex, particularly for multistate taxpayers. The consequences in any state may differ from the federal tax consequences and from other states' tax consequences, depending upon the degree of conformity between federal and state tax treatment of COD income and tax attributes, among other factors. Partnerships that are themselves subject to state or local tax, or are responsible for paying estimated tax or withholding in respect of partners, will need to take those taxes into account in deciding whether to make the election, and in monitoring partners' acceleration events.			
I.B.9	Modifications of rules for original issue discount on certain high yield obligations (57-59)	163(e)(5), (i)	1232	91-93	**Federal Tax Implications:** Section 163(e)(5) of current law disallows a portion of OID otherwise deductible with respect to "applicable high yield discount obligations" ("AHYDOs") and provides that the remaining portion is deductible only upon payment. The Act suspends application of these rules to AHYDOs issued from September 1, 2008, through December 31, 2009, if issued in exchange for non-AHYDOs issued by the same issuer. This suspension applies regardless of whether the exchange constitutes a significant modification of the debt instrument, and also applies to successive exchanges; that is, for purposes of applying the suspension, the newly issued AHYDO is not considered an AHYDO if subsequently exchanged for another AHYDO issued by the same issuer within the suspension period. The suspension does not apply to (i) certain newly issued contingent debt instruments described in Section 871(h)(4) (without regard to the grandfather exception of Section 871(h)(4)(D)); or (ii) newly issued debt instruments issued to a person related to the issuer. The provision also gives the Secretary authority (i) to extend the suspension to periods after December 31, 2009, and (ii) to use a rate higher than the applicable federal rate for purposes of applying Section 163(e)(5), in either case if appropriate in light of distressed conditions in debt capital markets. **State and Local Tax Implications:** Where state definitions of income fully conform to the federal rules, the Act's suspension of the AHYDO rules for certain debt exchanges should flow through to state income computations.	This provision applies to interest deductions arising from debt exchanges between September 2008 and the end of 2009 (unless extended by the Secretary).	Debt Workouts and Loss Carrybacks	Kellar SALT Team

ENERGY INCENTIVES*

JES Div. B Title No.	JES Div. B Heading (Page No.)	Code Section No.	ARRTA Section No.	ARRTA Page No.	Commentary	Effective Date per ARRTA	Subject Matter	Responsible Attorney(s)
I.D.1	Extension of renewable electricity production credit (103-10)	45(d)	1101	33-34	**Federal Tax Implications:** To qualify for credits for producing electricity from various renewable resources, facilities must be placed in service before specified dates. Those dates have been extended significantly: from the end of 2010 to the end of 2013 for wind projects; from the end of 2011 to the end of 2014 for biomass, solar, geothermal, landfill gas, trash combustion, and qualified hydropower; and from the end of 2012 to the end of 2014 for marine and hydrokinetic. Deadlines were not extended for refined coal, steel industry fuel, and Indian coal.	This provision applies to property placed in service after February 17, 2009.	Energy Incentives	Wallace
I.D.2	Election of investment credit in lieu of production tax credits (110-11)	48(a)	1102	34-36	**Federal Tax Implications:** For facilities placed in service during 2009-2013 (2012 for wind) taxpayers can elect to take a 30% current year tax credit (under Section 48) instead of taking production tax credits over the next 10 years (under Section 45). This election is available only for wind, biomass, solar, geothermal, landfill gas, trash combustion, and qualified hydropower, marine and hydrokinetic. The election is limited to tangible personal property and to other tangible property that is "used as an integral part" of a qualified facility (which for wind farms is generally property subject to five-year depreciation).	This provision applies to property placed in service after December 31, 2008.	Energy Incentives	Wallace
I.D.3	Modification of energy credit (111-14)	48(c)	1103(a)	36-38	**Federal Tax Implications:** For periods after 2008, the 30% current year credit for investments in "small wind energy property" will no longer be subject to a $4,000 cap.	This provision applies for taxable years beginning after December 31, 2008.	Energy Incentives	Wallace
I.D.3	Modification of energy credit (111-14)	48, 25C, 25D, 48A, 48B	1103(b)	36-38	**Federal Tax Implications:** For periods after 2008, the base on which the 10% or 30% current year credit under Section 48 is calculated will not (as in prior years) be decreased to the extent the project is financed by "subsidized energy financing" from a government entity. The same will be true for the base for the credits for nonbusiness energy property (under Section 25C); for residential energy property (under Section 25D); for qualified advance coal projects (under Section 48A); and for qualifying coal gasification projects (under Section 48B).	This provision applies for taxable years beginning after December 31, 2008.	Energy Incentives	Wallace
I.D.4	Grants for specified energy property in lieu of tax credits (114-15)	45, 48	1104, 1603	38-39, 153-58	**Federal Tax Implications:** Instead of claiming production tax credits over 10 years (under Section 45) or energy investment credits up front (under Section 48), taxpayers may apply for reimbursement by application to the Treasury; the reimbursement will not be included in taxable income, but the taxpayers cannot claim any tax credits. Such grants will be available only for projects that are either placed in service in 2009 or 2010, or for which construction began in 2009 or 2010 and were completed before the relevant deadline for being eligible for credits (generally 2013 or 2014). The reimbursement will be equal to 30% of the cost of the depreciable property (10% for microturbine, combined heat and power systems, and geothermal heat pump property), which is generally the same as the upfront tax credit that could otherwise have been claimed under Section 48. Reimbursement will not be available to nontaxpayers such as governments and charities, or to partnerships that include any such persons.	These provisions apply as of February 17, 2009.	Energy Incentives	Wallace

* See "Government Finance Incentives" for provisions related to certain tax-exempt renewable energy and energy conservation bonds.

