EIGHTEENTH ANNUAL TAX SYMPOSIUM

October 3, 2009
SHERATON DETROIT NOVI
NOVI, MICHIGAN

PRESENTED BY THE LAW OFFICES OF
MADDIN, HAUSER, WARTELL, ROTH & HELLER, P.C.

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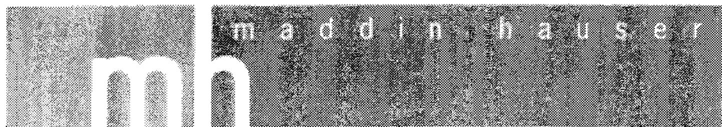

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October 3, 2009

Dear Tax Symposium Participants:

Welcome to our Eighteenth Annual Tax Symposium. We are pleased that you have joined us this morning. As we have done historically, our Program will principally address tax issues and topics which we believe will help you better represent your clients.

You will note that our Program includes a number of topics focusing on issues relating to our troubled and uncertain economic environment. As we have seen with our own practice, our clients are facing unusual and challenging business and tax related issues. The tax consequences of foreclosure and bankruptcy are of course at the forefront. Qualified retirement plans face a myriad of issues which impact their operation and tax qualified status. Even estate planning is impacted by our economic climate; although in the case of estate planning, unique opportunities may also be present.

While our Annual Tax Symposium features many of the tax and corporate members of the firm, you should be aware that we are a "full service law firm." Please visit our website at www.maddinhauser.com to find out more about the firm. As always, we appreciate your attendance at this Program and welcome your comments and suggestions.

Very truly yours,

MADDIN, HAUSER, WARTELL,
ROTH & HELLER, P.C.

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MADDIN, HAUSER, WARTELL, ROTH & HELLER, P.C.
EIGHTEENTH ANNUAL TAX SYMPOSIUM PROGRAM

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Seminar Qualifies for Four CPE Credits

TAX CONSEQUENCES OF FORECLOSURE AS WELL AS VARIOUS BANKRUPTCY/TAX RELATED ISSUES (DISCHARGE OF TAXES IN BANKRUPTCY)

By: Geoffrey N. Taylor

I. TAX TREATMENT OF OWNER/DEBTOR IN FORECLOSURE

A. Foreclosure is the process by which legal proceedings are initiated and pursued by a creditor to acquire collateral for a loan that is in default.

1. A deed in lieu of foreclosure is treated as a foreclosure for tax purposes.

B. A foreclosure is treated as a "sale" for tax purposes even though the sale is involuntary.

1. Consequently, the amount of the debtor's gain or loss on a foreclosure is determined by the statutory provisions relating to the amount of gain or loss on the sale or exchange of property.

2. If the amount realized on the deemed sale exceeds the adjusted basis of the property, there is a gain.

3. If the amount realized on the deemed sale is less than the adjusted basis of the property, there is a loss.

C. Amount Realized.

1. For a recourse loan, the debtor is personally liable for the debt and generally is deemed to realize the net amount received for the property on the foreclosure sale and used to discharge the debtor's obligation to the lender.

2. For a nonrecourse loan, the debtor is not personally liable for the debt and generally is deemed to realize the amount of the entire unpaid debt.

D. Bifurcation for Recourse Loans.

1. Where the debt is recourse, income may consist of both cancellation of indebtedness income and gain, each of which may be subject to different treatment.

   a. The debtor has gain to the extent the net foreclosure proceeds exceed the debtor's basis in the property.

   b. The debtor has cancellation of indebtedness income to the extent the amount of debt that is cancelled exceeds the net foreclosure proceeds.

2. Where the debtor is solvent, both gain and discharge of indebtedness income are taxable.

3. Where the debtor is insolvent, the cancellation of indebtedness income may be excludible from taxable income under the insolvency exception to the general rule of income recognition (discussed below). However, this exclusion does not apply to gain arising from the repossession of property subject to indebtedness because that gain is deemed to arise from a sale or exchange rather than cancellation of indebtedness. In other words, the insolvency exception to recognition does not apply to foreclosure of nonrecourse loans and applies only to the cancellation of indebtedness component of a foreclosure of a recourse loan.

E. Character of Gain or Loss.

1. If the property is a capital asset in the debtor's hands, gain or loss is treated as capital gain or loss. Capital gains are subject to depreciation recapture rules.

2. Otherwise the gain or loss is ordinary.

F. Deduction of Loss.

For an individual, generally a deduction is allowed only for a loss incurred in a trade or business or incurred in a transaction for profit.

G. Year of Gain or Loss.

1. Since a foreclosure sale is treated for tax purposes like a voluntary sale, gain or loss is realized in the year the sale becomes final.

2. If the debtor has a right of redemption after the foreclosure sale, the sale is not final for tax purposes until the right of redemption expires.

3. If the debtor prefers the gain or loss to be realized in the year of foreclosure and the right of redemption expires in the following year, the debtor may accelerate realization by releasing the right of redemption.

4. For accrual-basis taxpayers, income is realized when the "all-events test" is satisfied. This test normally is not satisfied while the right to income is being contested. Thus, it has been held that foreclosure gain is not realized in the year in which the foreclosure sale occurs (or if later after the redemption period, if any, expires) where the foreclosure is being judicially contested

and could be invalidated. Instead, it is realized in the year in which the foreclosure is upheld.

H. Foreclosure proceeds applied to the payment of past due real estate taxes and interest may be treated as deductible as such rather than an offset in computing gain or loss.

II. TAX TREATMENT OF OWNER/DEBTOR IN WORKOUTS

A. If a debt is repaid at a discount form its face amount, the debtor may be receiving an economic benefit that is subject to tax.

B Section 61 of the Internal Revenue Code explicitly treats "income from discharge of indebtedness" as a variety of gross income.

C. Under the statute, "indebtedness of the taxpayer" means either indebtedness for which the taxpayer is personally liable or indebtedness subject to which the taxpayer owns property.

D. One set of rules governs debt discharge for solvent debtors and another set of rules governs debt discharge for bankrupt or insolvent debtors.

1. Solvent Debtor.

   In general, any discharge of indebtedness of a solvent taxpayer produces current income in the amount of the debt discharged.

2. Insolvent Debtor.

   a. If a discharge of indebtedness occurs when the taxpayer is insolvent, but not in bankruptcy, the discharge of indebtedness income may have to be broken into two components.

i. First, the amount of the debt discharged is excluded from gross income up to the amount by which the taxpayer is insolvent. The amount excluded is used to reduce specified tax attributes (discussed below).

ii. Second, any balance of the debt discharged that exceeds the insolvency amount is included in gross income.

b. If the discharge of indebtedness occurs in bankruptcy, the amount of the debt discharged is excluded from gross income and used to reduce tax attributes.

c. Insolvent means an excess of liabilities over the fair market value of assets immediately before the discharge.

d. Contingent liabilities are not taken into account unless it is more probable than not that the taxpayer will be called upon to pay the amount claimed.

e. The exemption of an asset from the claims of creditors under state law does not preclude the inclusion of the asset in determining whether liabilities exceed assets for purposes of ascertaining the taxpayer's solvency.

E. Reduction of Tax Attributes.

1. Under Internal Revenue Code Section 108(b)(2), the amount excluded from gross income generally is applied to reduce the following tax attributes in the following order.

a. Net operating losses.

b. General business credits.

c. Minimum tax credits.

d. Net capital losses.

e. The basis of the taxpayer's property (in the order of priority described below).

f. Passive activity losses.

F. Election to Reduce Basis.

1. At the taxpayer's election, instead of reducing tax attributes in the order described above, the amount excluded from gross income may first be applied to reduce the basis of the taxpayer's depreciable property.

   a. A taxpayer making the election must reduce, in the following order, the adjusted bases of property in the following categories.

      i. Real property used in a trade or business or held for investment that secured the discharged indebtedness.

      ii. Personal property used in a trade or business or held for investment that secured the discharged indebtedness.

      iii. Remaining property used in a trade or business or held for investment.

   b. If the basis of property is reduced, any corresponding gain on a subsequent disposition of the property is subject to recapture as ordinary income.

G. Election to Exclude Discharge of Indebtedness Income for Qualified Real Property Business Indebtedness.

1. A taxpayer may elect to reduce the basis of the taxpayer's depreciable real property by the amount of discharge of indebtedness income that otherwise would be included in gross income.