ENERGY INCENTIVES*

JES Div. B Title No.	JES Div. B Heading (Page No.)	Code Section No.	ARRTA Section No.	ARRTA Page No.	Commentary	Effective Date per ARRTA	Subject Matter	Responsible Attorney(s)
I.D.8	Extension and modification of credit for nonbusiness energy property (123-26)	25C	1121	41-45	**Federal Tax Implications:** The credit for nonbusiness energy property (under Section 25C) is increased from 10% to 30% of cost; the $500 lifetime limitation is increased to $1,500 for 2009 and 2010; the deadline for making such investments is extended from the end of 2009 to the end of 2010; and the efficiency requirements to qualify for the credit are updated (for property placed in service after February 17, 2009). This credit is generally available for certain energy-efficient types of insulation, windows and doors, roofs, furnaces, boilers, fans, heat pumps, air conditioners, and water heaters.	This provision applies to taxable years beginning after December 31, 2008; updated standards apply only to property placed in service after February 17, 2009.	Energy Incentives	Wallace
I.D.9	Credit for residential energy efficient property (126-27)	25D	1122	46-47	**Federal Tax Implications:** The 30% credit for residential energy efficient property (under Section 25D) will no longer be subject to the caps that applied under prior law, except that qualifying fuel cells continue to be subject to the prior law cap. This credit is generally available for certain solar hot water, geothermal, and wind property, and for fuel cell plants.	This provision applies for taxable years beginning after December 31, 2008.	Energy Incentives	Wallace
I.D.10	Temporary increase in credit for alternative fuel vehicle refueling property (128-29)	30C	1123	47-48	**Federal Tax Implications:** For property placed in service during 2009 and 2010, the credit for qualified alternative fuel vehicle refueling property (under Section 30C) is increased from 30% to 50%, and certain caps on the credit are raised as well. The rules for expensing of business property (under Section 179(d)) are also changed to include such property as expensable items.	This provision applies for taxable years beginning after December 31, 2008.	Energy Incentives	Wallace
I.D.13	Modification of credit for carbon dioxide sequestration (135-36)	45Q	1131	48-49	**Federal Tax Implications:** The credit for carbon capture and sequestration (under Section 45Q) is modified to change the monitoring and verification requirements.	This provision applies to carbon dioxide captured after February 17, 2009.	Energy Incentives	Wallace
I.D.14	Modification of the plug-in electric drive motor vehicle credit (136-39)	30, 30B, 30D	1141-44	50-68	**Federal Tax Implications:** The credit for "plug-in" electric vehicles (under Section 30D) will now be available for 200,000 vehicles per manufacturer per year (instead of 250,000 for all manufacturers). The credit is also expanded to cover two-wheeled, three-wheeled, and "low speed" vehicles that meet various requirements, beginning for vehicles placed in service in 2010, with a cap of $2,500 per vehicle. A new credit applies to plug-in conversions of existing vehicles, with a cap of $7,500 per vehicle. The credit for alternate fuel motor vehicles (under Section 30B) will extend to conversion kits that change a motor vehicle to a plug-in electric drive; there will be no credit recapture if another type of alternate-fuels vehicle is converted to a plug-in electric drive; and the credit will now be usable against AMT.	The effective dates of these provisions vary.	Energy Incentives	Wallace

* See "Government Finance Incentives" for provisions related to certain tax-exempt renewable energy and energy conservation bonds.

ENERGY INCENTIVES*

JES Div. B Title No.	JES Div. B Heading (Page No.)	Code Section No.	ARRTA Section No.	ARRTA Page No.	Commentary	Effective Date per ARRTA	Subject Matter	Responsible Attorney(s)
I.B.16	Credit for investment in advanced energy property (140-42)	46, New 48C	1302	101-10	**Federal Tax Implications:** A new credit program for "advanced energy facilities" is added as Section 48C. This new credit will resemble the credits for advanced coal projects and coal gasification projects, in that the 30% investment credit will be available only for projects certified by the DOE and the IRS pursuant to an application system. Qualifying projects may involve re-equipping or expanding manufacturing facilities, as well as new facilities, as long as the project involves: using renewable energy resources; manufacturing fuel cells, microturbines, or energy storage systems for electric vehicles or hybrid vehicles; electric grids to support intermittent sources of renewable energy; property for carbon dioxide capture and sequestration; property for refining or blending renewable fuels; producing energy conservation technologies (including lighting and smart grid technologies); plug-in electric drive motors; and property to reduce greenhouse gas emissions. In granting certifications, the government is to take into account domestic job creation and reduction in pollution or greenhouse gases, as well as technical and economic merits. Certifications are limited to $2.3 billion in credits.	This provision is effective on February 17, 2009.	Energy Incentives	Wallace

* See "Government Finance Incentives" for provisions related to certain tax-exempt renewable energy and energy conservation bonds.

GOVERNMENT FINANCE INCENTIVES

JES Div. B Title No.	JES Div. B Heading (Page No.)	Code Section No.	ARRTA Section No.	ARRTA Page No.	Commentary	Effective Date per ARRTA	Subject Matter	Responsible Attorney(s)
I.C.9	Pass-through of credits on Tax Credit Bonds held by regulated investment companies (98-99)	New 853A	1541	143-48	**Federal Tax Implications:** Regulated investment companies ("RICs") can elect to pass through credits on Tax Credit Bonds held by them. Tax Credit Bonds include New CREBs, Qualified Energy Conservation Bonds, QZABs, and Build America Bonds.	This provision applies to taxable years ending after February 17, 2009.	Government Finance Incentives	Roberts
I.C.2	Temporary modification of alternative minimum tax limitations on tax-exempt bonds (69-70)	57, 56	1503	127-29	**Federal Tax Implications:** Interest on tax-exempt "private activity" bonds issued during 2009 and 2010 is not an item of tax preference for purposes of the alternative minimum tax. Interest on tax-exempt bonds (regardless of whether they are private activity bonds) issued during 2009-2010 is not included in a corporation's adjustment based on current earnings. Generally, for purposes of determining whether a bond is issued during 2009-2010, a refunding bond is deemed to have been issued on the issue date of the refunded bonds (or, in the case of a series of refundings, on the issue date of the original bond). The deemed issue date rule does not apply to refunding bonds issued to refund bonds issued during 2004-2008. The JES indicates that the deemed issue date rule exception applies only to bonds that currently refunded bonds issued during 2004-2008.	This provision applies to obligations issued after December 31, 2008.	Government Finance Incentives	Roberts
I.C.1	De minimis safe harbor exception for tax-exempt interest expense of financial institutions (66-69)	New 265(b)(7), 291	1501	123-24	**Federal Tax Implications:** A financial institution, such as a bank, may invest up to 2% of the adjusted basis of its assets in tax-exempt obligations issued during 2009 and 2010 without being subject to a pro-rata disallowance of its interest deductions, but such obligations constitute financial institution preference items, with the result that the deduction for interest incurred to carry such obligations is reduced by 20%. For purposes of determining whether a bond is issued during 2009-2010, a refunding bond is treated as issued on the issue date of the refunded bonds (or, in the case of a series of refundings, on the issue date of the original bond).	This provision applies to obligations issued after December 31, 2008.	Government Finance Incentives	Roberts
I.C.1	Modification of small issuer exception to tax-exempt interest expense allocation rules for financial institutions (66-69)	New 265(b)(3)(G)	1502	124-26	**Federal Tax Implications:** The "small issuer" exception for bank-qualified bonds (which are not subject to the automatic interest deduction disallowance rule for financial institution holders) is modified. The $10 million annual limit on issuers of bank-qualified bonds is increased to $30 million for tax-exempt bonds issued during 2009-2010. Special rules apply the $30 million annual volume limitation at the borrower level for a "qualified financing issue," which is any pooled, composite, or conduit issue in which proceeds of the bonds are loaned directly or indirectly to qualified borrowers such as a Section 501(c)(3) organization or a state or local government, as long as each loan satisfies the $30 million limit and other requirements of Section 265. For purposes of determining whether an issuer meets the requirements of this "small issuer" exception, qualified Section 501(c)(3) bonds issued in 2009 or 2010 are treated as if the Section 501(c)(3) organization were the issuer.	This provision applies to obligations issued after December 31, 2008.	Government Finance Incentives	Roberts

GOVERNMENT FINANCE INCENTIVES

JES Div. B Title No.	JES Div. B Heading (Page No.)	Code Section No.	ARRTA Section No.	ARRTA Page No.	Commentary	Effective Date per ARRTA	Subject Matter	Responsible Attorney(s)
I.C.3	Temporary expansion of availability of industrial development bonds to facilities creating intangible property and other modifications (70-72)	144(a)(12)(C)	1301	100-01	**Federal Tax Implications:** Industrial Development Bonds (tax-exempt bonds issued to finance certain manufacturing facilities for the benefit of for-profit businesses) can be issued through 2010 to finance facilities to be used to manufacture, create, or produce tangible or intangible property (within the meaning of Section 197(d)(1)(C)(iii)). For this purpose, intangible property means any patent, copyright, formula, process, design, know how, format, or other similar item and is intended to include the creation of computer software, and intellectual property associated with biotechnology or pharmaceuticals. In addition, such bonds can be used to provide facilities that are functionally related and subordinate to the manufacturing facilities described above, if located on the same site. The Code provides limits on the amount of bonds per project and in the aggregate for each borrower (and related parties).	This provision applies to obligations issued after February 17, 2009, and before January 1, 2011.	Government Finance Incentives	Roberts
I.C.6	Build America Bonds (83-89)	New 54AA, New 6431	1531	136-43	**Federal Tax Implications:** During 2009 and 2010, a state or local governmental issuer can elect to treat its otherwise tax-exempt governmental bonds (other than qualified Section 501(c)(3) and other private activity bonds) as taxable Build America Bonds for which the holder receives taxable interest plus a tax credit equal to 35% of the interest received (40% in the case of certain small issuers). The JES indicates that the taxable interest rate is expected to be approximately 74% of that on comparable taxable obligations, due to the tax credit. Under certain special rules, the issuer can elect to receive the credit itself, rather than passing the credit to the bond holder. Until a state provides otherwise, interest on taxable Build America Bonds and the amount of the credit are treated as federally exempt for purposes of determining state income tax.	This provision applies to obligations issued after February 17, 2009.	Government Finance Incentives	Roberts