2. The relief is available only to taxpayers who are not C corporations and who are not insolvent or in bankruptcy.

3. The election applies only to "qualified real property business indebtedness," which has three requirements.

   a. First, the indebtedness must have been incurred or assumed by the taxpayer with respect to real property used in a trade or business and the indebtedness must be secured by such real property.

   b. Second, the indebtedness must have been incurred or assumed prior to January 1, 1993 or, if incurred or assumed afterward, must be "qualified acquisition indebtedness." Qualified acquisition indebtedness is indebtedness incurred or assumed to acquire, construct, reconstruct, or substantially improve real property securing such indebtedness.

   c. Third, the taxpayer must elect to have the relief provisions apply.

4. Determining whether indebtedness was incurred or assumed in connection with real property used in a "trade or business" may sometimes be difficult. Land held merely as an investment would not qualify, but if the taxpayer planned to construct

commercial improvements on the land, the land then presumably should qualify, assuming the taxpayer's plans were sufficiently advanced.

5. The statute imposes two limitations on the amount of mortgage reduction protected from current taxation.

    a. First, it cannot exceed the excess, if any, of the outstanding principal amount of the debt immediately before the reduction over the fair market value of the real property that is security for the debt.

    b. Second, the amount excludable may not exceed the aggregate adjusted bases of depreciable real property held by the taxpayer immediately before the discharge.

H. Debt Modifications.

1. Modifications that may create discharge of indebtedness income include an exchange of debt instruments, an amendment of an existing debt instrument, and indirect modifications through transactions with third parties. It is irrelevant whether the modification is written or oral or occurs by the conduct of the parties or otherwise.

2. If the modification is other than a reduction in the principal amount of the debt and if interest continues to be payable at the applicable federal rate, generally there is no discharge of indebtedness income.

3. An alteration of a legal right or obligation that occurs by operation of the terms of the debt instrument generally is not treated as a modification.

4. An agreement by a creditor to stay collection or temporarily waive an acceleration clause or similar default right may elude characterization as a modification, absent a written or oral agreement to alter other terms of the debt instrument.

5. A modification of a debt instrument must be "significant" for taxable income to be recognized. The four general types of significant modifications are changes in yield, changes in timing of payments, changes in obligor or security, and changes in nature of debt instrument.

   a. A modification in the yield of a debt instrument is a significant modification if the yield varies from the annual yield on the unmodified instrument by more than the greater of 0.25% or 5% of the annual yield of the unmodified debt instrument.

   b. A modification in the timing of payments due under a debt instrument is significant if it results in a material deferral of scheduled payments. Although the regulations are vague as to when a "material" deferral occurs, there is a safe harbor rule permitting deferral for the lesser of five years or 50% of the original term of the debt instrument.

   c. A modification of a nonrecourse debt instrument is significant if it releases, substitutes, adds, or otherwise alters a substantial amount of the collateral for, a guarantee on, or other form of credit enhancement for the debt instrument. However, a substitution of collateral is not significant if the collateral is fungible, such as securities of a particular type and rating.

d. The substitution of a new obligor on a recourse debt instrument generally is a significant modification.

e. A change in the recourse nature of a debt instrument generally is a significant modification. However, a modification that changes a recourse debt to a nonrecourse debt is not a significant modification if the instrument continues to be secured only by the original collateral and the modification does not result in a change in payment expectation for the creditor.

I. If the payment of a liability would have given rise to a deduction, the discharge of the liability does not produce discharge of indebtedness income.

J. Income treatment may be avoided in a purchase-money context.

1. Purchase-money debt is a seller-financed transaction in which the property purchased secures the debt.

2. A reduction of purchase-money debt is viewed as a transaction between a purchaser and a seller, rather than a transaction between a debtor and a creditor.

3. The reduction of the debt is treated as an adjustment to the purchase price, rather than a taxable discharge of indebtedness income.

4. This treatment only applies to a reduction made between the original seller and the original purchaser. It does not apply where the debt or the property has been transferred to a third party, even if the third party is related to the transferor.

5. This treatment is not available where the taxpayer is insolvent or is in bankruptcy.

K. A taxpayer can elect to defer recognition of discharge of indebtedness income from the reacquisition of business debt at a discount if the reacquisition occurs in 2009 or 2010.

1. The deferred income is recognized equally in each of the five tax years from 2014 to 2018.

2. The election can be made with respect to any debt issued by a C corporation or by any other person in connection with the conduct of a trade or business by such person.

3. Certain events accelerate the deferral, such as a transfer or redemption of a partner's partnership interest, transfer or redemption of an S corporation shareholder's stock, liquidation of the entity, or cessation of business.

III. DISCHARGE OF TAXES IN BANKRUPTCY

A. There are four types of bankruptcy available to individuals and the rules for each type are based on the governing Chapter of the Bankruptcy Code.

1. Chapter 7 - Liquidation.

2. Chapter 11 – Business reorganization.

3. Chapter 12 – Farmers.

4. Chapter 13 – Individual reorganization.

B. Chapter 7 involves liquidation of a taxpayer's assets and gives the taxpayer a "fresh start."

C. Chapters 11 and 13 involve a reorganization in which the debtor pays off creditors over a period of time under a plan.

D. Unlike a reorganization, Chapter 7 does not commit the debtor's future income to pay old debt, and does not provide protection for assets other than certain "exempt" assets.

E. When a taxpayer files a petition in bankruptcy, all collection efforts against the taxpayer and the taxpayer's property, including collection efforts by the IRS, are automatically stayed.

F. If an income tax debt meets all of the following, then the tax debt is dischargeable in Chapter 7 and Chapter 13 bankruptcy petitions.

   1. The tax debt must be related to a tax return that was due at least three years before the taxpayer files for bankruptcy. The due date includes any extensions.

   2. The tax debt must be related to a tax return that was filed at least two years before the taxpayer files for bankruptcy. The time is measured from the date the taxpayer actually filed the return.

   3. The IRS assessed the tax at least 240 days before the taxpayer filed for bankruptcy. The IRS assessment may arise from a self-reported balance due, an IRS final determination in an audit, or an IRS proposed assessment which has become final.

   4. The tax return was not fraudulent or frivolous.

   5. The taxpayer is not guilty of any intentional act of evading the tax laws.

G. Trust fund recovery penalties on responsible persons who fail to collect and pay over withholding taxes are treated as priority tax debts excepted from discharge.

H. Tax debts that arise from unfiled tax returns are not dischargeable.

WHO'S YOUR DADDY? A LOOK AT AGGREGATION AND CONTROLLED GROUP RULES

By: Gary M. Remer

I. <u>CONTROLLED GROUPS</u>

A. For purposes of applying the provisions of Section 401 (relating to qualified pension, profit sharing, and stock bonus plans), 408(k) (relating to simplified employee pensions), 410 (relating to minimum participation standards), 411 (relating to minimum vesting standards), 415 (relating to limitations on benefits and contributions under qualified plans), and 416 (relating to top-heavy plans), all employees of two or more trades or business under common control within the meaning of Treasury Regulations Section 1.414(c)-2 for any period shall be treated as employed by a single employer.

B. The term "two or more trades or businesses under common control" means any group of trades or businesses which is either a "parent subsidiary group of trades or businesses under common control" or a "brother sister group of trades or businesses under common control".

C. For purposes of the controlled group rules the term "organization" means a sole proprietorship, a partnership, a trust, an estate, or a corporation.

D. Parent Subsidiary Group of Trades or Businesses Under Common Control.

1. The term "Parent Subsidiary Group of Trades or Businesses Under Common Control" means one or more chains of organizations conducting trades or business connected through ownership of a <u>controlling interest</u> with a common parent organization if:

a. a controlling interest in each organization, except that the common parent organization, is owned by one or more other organization; and

b. the common parent organization owns a controlling interest in at least one of the other organizations, excluding, and computing such controlling interest, any direct ownership interest by such other organizations.

2. Controlling Interest is defined as:

a. in the case of an organization which is a corporation, ownership of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote of such corporation or at least 80% of the total value of shares of all classes of stock of such corporation;

b. in the case of an organization which is a trust or estate, ownership of an actuarial interest of at least 80% of such trust or estate;

c. in the case of an organization which is a partnership, ownership of at least 80% of the profits interests or capital interest of such partnership, and

d. in the case of an organization which is a sole proprietorship, ownership of such sole proprietorship.

E. Brother Sister Group of Trades or Businesses Under Common Control.

1. The term "Brother Sister Group of Trades or Businesses Under Common Control" means two or more organizations conducting trades or businesses if:

a. the same 5 or fewer persons who are individuals, estates or trust own a controlling interest in each organization, and

b. take into account the ownership of each such person only to the extent such ownership is identical with respect to each such organization, such persons are in effective control of each organization. The 5 or fewer person's whose ownership is considered for purposes of the controlling interest requirement for each organization must be the same persons who's ownership is considered for purposes of the effective control requirement.