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I.C.7	Recovery Zone Bonds (89-96); Application of certain labor standards to projects financed with certain tax-favored bonds (146)	New 1400U-1, -2, -3	1401, 1601	110-18, 148-49	**Federal Tax Implications:** An issuer can designate one or more areas as a recovery zone ("RZ") if that area has significant poverty, unemployment, general distress, or home foreclosures or has an empowerment zone or renewal community designation or is economically distressed by reason of the Defense Base Closure and Realignment Act of 1990. Two types of RZ Bonds may be issued in 2009 and 2010, each subject to a separate national limitation - $10 billion for RZ Economic Development Bonds and $15 billion for RZ Facility Bonds. RZ Economic Development Bonds are a type of taxable Build America Bond to be issued before 2011, where the issuer designates the bond as an RZ Economic Development Bond, and uses 95% or more of the net proceeds (other than amounts in a reserve fund) for capital expenditures for property in that RZ or for public infrastructure or job training and educational programs in that RZ. The issuer of an RZ Economic Development Bond may elect to receive an advance tax credit equal to 45% of the interest payable under new Section 6431. In contrast, an RZ Facility Bond is a new type of tax exempt private activity bond, designated as such by the issuer, where the proceeds are loaned to a for-profit person and 95% is to be used to provide new RZ property, purchased by the borrower after the RZ designation date, and used by the borrower in a qualified business in that RZ. Complex rules apply to allocate RZ Bond authority among the states based on each state's employment decline. Other than allocation of issuing authority, no other state volume cap applies. Davis-Bacon Act prevailing wage requirements (U.S.C. Title 40, Chapter 31, Subchapter IV) apply to projects financed with proceeds of RZ Economic Development Bonds.	These provisions apply to obligations issued after February 17, 2009.	Government Finance Incentives	Roberts
I.C.4, I.E.1	Qualified School Construction Bonds (72-80); Application of certain labor standards to projects financed with certain tax-favored bonds (146)	New 54F, 54A	1521, 1601	130-36, 148-49	**Federal Tax Implications:** Up to $11 billion of Qualified School Construction Tax Credit Bonds can be issued in each of 2009 and 2010 if the bonds are so designated and issued for facilities located within the issuer's jurisdiction, as long as all available project proceeds are to be used for construction, repair, or rehabilitation of public school facilities or to acquire land for such facilities. Bonding authority is to be allocated among the states, to the largest school districts and to certain U.S. possessions under complex allocation rules, and up to $200 million may be allocated for Indian schools funded by the Bureau of Indian Affairs. Bond proceeds are subject to modified arbitrage and rebate requirements. The credit (the amount of which is set by the Secretary) may be claimed against regular or alternative minimum tax liability, and credits may be stripped from the underlying bond. Davis-Bacon Act prevailing wage requirements (U.S.C. Title 40, Chapter 31, Subchapter IV) apply to projects financed with proceeds of Qualified School Construction Bonds.	These provisions apply to obligations issued after February 17, 2009.	Government Finance Incentives	Roberts