2. Persons are in "effective control" of an organization if:

a. in the case of an organization which is a corporation, such persons own stock possessing more than 50% of the total combined voting power of all classes of stock entitled to vote or more than 50% of the total values of shares of all classes of stock of such corporation;

b. in the case of an organization which is a trust or estate, such persons own an aggregate actuarial interest of more than 50% of such trust or estate;

c. in the case of an organization which is a partnership, such persons own an aggregate of more than 50% of the profits interest or capital interest of such partnership; and

d. in the case of an organization which is a sole proprietorship, one of such persons owns such sole proprietorship.

3. The following example will help illustrate the concepts of controlling interest and effective control of a Brother Sister Group of Trades or Businesses under Common Control.

Example. Unrelated individuals A, B, C, D, E, and F own an interest in sole proprietorship A, a capital interest in the GHI Partnership, and stock of corporations M, W, X, Y, and Z (each of which has only one class of stock outstanding) in the following proportions:

	A	GHI	M	W	X	Y	Z
A	100%	50%	100%	60%	40%	20%	60%
B	---	40%	---	15%	40%	50%	30%
C	---	---	---	---	10%	10%	10%
D	---	10%	---	25%	---	20%	---
E	---	10%	---	---	10%	---	---

Under these facts the following four brother-sister groups of trades or businesses under common control exist: GHI, X and Z; X, Y and Z, W and Y; A and M. In the case of GHI, X, and Z, for example, A and B together have effective control of each organization because their combined identical ownership of GHI, X and Z is greater than 50%. (A's identical ownership of GHI, X and Z is 40% because A owns at least 40% interest in each organization. B's identical ownership of GHI, X and Z is 30% because B owns at least a 30% interest in each organization.) A and B (the persons whose ownership is considered for purposes of the effective control requirement) together own a controlling interest in each organization because they own at least 80% of the capital interest of partnership GHI and at least 80% of the total combined voting power of corporations X and Z. Therefore, GHI, X and Z comprise a brother sister group of trades or businesses under common control. Y is not a member of this group because neither the effective control requirement nor the 80% controlling interest requirement are met. (The effective control requirement is not met because A's and B's combined identical ownership if GHI, X, Y and Z (20% for A and 30% for B) does not exceed 50%. The 80% controlling interest test is not met because A and B together only own 70% of the total combined voting power of stock of Y.) A and M are not members of this group because B owns no interest in either organization and A's ownership of GHI, X and Z, considered alone, is less than 80%.

4. Constructive Ownership/Attribution from Partnerships.

   a. An interest owned, directly or indirectly, by or for a partnership shall be considered as owned by any partner having an interest of 5% or more in either the profits or capital of the partnership in proportion to such partner's interest in the profits or capital, whichever such proportion is greater.

   b. The provisions of the partnership attribution rule may be illustrated by the following example:

      Example. A, B, and C, unrelated individuals, are partners in the ABC Partnership. The partners' interest in the capital and profits of ABC are as follows:

Partner	Capital	Profits
A	36%	25%
B	60%	71%
C	4%	4%

      The ABC Partnership owns the entire outstanding stock (100 shares) of X Corporation. A is considered to own stock of X Corporation owned by the partnership in proportion to his interest in capital (36 percent) or profits (25 percent), whichever such proportion is greater. Therefore, A is considered to own 36 shares of X stock. Since B has a greater interest in the profits of the partnership than in the capital, B is considered to own X stock in proportion to his interest in such profits. Therefore, B is considered to own 71 shares of X stock. Since C does not have an interest of 5% or more in either the capital or profits of ABC, he is not considered to own any shares of X stock.

5. Attribution from Corporations.

   a. An interest owned, directly or indirectly, by or for a corporation shall be considered as owned by any person who owns (directly and, in the case of a parent

subsidiary group of trades or businesses under common control, or in the case of a brother-sister group of trades or businesses under common control, with the application of those rules), 5% or more in value of the stock in that portion which the value of the stock which such person so owns bears to the total value of all stock of such corporation.

b. The provisions of this may be illustrated by the following example:

Example. An individual, owns 60 of the 100 shares of the only class of outstanding stock of corporation P. C, an individual owns 4 shares of the P stock, and corporation X owns 36 shares of the P stock. Corporation P owns, directly and indirectly, 50 shares of the stock of corporation S. B is considered to own 30 shares of the S stock (60/100 x 50), and X is considered to own 18 shares of S stock (36/100 x 50). Since C does not own 5% or more in the value of P stock, he is not considered as owning any of the S stock owned by P. If in this example, C's wife had owned directly 1 share of the P stock, C and his wife would each be considered as owning 5 shares of the P stock, and therefore C and his wife would be considered as owning 2.5 shares of the S stock (5/100 x 50).

6. Spousal Attribution.

a. Except as provided, an individual shall be considered to own an interest owned, directly or indirectly, by or for his or her spouse, other than a spouse who is legally separated from the individual under a decree of divorce, whether inter-lockatory or final, or a decree of separate maintenance.

b. An individual shall not be considered to own an interest in an organization owned, directly or indirectly, by or for

his or her spouse on any day of a taxable year of such organization, provided that each of the following conditions are satisfied with respect to such taxable year:

i. such individual does not, at any time during such taxable year, own directly any interest in such organization;

ii. such individual is not a member of the board of directors, a fiduciary, or an employee of such organization and does not participate in the management of such organization at any time during such taxable year;

iii. not more than 50% of such organization's gross income for such taxable year was derived from royalties, rents, dividends, interest, and annuities; and

iv. such interest in such organization is not, at any time during such taxable year, subject to conditions which substantially restrict or limit the spouse's right to dispose of such interest and which run in favor of the individual or the individual's children who have not attained the age of 21 years.

7. Children, Grandchildren, Parents, and Grandparent Attribution.

a. An individual shall be considered to own an interest owned, directly or indirectly, by or for the individual's children who have not attained the age of 21 years, and if the individual is not attained the age of 21 years, an

interest owned, directly or indirectly, by or for the individual's parents.

b. If an individual in effective control of an organization, then such individual shall be considered to an interest in such organization owned, directly or indirectly, by or for the individual's parents, grandparents, grandchildren, and children who have attained the age of 21 years.

c. The provisions of these attribution rules may be illustrated by the following examples:

(A) Facts. Individual F owns directly 40% of the profits interest of the DEF Partnership. His son, M, 20 years of age, owns directly 30% of the profits interest of DEF, and his son, A, 30 years of age, owns directly 20 percent of the profits interest of DEF. The 10% remaining of the profits interest and 100% of the capital interest of DEF is owned by an unrelated person.

(B) F's ownership. F owns 40% of the profits interest in DEF directly and is considered to own the 30% profits interest owned directly by M. Since, for purposes of the effective control test, F is treated as owning 70% of the profits interest of DEF, F is also considered as owning the 20% profits interest of DEF owned by his adult son, A. Accordingly, F is considered as owning a total of 90% of the profits interest in DEF.

(C) M's ownership. Minor son, M owns 30% of the profits interest in DEF directly, and is considered to own the 40% profits interest owned directly by his father, F. However, M is not considered to own the 20% profits interest of DEF owned directly by his brother, A, and constructively by F, because an interest constructively owned by F by reason of family attribution is not considered as owned by him for purposes of making another member of his family the constructive owner of such interest. Accordingly, M is considered as

owning a total of 70% of the profits interest of the DEF Partnership.

8. There is no attribution between siblings for purposes of the controlled group rules.

II. AFFILIATED SERVICE GROUPS

A. Section 414(m) of the Code provides rules that require, in some circumstances, employees of separate organization be treated as if they were employed by single employer for purposes of certain employee benefit requirements.

B. A key component of an affiliated service group is having a professional service organization. "Service Organization" means the following fields: health; law; engineering; architecture; accounting; actuarial science; performing arts; consulting; and insurance.

C. "Affiliated Service Group" means a group consisting of a service organization (First Service Organization) and:

1. One or more A Organizations, or

2. One or more B Organizations, or

3. One or more A Organizations and one or more B Organizations.

D. A Organizations.

1. General rule – a service organization is an A Organization if it:

a. is a partner or shareholder in the First Service Organization (regardless of the percentage interest it owns in the first service organization but determined with regard to the constructive ownership rules); and

b. regularly performed service for the First Service Organization, or is regularly associated with the First Service Organization and performing services for third persons.

It is not necessary that any of the employees of the organization directly perform services for the First Service Organization; it is sufficient that the organization is regularly associated with the First Service Organization in performing services for third persons.

2. Regularly performed services. The determination of whether a service organization regularly performs services for the First Service Organization or is regularly associated with the First Service Organization in performing services for third persons shall be made on the basis of the facts and circumstances. One factor that is relevant in making this determination is that the amount of income from that income from that organization derives from performing services for the First Service Organization, or from performing services for third persons in association with the First Service Organization.

3. The provisions of this will be illustrated by the following examples.

Example (1). A Organization.

(i) Attorney N is incorporated, and the corporation is a partner in a law firm. Attorney N and his corporation are regularly associated with the law firm in performing services for third persons.

(ii) Considering the law firm as a First Service Organization, the corporation is an A Organization because it is a partner in a law firm and it is regularly associated with the law firm in performing services for third persons.

Accordingly, the corporation and the law firm constitute an Affiliated Service Group.

Example (2). Corporation.

(i) Corporation F is a service organization that is a shareholder in Corporation G, another service organization. F regularly provides services for G. Neither corporation is a professional service corporation within the meaning of the Code.

(ii) Neither corporation may be considered a First Service Organization and, thus, aggregation will not be required by operation of the A Organization test. However, G or F may be treated as a First Service Organization and the other organization may be a B Organization under the rules.

Example (3). Regularly associated with.

(i) R, S & T is a law partnership with offices in numerous cities. The office in the city of D is incorporated, and the corporation is a partner in the law firm. All of the employees of the corporation work directly for the corporation, and none of them work directly for any of the other offices of the law firm.

(ii) Considering the law firm as a First Service Organization, the corporation is an A Organization because it is a partner in the First Service Organization and is regularly associated with the law firm in performing services for third persons. Accordingly, the corporation and the law firm constitute an Affiliated Service Group.

E. B Organization.

a. General rule – An organization is a B Organization if:

i. A significant portion of the business of the organization is the performance of services for the First Service Organization, for one or more A Organizations determined with respect to the First Service Organization, or for both.

ii. Those services are of a type historically performed by employees in the service field of the First Service Organization or the A Organization, and

iii. Ten percent or more of the interest in the organization is held, in the aggregate by the persons who are designated group members of the First Service Organization or of the A Organization, determined using the constructive ownership rules.

b. Significant Portion.

i. General rule – the determination of whether there is a significant portion of business of an organization will be based on the facts and circumstances.

ii. Service Receipt Safe Harbor – the performance of services for the First Service Organization for one or more A Organizations, or for both, will not be considered a significant portion of the business of an organization if the service receipt percentage is less than 5%.

iii. Total Receipts Threshold Test – the performance of services for the First Service Organization, for one or more A Organizations, or for both, will be considered a significant portion of the business of an organization, the total receipts percentage is 10% or more.

iv. Service Receipts Percentage – the service receipts percentage is the ratio of the gross receipts of the organization derived from performing services for the First Service Organization, for one or more A Organizations, or both, to the total gross receipts of the organization derived from performing services. This

ratio is the greater of the ratio for the year for which the determination is being made or for the three year period including that year and the two preceding years.

v. Total Receipts Percentage – the Total Receipts Percentage is calculated in the same manner as the Service Receipts Percentage, except the gross receipts in the denominator are determined without regard to whether they were derived from performing services.

c. Historically Performed – services will be considered of a type historically performed by employees in a particular service field if it was not usual for the services to be formed by employees of organizations in that service field.

F. Non Service Organization – an organization may be a B Organization even though it does not qualify as a service organization.

G. The provisions may be illustrated by the following examples:

Example. B Organization.

(i) R is a service organization that has 11 partners. Each partner of R owns 1% of the stock in Corporation D. The corporation provides services to the partnership of a type historically performed by employees in the service field of the partnership. A significant portion of the business of the corporation consists of providing services to the partnership.

(ii) Considering the partnership as a First Service Organization, the corporation is a B Organization because a significant portion of the business of the corporation is the performance of services for the partnership of a type historically performed by employees in the service field of the partnership, and more than 10% of the interests in the corporation is held, in the aggregate, by the designated group members (consisting of the 11 common owners of the partnership). Accordingly, the corporation and the partnership constitute an Affiliated Service Group.

Example. Other aggregation rules.

(i) C, an individual, is a 60% partner in D, a service organization, and regularly performs services for D. C is also an 80% partner in F. A significant portion of the gross receipts of F are derived from providing services to D of a type historically performed by employees in the service field of D.

(ii) Viewing D as a First Service Organization, F is a B Organization because a significant portion of gross receipts of F are derived from performing services for D of a type historically performed by employees in that service field and more than 10% of the interests in F is held by the designated group member C (who is a common owner of D). Accordingly, D and F constitute an Affiliated Service Group. Additionally, the employees of D and F are aggregated under the rules of Section 414(c). Thus, any plan maintained by a member of the Affiliated Service Group must satisfy the aggregation rules of Sections 414(c) and 414(m).

Example. B Organization.

(i) Individual M owns one-third of an employee benefit consulting firm. M also owns one-third of an insurance agency. A significant portion of the business of the consulting firm consists of assisting the insurance agency in developing employee benefit packages for sale to third persons and providing services to the insurance company in connection with employee benefit programs sold to other clients of the insurance agency. Additionally, the consulting firm frequently provides services to clients who have purchased insurance arrangements from the insurance company for the employee benefit plans they maintain. The insurance company frequently refers clients to the consulting firm to assist them in the design of their employee benefit plans. The percentage of the total gross receipts of the consulting firm that represent gross receipts from the performance of these services for the insurance agency is 20%.

(ii) Considering the insurance agency as a First Service Organization, the consulting firm is a B Organization because a significant portion of the business of the consulting firm (as determined under the Total Receipts Percentage Test) is the performance of services for the insurance agency of a type historically performed by employees in the service field of insurance, and more than 10% of the interests in the consulting firm is held by owners of the insurance agency. Thus, the

insurance agency and the consulting firm constitute an Affiliated Service Group.

ESTATE PLANNING IN A LOW INTEREST RATE ENVIRONMENT

By: George V. Cassar, Jr.

Yes, that's right, in case you haven't noticed we are currently experiencing historically low interest rates on everything from the mortgage rates that banks are charging to the interest rates that they are paying on your checking or savings accounts. We are also in a time of incredibly depressed values on everything from our homes and investments to our retirement and our savings. But instead of focusing on the gray cloud, we should be paying attention to the silver lining that is the estate plan. These historically low interest rates and depressed asset values make this an excellent time to engage in various estate planning techniques. Minimizing gift and estate tax when transferring assets is of primary importance in this uncertain time. Current conditions present several planning opportunities for transferring wealth at little or no gift tax cost.

And while one would think that these current economic conditions would have us estate planners and accountants deep in tax-planning sessions with our clients, the truth is that taking advantage of this perfect storm for tax-driven wealth transfer strategies is frozen in its tracks for many clients by their own fears. Motivating a client when he or she does not feel wealthy or financially secure may be an obstacle to having him or her implement estate planning arrangements. Frequently, a client's sense of self relates directly to his or her standing in his or her society and within the family as the one who owns and controls the wealth. That identity may already have been substantially shaken by the current economic crisis. For many clients, this may be the first time they have had to contemplate lifestyle changes because portfolio values and returns have fallen so dramatically. Further dilution by current wealth transfers may be psychologically unacceptable.

This, of course, is the reason that clients rely on us as their professional, trusted advisors. In time of greatest financial fear, never more has our trusted

advice been more necessary. When everything is going smoothly, when even the worst managed of portfolios grows by 20% per year, when real estate values are soaring and banks are lining up for your business, fear is the furthest from our client's financial thoughts. But as the news of interest rates falling and declining values lingers in the air (and the media), fear is consuming. Even when many of those clients haven't actually realized any impact because they haven't sold any of their depressed assets or had cause to fret over unavailable financing, the silver lining is difficult for them to see on their own.

As such, it is our responsibility to understand the strategies that may appeal to those of our clients that are open to pulling their head out of the sand and into the clouds. Understanding the numbers will help determine which strategies are the best now, tomorrow and into the not so distant future. In doing so, keep in mind that the advantages may be garnered not only by implementing flexible structures that void loss of access to the wealth transferred, but also by restructuring existing estate planning, which may be more palatable because no new wealth transfer is involved.

I. THE NUMBERS

A. What Is a Low Interest Rate Environment?

Just when you think it can't go any lower, the Federal Reserve orders the limbo bar down another notch. Of course while the Federal Reserve doesn't control every aspect of our economy, the proverbial "buck" definitely starts here. And while most of our general public clients are familiar with rates such as the Prime rate for lending, mortgage interest rates, and the ever shrinking bank interest rates paid on deposits, many have never even heard of the AFR 7520 rate let alone understand what it has to do with their estate plan.