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I.C.5, I.E.1	Extend and expand Qualified Zone Academy Bonds (80-83); Application of certain labor standards to projects financed with certain tax-favored bonds (146)	54E	1522, 1601	136, 148-49	**Federal Tax Implications:** Authorization to issue Qualified Zone Academy Bonds ("QZABs"), a form of tax credit bond, is increased to $1.4 billion in each of 2009 and 2010. At least 95% of the proceeds of a QZAB must be used to renovate, provide equipment to, develop course materials for, or train teachers in a "qualified zone academy," which is a public school (below college level) that operates a special academic program in cooperation with businesses that enhance the curriculum, and the school satisfies certain other specified requirements. The credit (the amount of which is set by the Secretary) may be claimed against regular or alternative minimum tax liability, and credits may be stripped from the underlying bond. Davis-Bacon Act prevailing wage requirements (U.S.C. Title 40, Chapter 31, Subchapter IV) apply to projects financed with proceeds of QZABs issued after February 17, 2009.	The extension and expansion of the program apply to obligations issued after December 31, 2008. The labor standards apply to obligations issued after February 17, 2009.	Government Finance Incentives	Roberts
I.D.5, I.E.1	Expand New Clean Renewable Energy Bonds (116-18); Application of certain labor standards to projects financed with certain tax-favored bonds (146)	54C	1111, 1601	39-40, 148-49	**Federal Tax Implications:** New Clean Renewable Energy Bonds ("New CREBs"), a new type of tax credit bond, were authorized for issuance after October 3, 2008, by the Energy Improvement and Extension Act of 2008 to provide certain qualified renewable energy facilities that are owned by a public power provider, governmental body, or cooperative electric company. The New CREBs program is expanded to authorize up to an additional $1.6 billion of New CREBs. The credit (the amount of which is set by the Secretary) may be claimed against regular or alternative minimum tax liability, and credits may be stripped from the underlying bond. Davis-Bacon Act prevailing wage requirements (U.S.C. Title 40, Chapter 31, Subchapter IV) apply to projects financed with proceeds of New CREBs issued after February 17, 2009.	These provisions apply to obligations issued after February 17, 2009.	Government Finance Incentives	Roberts
I.D.6, I.E.1	Expand Qualified Energy Conservation Bonds (118-21); Application of certain labor standards to projects financed with certain tax-favored bonds (146)	54D	1112, 1601	40-41, 148-49	**Federal Tax Implications:** The present-law Qualified Energy Conservation Bond program, permitting state or local governments to issue tax credit bonds, is expanded to permit the issuance of an additional $2.4 billion of such bonds and clarifies that proceeds of such bonds can be used to make grants or loans to implement green community programs, enabling states to issue bonds to finance retrofits of existing private buildings through loans and/or grants to homeowners or businesses. Repayment mechanisms can include periodic fees assessed on a governmental bill or utility bill that approximates the energy savings from the retrofit. Like New CREBs, these bonds were authorized for issuance after October 3, 2008. The credit (the amount of which is set by the Secretary) may be claimed against regular or alternative minimum tax liability, and credits may be stripped from the underlying bond. Davis-Bacon Act prevailing wage requirements (U.S.C. Title 40, Chapter 31, Subchapter IV) apply to projects financed with proceeds of Qualified Energy Conservation Bonds issued after February 17, 2009.	These provisions apply to obligations issued after February 17, 2009.	Government Finance Incentives	Roberts

GOVERNMENT FINANCE INCENTIVES

JES Div. B Title No.	JES Div. B Heading (Page No.)	Code Section No.	ARRTA Section No.	ARRTA Page No.	Commentary	Effective Date per ARRTA	Subject Matter	Responsible Attorney(s)
I.C.8	Tribal Economic Development Bonds (96-98)	New 7871(f)	1402	118-21	**Federal Tax Implications:** Up to $2 billion of Tribal Economic Development Bonds can be issued as tax-exempt bonds for purposes that would qualify for tax exemption had the bonds been issued by a state issuer, without regard to whether bond proceeds are to be used for an "essential governmental function." Proceeds cannot be used to finance any portion of a building used for Class II or Class III gaming or for other property used in the conduct of gaming, or for facilities located outside the Indian reservation. The Secretary will allocate issuance authority.	This provision applies to obligations issued after February 17, 2009.	Government Finance Incentives	Roberts
I.A.7	Election to substitute grants to states for low-income housing projects in lieu of low-income housing credit allocation for 2009 (18-20)	42	1404, 1602	122-23, 149-53	**Federal Tax Implications:** For 2009, a state may elect to receive a cash grant in lieu of up to 85% of its 2009 low-income housing credit allocation. A state receiving such a grant is to use the monies received to make sub-awards to finance the construction, acquisition, or rehabilitation of qualified low-income buildings (as defined under the low-income housing credit) regardless of whether the building otherwise has an allocation of low-income housing credit. Such a grant does not reduce the tax basis of the qualified low-income building, and such grants are not taxable income to the recipients.	These provisions apply as of February 17, 2009.	Government Finance Incentives	Roberts
I.D.7	Modification to high-speed intercity rail facility bonds (122-23)	142(i)	1504	129	**Federal Tax Implications:** Modification of the speed requirement for "high-speed intercity rail facilities" permits tax-exempt private activity bonds to be issued to finance facilities that use rail cars "capable of attaining a maximum speed in excess of 150 mph" (in contrast to the current requirement of "expected to operate at speeds in excess of 150 mph"). There is no sunset date.	This provision applies to obligations issued after February 17, 2009.	Government Finance Incentives	Roberts