Each month the Internal Revenue Service (IRS) announces the interest rate used to measure the present value of annuities, income

interests and remainder interests for gift tax purposes. That interest rate is known as the "Section 7520 rate," and is named after the section of the Internal Revenue Code that defines it.

B. How Low Can It Go?

The current Section 7520 rate is now just off its historic lows from earlier this year. The chart attached as Exhibit A shows a historic perspective on the 7520 rate from it's inception through present.

C. Is Lower Always Better?

At the risk of overstating the obvious, the answer is that it depends. When you are the borrower, you believe that the lower the interest rate you have to pay, the better it is for you. If you are the lender, not so much: so of course that translates into the fact that if the banks are collecting less on what they are lending out, they are paying less on what they are taking in. So whether it is better to have a lower rate depends on whether you are paying or receiving. And to take it a step further, it depends on your plans: financial plans, tax plans and estate plans.

Investment advisors rely on high interest rates of return to show the potential of their portfolios. Accountants like the deductions for interest paid but frown at the income tax due on interest received. But when reviewing the below estate planning strategies, keep in mind that while the lower 7520 interest rates may be the underlying theme, the potential for significant appreciation on depressed value assets can quickly overcome any interest issues.

D. What Goes Down Must Come Up

Finally, keep in mind that if history has proved anything, nothing remains constant. That includes the ups and the downs. But while

the economy is always changing, few have ever been able to time it with any reasonable success. Of course, that never stops us from trying. The tables attached as Exhibit B try to forecast those very ups and downs over the next several months/years as computed by certain resource groups that thrive on creating such projections.

II. THE STRATEGIES

So how does the current economic environment provide those "silver lining" opportunities? The key is this: Lower interest rates with the right transfer strategies allow you to transfer more assets to heirs at a minimal cost in terms of federal gift tax now. In fact, some strategies require none of your gift tax exemption to be used (such as a "zeroed out GRAT") while still offering incredible transfer opportunities.

Then when you couple these lower gift tax consequences with removing the future appreciation value on the depressed assets being transferred from your eventual estate for estate tax purposes, the results can be staggering.

The bottom line: More may be provided for your family and other heirs by using revisited estate planning strategies for transferring existing assets, the key factor being that you advised them to act at the right time.

A. Grantor Retained Annuity Trusts (GRATs)

Grantor retained annuity trusts – or GRATs – offer an opportunity to transfer property at a discounted value, and, therefore, a lower gift tax cost. In fact, a "zeroed out GRAT" requires no gift tax cost at all. To create a GRAT, you can transfer property that is likely to appreciate, such as securities or income producing property, into a trust. Like the name of the trust implies, you retain a right to receive an annuity payment from the trust for a set period of time. As long as you outlive the payment period, when the trust term ends the property remaining in the GRAT – including any and all appreciation on that property – will

pass to the trust remainder beneficiaries free of any <u>additional</u> gift tax – a benefit in any economic environment.

You as the grantor choose the length of the term and the amount of the annuity payments you want to receive when you create the GRAT. And the gift tax that is to be paid (or exemption used) is determined at the time the GRAT is created by calculating the value of the remainder based on the 7520 rate. As such, the greater the value of the annuity interest, the smaller the taxable gift involved. But you can achieve the same result (i.e. higher annuity payment and lower taxable gift) by utilizing a lower interest rate. As such, the lower the 7520 rate, the higher the actuarial value of the retained annuity. Consequently, the same annuity payments will produce a lower taxable gift at a lower interest rate.

> Let's assume that Kathryn, age 50, contributed $1 million of appreciating securities to a GRAT in September 2008. At that time, the applicable AFR or 7520 rate was 4.2%. Her son, Chris, is the trust beneficiary. Kathryn set up the trust as a "zeroed out GRAT" so she won't have to use any of her lifetime gift tax exclusion amount.
>
> (The "zeroed out GRAT," in simplest terms, means that the annuity payments are structured such that the entire principal of the trust is scheduled to be paid back to the Grantor thus if there is no increase in value, the remainder beneficiaries get zero and the resulting gift tax consequence is zero. That also means that if the property appreciates by more than the 7520 rate at the time the trust was established, all of that appreciation goes to the beneficiaries gift tax free, the Grantor receives back all of his or her principal and essentially a transfer was made without any gift tax consequence whatsoever.)
>
> Under the GRAT that Kathryn set up, she will receive an annual payout of $225,892 for five years. The assets in the trust earn 7.5% annually. When the trust ends, Chris will receive the assets remaining in the trust - $123,562 – gift tax free and Kathryn has all of her principal back, plus interest, and retains her entire $1 million gift tax exemption to use another day.

> Now if Kathryn had created her GRAT in February 2009, when the AFR had dropped to 2.0%, she would have received $212,157 a year for five years and ultimately transferred $203,341 to Chris gift tax free. Clearly, establishing a GRAT when rates are low offers advantages.

As an added benefit, clients can combine life insurance solutions with a GRAT for even greater results. While the GRAT can "freeze" the net worth and transfer growth to one's heirs, one must deal with estate tax on assets still in the estate. And if you use a "zeroed out GRAT" as Kathryn did in the above example, the full value of the original asset remains in her taxable estate for estate tax purposes. Thus one strategy would be to consider "re-gifting" the annual GRAT annuity payment (or even a portion thereof) to an Irrevocable Life Insurance Trust (ILIT) with children and grandchildren as beneficiaries. If you take advantage of the gift-tax annual exclusion, you can give up to $13,000 a year to each child or grandchild gift tax free – or $26,000 if your spouse joins in the gift. These contributions to the ILIT can then be used to make premium payments on the life insurance policy and as such, the children and grandchildren then can receive the growth of the assets at the end of the GRAT term, as well as the death benefit in the ILIT, all gift and estate tax free.

B. Sales To Intentionally Defective Grantor Trusts

Another trust strategy that can be beneficial when asset values and interest rates are reduced is a sale of assets to an intentionally defective grantor trust (IDGT). With this strategy, you create an irrevocable trust for the benefit of, say, your children and grandchildren. Under the trust agreement, you retain certain powers that will cause the trust income to be taxed to you, rather than to the trust at potentially higher income tax rates. This still allows the value of the trust property to be removed from your estate for estate tax purposes and you get the added benefit of having the payment of the

income taxes further reduce the size of your remaining gross estate for estate tax purposes. Selling property to the trust can be an especially effective strategy.

Note that interest rates for these installment sales are typically based on the AFR under Section 1274, rather than the Section 7520 rate.

> Let's assume that Wally, age 55, and Carol, age 54, funded a grantor trust with property valued at $100,000 in September 2008. They then sold a closely held business valued at $1 million to the trust and took back an installment note. The interest rate on the note was 4.53% (the long term AFR for September 2008), compounded semi-annually. This rate is the lowest they could charge without the loan being considered a below-market loan for gift tax purposes. Under the note, the trust pays them $92,586 a year for 15 years for a total of $1,388,790. During that time, the trust assets earn an annual return of 9%. When the trust term ends, the trust assets are worth $1,227,145. This amount passes to the trust beneficiaries – their children – transfer tax free.

In addition, while Wally and Carol will be taxed on the income the trust assets earn, they won't be taxed on the interest payments they receive from the trust and won't recognize capital gain (or loss) on the sale to the trust. Wally and Carol won't have to recognize gain (or loss) for income tax purposes unless the trust sells the assets.

> This strategy is even more effective when interest rates are lower. If Wally and Carol had created their trust in February 2009 when the AFR for long term interest rates was 2.94%, compounded semi-annually, they would receive slightly lower annual payments on the note ($82,925 a year), but $1,517,205 – about $290,060 more – could pass gift tax free to their children.

Perhaps your clients already entered into such an installment sale and with the economic downturn, the transaction is "underwater." An underwater sale means one where the fair market value of the asset purchased by the trust and not used to pay off the installment note has

fallen below the outstanding principal due on the installment note. One possibility in this situation would be to lower the interest rate on the note to current market rate (see the applicable AFR). As shown above, this simple step alone can have a surprisingly beneficial effect on the outcome. It can be especially powerful when the value of the underlying assets experience a significant drop in value mid-way through the term.

C. Qualified Personal Residence Trusts (QPRT)

Stocks and other appreciating investment assets aren't the only property that you may be able to transfer in a tax-advantaged way. If you ask any client what asset they have that they feel has declined in value the most, they are probably going to say their house or their vacation property or both. So even though one might assume that when interest rates are low, a QPRT will not be beneficial because the income interest (or retained right to occupy the residence) will have a lesser value, the truth is that the other factors at play may more than make up the difference.

A QPRT involves you creating a trust wherein you or another family member serves as Trustee and you irrevocably transfer a personal residence to a living trust. You retain the right to use and occupy the residence for a fixed period and at the end of that period of time, provided you survive, the residence passes to your children or other beneficiaries free of any additional gift tax. Much like the GRAT, if you don't survive the term established when the trust was created, the value of the residence is included in your estate.

This strategy can be used with primary residences or second residences – such as a vacation home. While the transfer of the home to the trust is a taxable gift to the remainder beneficiary, the value is discounted to reflect the fact that the gift is of a future interest

and the fact that you get to live in the home for the term rent-free. So the amount of the taxable gift is generally much less than the fair market value of the home. In addition, you can use your lifetime gift tax exclusion amount to offset some or all of the gift tax.

You can include a provision in your trust agreement that allows you to stay in your home after the trust term ends provided you pay fair market rent to the new owner (i.e. the beneficiaries). Again, don't think of this as a burden, but as an added benefit as the rent payments will continue to decrease your remaining estate for estate tax purposes.

> Alan and Linda, both ages 60, transfer their home, valued at $1 million, to a qualified personal residence trust set up to last 10 years. Over that period, the home appreciated 2% per year. When the trust ends, it's worth $1,218,994, and the ownership of the home is transferred to Alan and Linda's daughter. Assuming a 45% estate tax rate and an AFR of 2%, Alan and Linda can potentially realize estate tax savings of nearly $180,000.
>
> What about gift tax? Alan and Linda's top gift tax rate would be the same as their estate tax rate – 45%. If Alan and Linda gave their home to their daughter outright, the value of the transfer for gift tax purposes would be $1 million. They would need to use half of their combined $2 million lifetime gift tax exclusion or pay as much as $450,000 in gift tax.
>
> In contrast, gifting the home in trust with the right to live in the residence for ten years reduces the taxable value of their gift to $820,348. Remember, the value of the right to live in the home for the trust term is subtracted from the value of the property. Alan and Linda would only have to use $820,348 of their combined lifetime exclusion or pay as much as $369,157 in gift tax.

So as mentioned above, while lower interest rates may not make a QPRT as attractive because it essentially translates into the retained right to occupy the residence having a lower value, thus increasing the size of the gift to the beneficiaries, if the value of the residence appreciates significantly during the term due to a rebound in the

market, the transfer of that appreciation out of the estate for estate tax purposes still results in a significant benefit to all the parties.

In addition, a QPRT involves another retained interest that is used in calculating the present interest gift when the QPRT is created in addition to the right of use of the property - and that is a reversion if death occurs within the term. The reversion is not nearly as interest rate sensitive as is the income interest, but the reversion is very age sensitive. Accordingly, it is the value of the reversion, not the income interest that increases significantly the aggregate value of the retained interest for an older transferor. A ten-year QPRT for a 65 year old at a 7520 rate of 8% will yield approximately the same taxable gift (35% of the contributed value) as a ten-year QPRT for a 75 year old at a 7520 rate of 3.8% (36% of the contributed value). Therefore, when interest rates are low, QPRTS may still be a viable strategy, especially for an older client.

D. Charitable Remainder Annuity Trusts (CRATs) and Charitable Lead Annuity Trusts (CLATs)

A CRAT is designed in theory to provide for a contribution to a trust whereby the grantor will retain a stream of annuity payments for either a term of years or for the rest of the grantor's life and the charity will receive the remainder at the end of the trust term. Strict rules must be abided by in order to receive the benefit of the charitable deductions and not run afoul of having the assets included in the estate.

Unfortunately interest rates will affect the qualification of a CRAT for a charitable deduction in at least two ways. For a term-of-years CRAT, if interest rates are low, certain levels of annuity payments will cause the actuarial value of the remainder interest to fall below the 10% minimum requirement. For a life CRAT, low interest rates will make it impossible for a CRAT with a younger life beneficiary to qualify for a

charitable deduction because the minimum 5% payout will cause the CRAT to fail either or both the minimum 10% remainder requirement and the 5% probability of exhaustion test.

At 7520 rates near 3.8%, a CRAT for the life of a 30, 40 or 50 year old will fail the minimum 10% remainder requirement. At a 3.6% rate, a CRAT for the life of a 60 year old will fail the 5% probability of exhaustion test. Thus, a lower interest rate environment may make a charitable deduction for a life CRAT unavailable altogether as a planning strategy for a younger measuring life.

Adversely, lower interest rates can also make certain other charitable gifts, such as the CLAT, more advantageous. A CLAT operates much like a GRAT but the charity replaces the grantor as the one receiving the retained annuity payments throughout the term before any remainder goes to the beneficiaries. Thus, a CLAT pays a set amount to the charity of your choice for a certain period and at the end of the period, any remaining trust assets pass to the person you've named as the trust's remainder beneficiary – a child or grandchild, for instance.

A CLAT is usually a longer term strategy than is a GRAT. One reason is that the GRAT will "fail" if the grantor dies during the annuity term; a CLAT generally will not. A CLAT, therefore, has the potential to benefit from "locking in" a long-term low interest rate at inception.

With a CLAT, the value of the assets placed in the trust and any appreciation of those assets are removed from your estate for estate tax purposes. A low AFR 7520 rate coupled with a high payout rate can substantially reduce the gift tax value of the remainder interest. That's because the value of the trust assets is reduced by the present value of the payments that will be made to the charity over the trust's term. This can mean a significantly lower gift tax valuation.

> Take Carlos, for example. In September 2008, when the AFR rate was 4.2%, he created a CLAT with $1 million worth of appreciating securities. Under the trust agreement, the CLAT will pay his favorite charity $70,000 a year for 15 years for a total contribution of $1,050,000. Calculated using a 4.2% AFR, the present value of the annuity stream to charity is $767,515. So the value of Carlos' taxable remainder gift is only $232,485.
>
> Let's say the trust assets earn an annual return of 7.5%. At the end of the 15 year trust term, the assets remaining in the CLAT will be worth $1,130,592. The amount passes to Carlos' son tax free with the use of only $232,485 of Carlos' lifetime gift tax exclusion. A higher or lower actual return would increase or decrease the final value of the trust property but would not affect the gift tax consequences.

What would happen if interest rates were lower? Lower rates can reduce transfer taxes on the assets that eventually pass to family members or other heirs.

> Assume Carlos' situation is the same as above. However, he waited until February 2009 when the AFR had dropped to 2% to crate his trust. Calculated with this rate, the present value of the future payments to the charity is higher - $899,451 – so the taxable value of the remainder gift is lower - $100,549. With the same annual return performance, Carlo's son receives the same remainder amount with less than half of the gift tax consequence as before.

And as with the GRAT, the strategy can be leveraged by combining a life insurance – only this time it is to further benefit the charity. If the charity were to use a portion of its annuity payments to fund the premiums on a life insurance policy on your life, you may be able to significantly increase your future charitable gift at no extra cost or additional transfer tax liability to you.

E. Intra-Family Loans

Perhaps the simplest and lowest cost transaction to the available strategies discussed herein will be the intra-family loan where the

wealthier senior generation of a family can loan cash to the younger generation at attractive interest rates, all at a time when the banks are paying very little interest to the senior generation on their savings and the younger generation may have difficulty qualifying for a loan at any interest rate given all the credit issues in today's economy.

The loan is documented by a promissory note bearing an interest rate at the applicable AFR for the appropriate term of the loan. These rates are typically lower than the rates charged by commercial lenders yet are higher than the rates being earned on conservative savings accounts or certificates of deposit and money market accounts that become more popular for the senior generation as they move into or past retirement.

Because you are loaning, not gifting the money, a properly structured intra-family loan is not subject to gift tax (i.e. so long as the interest rate charged is at least equal to the AFR for the applicable term of the loan).

In addition, depending on what the loan is being used for (some people use it to buy a first house, help start a business, etc.) there may be the added benefit of removing appreciated assets from your estate for estate tax purposes without the use of any gift tax whatsoever. For instance, if you planned on funding an account or a trust for your child or grandchild to leave to them upon your passing but instead you lent them the money and they purchased the assets directly, the value of those assets, along with any appreciation in the meantime, are not included in your estate when you die. You might also reduce overall family income tax because any income produced by the investments purchased with the loan proceeds will be taxed to your child/grandchild at their (presumably) lower income tax bracket than you are (but note that you must include interest payments in

taxable income; so this is a benefit only to the extend that the income produced by the assets is greater than the interest paid).

Some families decide to forgive the interest, or a portion thereof, on an annual basis. If the interest is less than the annual exclusion amount ($13,000 or $26,000 if your spouse joins in), you wouldn't even have to use any of your lifetime exemption in doing so, thus avoiding the income tax on the interest due to you and not having the same add to your overall remaining taxable estate.