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JES Div. B Title No.	JES Div. B Heading (Page No.)	Code Section No.	ARRTA Section No.	ARRTA Page No.	Commentary	Effective Date per ARRTA	Subject Matter	Responsible Attorney(s)
I.B.1	Special allowance for certain property acquired during 2009 and extension of election to accelerate AMT and research credits in lieu of bonus depreciation (28-32)	168(k)	1201	69-74	**Federal Tax Implications:** This provision extends the "bonus depreciation" made available for property acquired and placed in service in 2008, to apply to property acquired after December 31, 2007, and placed in service prior to 2010 as well (and prior to 2011 for certain longer-lived and transportation property). With respect to such property used in the United States, businesses are permitted an immediate first-year write-off of 50% of their capital expenditures, rather than the lesser amount ordinarily available under current law depreciation schedules. Section 168(k)(4) allows corporations to elect, in lieu of bonus depreciation, to accelerate use of their alternative minimum tax ("AMT") or research and development credits, by increasing the credit limitation in an amount equal to 20% of the bonus depreciation that could otherwise be claimed absent that election. The increased amount is treated as a refundable credit. The Act extends the availability of this election to taxable years ending after December 31, 2008, permitting it to be made with respect to "extension property," defined as property that is eligible solely because it meets the requirements for bonus depreciation under the extension discussed above. **State and Local Tax Implications:** Accelerated depreciation regimes can have significant and immediate adverse effects on state revenues. As a result, states have frequently "decoupled" from prior federal changes accelerating depreciation schedules. In some cases, states have already enacted legislation that will automatically decouple from the Act; in other cases, specific state legislation may be required for a state to decouple. Where states decouple, depreciation generally is calculated under prior law. As a consequence, throughout the life of the affected asset state basis will differ from federal, resulting in differing calculations of gain and loss, as well as differences in the amounts of depreciation allowed.	This provision generally applies to property placed in service after December 31, 2008.	Miscellany	Kellar SALT Team
I.B.2	Temporary increase in limitations on expensing of certain depreciable business assets (32-34)	179	1202	74	**Federal Tax Implications:** For 2008, the small business expensing provision of Section 179 allowed immediate write-off of the cost of depreciable personal property and computer software acquired by purchase for use in the active conduct of a trade or business, in an amount up to $250,000, with a phaseout if the amount of eligible property placed in service during the taxable year exceeded $800,000. These dollar thresholds were scheduled to decrease in subsequent years, but the Act extends these favorable provisions to qualifying property placed in service in taxable years beginning in 2009. **State and Local Tax Implications:** As with federal bonus depreciation, many states decouple from federal amendments, expanding the scope of Section 179. Whether such decoupling is automatic or requires specific state legislation varies from state to state. Where the state treatment diverges from the federal, that will affect both current year expensing and future years' computations of state depreciation, basis, gain, and loss.	This provision applies to taxable years beginning after December 31, 2008.	Miscellany	Kellar SALT Team

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JES Div. B Title No.	JES Div. B Heading (Page No.)	Code Section No.	ARRTA Section No.	ARRTA Page No.	Commentary	Effective Date per ARRTA	Subject Matter	Responsible Attorney(s)
I.B.11	Temporary reduction in recognition period for S corporation built-in gains tax (61-62)	1374	1251	94-95	**Federal Tax Implications:** If an S corporation originally formed as a C corporation had built-in gains (assets worth more than their tax basis) at the time of the S election, the S corporation would be subject to a corporate-level tax on any built-in gain realized during its first 10 S corporation tax years. The tax, assessed at the highest corporate tax rate, also applies to gains realized on the disposition of property received from a C corporation in a carryover basis transaction. The Act temporarily shortens the gain recognition period from 10 to seven years. *Example*: Essco was formed as a C corporation on January 1, 1990. It elected to be taxed as an S corporation effective January 1, 2000. On that date, Essco owned a trademark with a basis of zero and a fair market value of $1 million. Essco sold the trademark for $2 million on March 20, 2009. Under prior law, Essco would have incurred a corporate-level tax on $1 million of its gain, the built-in amount at the time Essco became an S corporation, because the sale occurred within the 10-year recognition period. Under the Act, there is no corporate-level tax. **State and Local Tax Implications:** The federal built-in gain provision takes the form of a separate federal tax imposed on the S corporation. In many cases, states do not impose a comparable state tax on built-in gains. Nevertheless, because of the varying state S corporation regimes, a specific analysis of applicable state rules is needed to determine the state-level treatment of built-in gains and whether any state that imposes a comparable corporate tax will conform to the federal shortening of the period.	This provision applies to sales or other taxable dispositions in taxable years that begin in 2009 or 2010.	Miscellany	Purnell SALT Team
I.B.10	Special rules applicable to qualified small business stock for 2009 and 2010 (60-61)	1202	1241	93-94	**Federal Tax Implications:** The Act increases the portion of the gain excluded on the sale of qualified small business stock held for more than five years from 50% (60% in limited cases) to 75%. "Qualified small business stock" is stock of a "qualified small business" that the taxpayer acquired at its original issuance in exchange for cash, other property (excluding other stock), or services. A "qualified small business" is generally a domestic C corporation that had assets of $50 million or less at all times before and immediately after issuance of the stock. The nonexcluded gain will continue to be taxed at a 28% rate, which produces an overall regular income tax of 7% on the gain (down from 14% under prior law). A portion of the excluded gain remains an alternative minimum tax preference. *Example*: Able realizes gain of $900,000 on his March 20, 2014, sale of 10,000 shares of Nanotech, Inc. for $1,000,000. Able had held those shares at all times since he purchased them from Nanotech for $100,000 on February 20, 2009. Nanotech was organized as a Delaware corporation on January 1, 2004. At no time between its organization and February 21, 2009, did Nanotech's assets exceed $50 million. Nanotech has never made an election to be taxed as an S corporation. Nanotech is a qualified small business. At the time of the sale, Able's shares were qualified small business stock held for more than five years. Under modified Section 1202, Able excludes 75% of his $900,000 gain from income. However, Able may pay some AMT as a result of the exclusion. *(Commentary continued on next page.)*	This provision applies to stock issued after February 17, 2009, and before January 1, 2011.	Miscellany	Purnell SALT Team