F. Self –Canceling Installment Notes (SCIN)

In certain situations, another intra-family financing strategy, the self-canceling installment note, or SCIN, may offer even greater wealth transfer benefits. With a SCIN, the parent doesn't necessarily loan money to children to buy investments. Instead, the child could purchase some of the parents' investment assets by executing an installment note. This strategy works best when there is a good possibility that the parent or other person holding the note on the sale won't live to his or her statistical life expectancy – but is not currently "terminally ill."

If the parent dies before the end of the note's term, the unpaid note balance is automatically canceled. The result is that the child no longer owes the money to the parent's estate and no value from the note is included in the parent's estate. Estate tax savings can be significant if the seller dies during the early years of the SCIN.

What about gift taxes? To avoid having the self-cancellation feature crate a gift, the buyer must pay a "risk premium." The premium is either an interest rate on the note that is higher than the applicable AFR or an above-market price on the assets. Given that we are experiencing both historically low interest rates and severely

depressed asset values, the combination of the two can really make the impact of the SCIN very attractive.

> Dave, age 65, sells shares of his closely held business to his son Jason for $2 million. In exchange, Dave takes back a 10 year, interest only note with an interest rate of 5.6%. The note requires a balloon payment at the end of the term and has a provision canceling the debt if Dave dies before that time. The interest rate is sufficiently higher than the AFR of 2.94% in the example to avoid having the transfer considered a gift if Dave dies before the note comes due. Under the note, Jason has to pay Dave $11,495 in interest each year. For income tax purposes, each payment is considered a combination of interest income, capital gain and a return of basis to Dave. Jason may be able to deduct his payments as investment interest.
>
> Three years later, Dave dies and the balance of the note is canceled. During those three years, the closely held stock has appreciated 9% a year. So Jason now owns $2,590,058 worth of closely held stock, for which he's paid only $334,485. All of the stock has been transferred to him gift and estate tax free, for a potential tax savings of $1,165.526 (45% of $2,590,058).

G. Private Annuities

Although private annuities are receiving increased scrutiny by the IRS as of late, they are still viable strategies for the appropriate estate plan when designed and utilized correctly. Low interest rates and depressed stock prices, for instance, can make private annuities an attractive way to transfer wealth. With a private annuity, you would transfer assets to your child in return for that child's unsecured promise to pay you a fixed, periodic income for life. As with a SCIN, a private annuity is typically most beneficial when the annuitant is not expected to live for too many years, but is not terminally ill.

If the fair market value of the assets transferred equals the present value of the annuity under IRS valuation tables, no gift tax will be due on the transaction. When interest rates are lower, the annuity

payment amount required to avoid gift tax is lower. Note, though, that the parent will have to pay capital gains tax on any gains realized on the "sale" of the property to the child. That's why stocks or other assets that have recently declined in value and are closer to their original purchase price are good candidates for funding a private annuity.

Transferring assets that have declined in value but are expected to recover can increase estate tax benefits as well. A private annuity transaction removes the value of the assets and any subsequent appreciation in those assets from the parent's estate for estate tax purposes.

> For example: In September 2008, Edna, age 65, transferred 4,000 shares of an international stock fund to her daughter, Melissa. At that time, the securities were valued at $500,000. Edna had purchased the shares several years earlier for $100 a share. In exchange for the securities, Melissa agrees to pay Edna an annuity of $44,222 a year. The fair market value of the shares is equal to the present value of the annuity calculated under the IRS valuation tables using the September 2008 AFR of 4.2%. Edna dies ten years later. Assuming that the fund shares return 7.5% a year and that Melissa pays the annuity (a total of $442,220) from those returns, at the end of ten years the shares owned by Melissa will be worth $404,903. As for the transfer tax consequences, the transfer is free of both gift and estate tax.
>
> The tax consequences would have been even better if Edna had made her transfer in February 2009 when the AFR was 2%. Under this scenario, Melissa would have about $118,000 more at the end of the annuity term. Granted, Edna's annuity payment would be lower, but so would her tax bill.

III. RESTRUCTURING EXISTING PLANS

As we discussed early on, there will likely be psychological hurdles to engaging in new estate planning strategies when clients feel less wealthy. Some may be so mired down in the process that they can't see the long term

benefits (i.e. significant transfers of wealth for little or no transfer tax costs) for the short term pain (i.e. attorney and accountant fees to properly set up and administer the plan). Other clients may be simply consumed by the fear of the risks that the economy will continue to decline or that they will now outlive their money. For such clients, consideration should be given to the opportunities that may exist to improve the performance of their existing estate planning structures.

The following is by no means an exhaustive list of opportunities in such situations but instead is simply to point out that, even if a client feels constrained in engaging in additional estate planning, a review of existing estate planning structures might present the opportunity for a number of possible wealth transfer enhancements without parting with large sums of additional capital.

A. Grantor vs. Non-Grantor Trusts

One significant opportunity may be to simply convert existing trusts from non-grantor trusts to grantor trusts within the meaning of Section 671. I has long been established that the payment of income tax by the grantor of a trust that is treated as wholly owned by the grantor for federal income tax purposes under Section 671 does not constitute a taxable gift by the grantor to the trust. Yet, the ability to enhance the value of a trust by the income tax liability on its assets effectively permits the trust to compound income tax free. Income tax free compounding affords a trust the same economic performance as a retirement plan or a charitable remainder trust, without any distribution requirements. Over time, the wealth transfer that can be accomplished is very substantial, and may become even more substantial in the future if ordinary income tax and capital gains rates increase – which they are all but certain to do.

Several methods may be available to convert a trust from a non-grantor trust to a grantor trust. One method may be to petition the court for a modification or reformation of the trust. Another might be to relocate the trust to a state that has legislation or state common law permitting so-called decanting of trusts, which is the act of a trustee contributing the assets of the original trust to a new trust with differing terms. Florida appears to be one of the leading states for liberally allowing such changes to occur.

The changes, for example, could consist of the new trust could simply adding a power in the grantor to substitute assets of equivalent value within the meaning of Section 675(4)(C). Another possibility is to change the identity of the trustees from independent trustees to trustees who are related and subordinate parties but are not otherwise beneficiaries.

B. Extension of Trust Term

Extending the duration of a trust will also enhance the wealth transfer and asset protection opportunities for the trust beneficiaries, particularly if the trust is simultaneously converted to a grantor trust. A trust scheduled to terminate at a specific age will likely accumulate substantially less value than a lifetime trust that is also a grantor trust. Not to mention, many clients are concerned with losing their trust assets to their children's creditors and predators thus opting for longer term or even lifetime trusts for their beneficiaries.

C. Taking Advantage of Increased GST Exemptions

Another possible strategy would be to take advantage of a client's enhanced GST exemption, currently $3.5 million. If values are depressed, it may be advantageous to allocate unused GST exemption to an existing trust using a so-called late allocation. One

may elect to value the assets as of the first day of the month in which the allocation is made, or to value the assets on the date the allocation is made by filing a Form 709 that is late with respect to the date of transfer.

If a client has previously created trusts, some of which are exempt from GST tax and some of which are not, it may be appropriate to consider a sale of assets between the trusts. If both trusts are grantor trusts, or can be made to be grantor trusts before the sale, there will be no income tax consequences to such a sale. And when interest rates are low and values are depressed, the leverage provided by moving assets to a transfer-tax free environment using a long-term, low interest rate note may be substantial over time.

IV. CONCLUSION

Lower interest rate environments and depressed asset values definitely provide certain estate planning opportunities. Motivating a taxpayer to see this silver lining when he or she does not feel wealthy or financially secure, however, may be an obstacle to having him or her implement estate planning arrangements. Strategies that do not involve substantial or long-term transfers of wealth might prove the most attractive to such an individual. In addition, strategies that transfer wealth in trust so that the trustee may directly or indirectly benefit the grantor will provide greater comfort. Restructuring planning that has already been implemented to enhance the after-tax benefits might be particularly attractive as no new wealth transfer would be involved. A failed prior strategy might be revitalized to one's advantage, and depressed values might even make direct gifts an attractive and highly leveraged opportunity.

EXHIBIT A

The section 7520 rate is used to discount the value of annuities, life estates, and remainders to present value, and is revised monthly. It is equal to 120% of the <u>applicable federal mid-term rate</u> under section 1274(d), but rounded to the nearest two-tenths of a percent.

Normally, the section 7520 rate for the month in which the gift or death occurs is used to calculate the gift or estate tax value of the annuity, life estate, or remainder. However, the income, gift, or estate tax value of a charitable life estate or remainder can be determined using the rate for the month in which the gift or death occurs or a rate for either of the two preceding months.