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JES Div. B Title No.	JES Div. B Heading (Page No.)	Code Section No.	ARRTA Section No.	ARRTA Page No.	Commentary	Effective Date per ARRTA	Subject Matter	Responsible Attorney(s)
					State and Local Tax Implications: The small business stock benefit is an exclusion from gross income. In states that fully conform to the federal rules, the increase in the exclusion from 50% to 75% should flow through to the state income tax computations. Where state conformity is not automatic, and in states that choose to decouple, the exclusion may remain at 50%.			
I.D.15	Parity for qualified transportation fringe benefits (139-40)	132(f)	1151	69	**Federal Tax Implications:** The limit on the exclusion from employee income (and the payroll tax base) for van pooling and employer-provided transit is increased to $230 (for 2009), so that it matches the limit on the exclusion for parking.	This provision applies to months beginning on or after February 17, 2009, and before January 1, 2011.	Miscellany	Purnell
I.C.11	Extend and modify the new markets tax credit (100-02)	45D	1403	121-22	**Federal Tax Implications:** The new markets tax credit has been available since 2001, subject to a limitation each calendar year on the aggregate amount of qualified equity investments that can generate the credit. Prior to the Act, the cap was $3.5 billion for calendar years 2008 and 2009. The Act increases the limitation to $5 billion for these years. The Act also requires that the increase for 2008 be allocated to qualified community development entities ("CDEs") that did not receive the full amount of the allocation for which they previously applied. A "CDE" is a domestic corporation or partnership organized to provide investment capital or services to low-income communities or persons. Low-income community investments include equity investments in or loans to low-income community businesses. The credit is a percentage of the amount paid to acquire stock in a CDE organized as a corporation or a capital interest in a CDE organized as a partnership. The percentage is 5% for years 1-3 and 6% for years 4-7. The credit is available to subsequent purchasers of the stock or partnership interest and is subject to recapture under specified circumstances, including failure of the corporation or partnership to qualify as a CDE.	This provision applies as of February 17, 2009.	Miscellany	Purnell
I.B.5	Modification of Work Opportunity Tax Credit (38-43)	51	1221	80-82	**Federal Tax Implications:** The Work Opportunity Tax Credit provides employers with a tax credit equal to 40% of qualified first-year wages paid to employees who are members of certain "targeted groups." The Act adds unemployed veterans and disconnected youth, hired in 2009 or 2010, to the eligible target groups. An "unemployed veteran" is defined as a veteran designated by certain local agencies as having (i) served on active duty for more than 180 days or who has been discharged or released from active duty for a service-connected disability, (ii) been discharged or released from active duty during the five-year period ending on the hire date, and (iii) received unemployment compensation for at least four weeks during the one-year period ending on the hiring date. A "disconnected youth" is defined as an individual certified by certain designated local agencies as (i) at least age 16 but not yet age 25 on the hiring date, (ii) not regularly attending any secondary, technical, or post-secondary school during the six-month period preceding the hiring date, (iii) not regularly employed during that six-month period, and (iv) not readily employable by reason of lacking a sufficient number of basic skills.	This provision applies with respect to employees beginning work after December 31, 2008.	Miscellany	Kellar

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JES Div. B Title No.	JES Div. B Heading (Page No.)	Code Section No.	ARRTA Section No.	ARRTA Page No.	Commentary	Effective Date per ARRTA	Subject Matter	Responsible Attorney(s)
I.A.11	Deduction for state sales tax and excise tax on the purchase of qualified motor vehicles (24-25)	63, 164	1008	27-31	**Federal Tax Implications:** The Act amends Section 164 to add qualified motor vehicle taxes as deductible taxes. "Qualified motor vehicle taxes" are defined as any state or local sales or excise tax imposed on the purchase of a motor vehicle (defined as a passenger vehicle or light truck, a motorcycle, or a motor home, in each case the original use of which commences with the taxpayer), but only to the extent the tax relates to $49,500 or less of purchase price. In addition, there is a phase-out of the deduction for taxpayers whose modified adjusted gross income exceeds $125,000, in the case of single filers, or $250,000, in the case of joint filers, which effectively eliminates the deduction for taxpayers with modified adjusted gross incomes of $135,000 and $260,000, respectively. "Modified adjusted gross income" is adjusted gross income determined without regard to Sections 911 (foreign earned income exclusion), 931 (income from sources in certain U.S. possessions), and 933 (income from sources in Puerto Rico). The Act also makes this deduction available for individuals who do not itemize their deductions. The above treatment of taxes on motor vehicles is not available to taxpayers who elect to deduct state sales taxes, in lieu of income taxes, as itemized deductions under Section 164(b)(5). Taxpayers for whom the sales tax itemized deduction is significant will therefore need to evaluate which approach produces the better result. The sales tax benefit applies to "purchases" of vehicles "acquired" by the taxpayer. The treatment of sales taxes paid on vehicle leases may require clarification. The deduction applies to "any State or local sales tax or excise tax imposed on the purchase…." This language differs from the existing definition of a "general sales tax" that is allowed electively as an itemized deduction under Section 164(b)(5), but nevertheless should cover compensating use taxes, which are taxes paid directly by the buyer when sales tax is not collected by the seller.	This provision applies to purchases on or after February 17, 2009, and before January 1, 2010.	Miscellany	Kellar SALT Team
I.A.6	Modifications to homebuyer credit (16-18)	36	1006	24-27	**Federal Tax Implications:** Section 36(f), enacted in 2008, provided a tax credit to first-time home buyers equal to 10% of the purchase price, subject to a $7,500 ceiling. The credit was economically equivalent to an interest-free loan because it was subject to recapture over 15 years. It applied only to homes purchased on or after April 9, 2008, and before July 1, 2009. There was a phaseout for taxpayers with adjusted gross income in excess of $75,000 for single filers, and $150,000 for joint returns. The Act amends this provision in several ways. It increases the maximum value of the credit to $8,000 ($4,000 for married individuals filing separately); it eliminates the repayment obligation for homes purchased after December 31, 2008; and it extends the credit provision as modified to homes purchased before December 1, 2009. However, the credit is still subject to recapture if the house is sold within 36 months from the date of purchase or ceases to be the taxpayer's principal residence within that period. The Act also adds rules to coordinate this provision with the first-time homebuyer credit for D.C. residents, provided in Section 1400C.	This provision applies to residences purchased after December 31, 2008.	Miscellany	Kellar

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I.C.10	Delay in implementation of withholding tax on government contractors (99-100)	3402	1511	129	**Federal Tax Implications:** The Code previously required that federal, state, and local governments and agencies withhold 3% on payments after December 31, 2010, to certain persons providing property or services. Withholding did not apply to political subdivisions of states that spend less than $100 million annually on property or services otherwise subject to withholding. No government or government agency was required to withhold on payments of public assistance, wages, or interest; payments for real property; payments to tax-exempt entities or other governments; and certain other payments. The Act retains the above exceptions but defers the withholding requirement for one year. Withholding will apply to payments made after December 31, 2011.	This provision applies as of February 17, 2009.	Miscellany	Purnell
I.B.4	Estimated tax payments (37-38)	6654	1212	78-80	**Federal Tax Implications:** Individual taxpayers are generally required to make quarterly estimated tax payments totaling the lesser of 90% of the taxes shown on their current year return or 100% of the taxes shown on their prior year return (110% for prior year returns with adjusted gross income exceeding $150,000). The Act reduces the estimated taxes required to be withheld for the 2009 tax year in limited cases: for 2009, qualified individuals need only pay estimated taxes totaling 90% of the taxes shown on their prior year return. A "qualified individual" is an individual whose prior year adjusted gross income was less than $500,000 ($250,000 for a married individual filing separately) and who certifies that at least 50% of the income shown on the prior year return was derived from a small trade or business. The Act defines a small trade or business as one that employed less than 500 persons, on average, during the calendar year ending in or with the prior taxable year.	This provision applies as of February 17, 2009 to tax years beginning in 2009.	Miscellany	Purnell

State and Local Tax Implications of Federal Credits:

Many of the stimuli in the federal tax package come in the form of credits against individual or corporate federal income taxes. While states often conform to the federal definition of income, at least as a starting point, it is rare for states to "piggyback" on federal tax credits. There may be exceptions, but in general one should not assume that a federal income tax credit will be mirrored at the state level. Where state definitions of income are based on federal income, however, any federal basis reductions linked to federal tax credits may reduce state and local depreciation deductions, and affect gain or loss, as the federal effects of decreases in basis flow through to state and local computations of net income.

FURTHER INFORMATION

For further information, readers are encouraged to contact their regular Jones Day attorney or the Responsible Attorney(s) listed herein. General email messages may be sent using our web site feedback form, which can be found at www.jonesday.com.

FEDERAL TAX

David S. Boyce
Los Angeles
1.213.243.2403
dsboyce@jonesday.com

Carl M. Jenks
New York / Cleveland
1.212.326.8321 / 1.216.586.7173
cmjenks@jonesday.com

Karl L. Kellar
Washington
1.202.879.3824
klkellar@jonesday.com

Kenneth J. Krupsky
Washington
1.202.879.3664
kjkrupsky@jonesday.com

Edward A. Purnell
Chicago
1.312.269.4368
epurnell@jonesday.com

Candace A. Ridgway
Washington
1.202.879.3633
caridgway@jonesday.com

Valerie P. Roberts
New York
1.212.326.3610
vroberts@jonesday.com

Wade R. Wagatsuma
Cleveland
1.216.586.7338
wrwagatsuma@jonesday.com

Todd Wallace
Dallas
1.214.969.3713
twallace@jonesday.com

Patrick J. Browne Jr.
Washington
1.202.879.5457
pbrownejr@jonesday.com

Colleen E. Laduzinski
New York
1.212.326.7890
celaduzinski@jonesday.com

Stephen P. Parrinello
New York
1.212.326.8377
spparrinello@jonesday.com

STATE AND LOCAL TAX (“SALT TEAM”)

David E. Cowling
Dallas
1.214.969.2991
decowling@jonesday.com

Carolyn Joy Lee
New York
1.212.326.3966
cjlee@jonesday.com

Charolette F. Noel
Dallas
1.214.969.4538
cfnoel@jonesday.com

One Firm Worldwide℠