The section 7520 rate for a calendar month is usually announced by the Internal Revenue Service in the form of a Revenue Ruling that is released around the 18th of the preceding month. The following is a chart of the rates that have been announced by the IRS:

	Jan.	**Feb.**	**Mar.**	**Apr.**	**May**	**Jun.**	**Jul.**	**Aug.**	**Sep.**	**Oct.**	**Nov.**	**Dec.**
1989	*NA*	*NA*	11.2%*	11.6%*	11.6%	11.2%	10.6%	10.0%	9.6%	10.2%	10.0%	9.8%
1990	9.6%	9.8%	10.2%	10.6%	10.6%	11.0%	10.6%	10.4%	10.2%	10.6%	10.6%	10.2%
1991	9.8%	9.6%	9.4%	9.6%	9.6%	9.6%	9.6%	9.8%	9.6%	9.0%	8.6%	8.4%
1992	8.2%	7.6%	8.0%	8.4%	8.6%	8.4%	8.2%	7.8%	7.2%	7.0%	6.8%	7.4%
1993	7.6%	7.6%	7.0%	6.6%	6.6%	6.4%	6.6%	6.4%	6.4%	6.0%	6.0%	6.2%
1994	6.4%	6.4%	6.4%	7.0%	7.8%	8.4%	8.2%	8.4%	8.4%	8.6%	9.0%	9.4%
1995	9.6%	9.6%	9.4%	8.8%	8.6%	8.2%	7.6%	7.2%	7.6%	7.6%	7.4%	7.2%
1996	6.8%	6.8%	6.6%	7.0%	7.6%	8.0%	8.2%	8.2%	8.0%	8.0%	8.0%	7.6%
1997	7.4%	7.6%	7.8%	7.8%	8.2%	8.2%	8.0%	7.6%	7.6%	7.6%	7.4%	7.2%

1998	7.2%	6.8%	6.8%	6.8%	6.8%	7.0%	6.8%	6.8%	6.6%	6.2%	5.4%	5.4%
1999	5.6%	5.6%	5.8%	6.4%	6.2%	6.4%	7.0%	7.2%	7.2%	7.2%	7.4%	7.4%
2000	7.4%	8.0%	8.2%	8.0%	7.8%	8.0%	8.0%	7.6%	7.6%	7.4%	7.2%	7.0%
2001	6.8%	6.2%	6.2%	6.0%	5.8%	6.0%	6.2%	6.0%	5.8%	5.6%	5.0%	4.8%
2002	5.4%	5.6%	5.4%	5.6%	6.0%	5.8%	5.6%	5.2%	4.6%	4.2%	3.6%	4.0%
2003	4.2%	4.0%	3.8%	3.6%	3.8%	3.6%	3.0%	3.2%	4.2%	4.4%	4.0%	4.2%
2004	4.2%	4.2%	4.0%	3.8%	3.8%	4.6%	5.0%	4.8%	4.6%	4.4%	4.2%	4.2%
2005	4.6%	4.6%	4.6%	5.0%	5.2%	4.8%	4.6%	4.8%	5.0%	5.0%	5.0%	5.4%
2006	5.4%	5.2%	5.4%	5.6%	5.8%	6.0%	6.0%	6.2%	6.0%	5.8%	5.6%	5.8%
2007	5.6%	5.6%	5.8%	5.6%	5.6%	5.6%	6.0%	6.2%	5.8%	5.2%	5.2%	5.0%
2008	4.4%	4.2%	3.6%	3.4%	3.2%	3.8%	4.2%	4.2%	4.2%	3.8%	3.6%	3.4%
2009	2.4%	2.0%	2.4%	2.6%	2.4%	2.8%	3.4%	3.4%	3.4%			

* The rates shown for March and April of 1989 exist only for charitable transfers in May or June of 1989 because the donor may elect to apply a rate from one of the preceding two months. See Notice 89-60, 1989-1 C.B. 700, for details. Transfers actually made in March or April of 1989 are not valued using the rates shown above but using the 10% discount rate that applied before the effective date of section 7520. See Treas. Reg. section 20.2031-7A(d).

EXHIBIT B

The Financial Forecast Center is a site that specializes in the generation and publication of forecasts related to money: savings, investments, finance, economics, employment and loans. You can find them at www.forecasts.org.

Prime Loan Interest Rate Forecast Values

Percent, Average of Month.

Month	Date	**Forecast Value**	50% Correct +/-	80% Correct +/-
0	Jul 2009	**3.250**	0.00	0.00
1	Aug 2009	**3.25**	0.35	0.78
2	Sep 2009	**3.25**	0.43	0.97
3	Oct 2009	**3.25**	0.49	1.09
4	Nov 2009	**3.25**	0.53	1.19
5	Dec 2009	**3.25**	0.57	1.27
6	Jan 2010	**3.25**	0.60	1.34
7	Feb 2010	**3.25**	0.63	1.41
8	Mar 2010	**3.25**	0.65	1.46

Updated Sunday, August 23, 2009

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3 Month London Interbank Offered Rate LIBOR Forecast

Annual Percent. Three Month Maturity based on USD deposits. FNMA Quoted.

Month	Date	**Forecast Value**	50% Correct +/-	80% Correct +/-
0	Jul 2009	**0.479**	0.00	0.00
1	Aug 2009	**0.39**	0.26	0.58
2	Sep 2009	**0.35**	0.32	0.72
3	Oct 2009	**0.36**	0.36	0.81
4	Nov 2009	**0.41**	0.39	0.88
5	Dec 2009	**0.48**	0.42	0.94
6	Jan 2010	**0.56**	0.45	1.00
7	Feb 2010	**0.65**	0.47	1.04
8	Mar 2010	**0.76**	0.49	1.09

Updated Monday, August 24, 2009

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ROUNDUP OF RECENT TAX DEVELOPMENTS

By: William E. Sigler

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I. FEDERAL

A. Timeline of Events Creating the Financial Crisis

1. Creating the Financial Environment

(a) 1983. The financial firms Salomon Brothers and First Boston create the first collateralized debt obligations (CDOs). A CDO is a security whose value and payments come from fixed-income underlying assets. This is significant because CDOs were at the heart of the US financial crisis, since investors were later allowed to buy and sell assets worth ten to twelve times the underlying value.

(b) 1992. Fannie Mae and Freddie Mac required to set aside percentage of lending to affordable housing. Affordable housing means that the home price is within the range of the median income. This, combined with the creation of CDOs, meant that Fannie Mae and Freddie Mac, which are organizations that purchase the mortgages from lenders, would just before the crisis began be holding a great amount of loans to poorer borrowers.

(c) 1995. Changes to the Community Reinvestment Act allow mortgage lenders to receive credit toward their affordable-housing lending obligations for buying subprime securities. Subprime market grows. The subprime market allows poorer borrowers, who have a shorter history of obtaining loans, lower incomes, and fewer assets, to get a loan. These loans are much riskier because the borrower is much weaker.

(d) 1997. Huge growth in number of mortgage-backed securities purchased by investors. Home prices were increasing starting in 1997, which meant that investors felt that these were reliable investments.

(e) September 1999. Fannie Mae eases credit requirements for subprime loans. This was done to help low-income consumers purchase homes, and it further encouraged weak borrowers to obtain home loans.

(f) November 1999. Gramm-Leach-Bliley Act deregulates financial industry in US and allows financial institutions to grow very large. This allowed one institution to act as both commercial bank and investment bank. Commercial banks make loans, while investment banks raise capital and trade securities for businesses. This meant that institutions that were commercial banks and investment banks were not regulated strictly as banks. They therefore had looser capital requirements and the banking side of these new institutions took on the profit-oriented mentality of the investment side.

(g) December 2000. Commodity Futures Modernization Act of 2000 allows trading of credit-default swaps with minimal oversight. A credit derivative contract between a buyer and seller. The buyer makes payments to a

seller and received a payoff if the underlying financial instrument defaults. (A future is a contract to sell or buy a commodity in the future.)

2. Roots of the crisis.

(a) 2001. Dot-com bubble bursts and in response, US Federal Reserve dramatically cuts interest rates. Federal Reserve Chairman Alan Greenspan has been accused of creating an environment ripe for crisis due to the allowance of very low interest rates. Introduction by David X. Li of Gaussian copula function, which is widely adopted throughout the financial industry and popularizes asset backed securities. The function allowed hugely complex risks to be modeled with more ease and accuracy than ever before. Li, a star mathematician from rural China, made it possible for traders to sell vast quantities of new securities, expanding financial markets to unimaginable levels. Li's breakthrough was that instead of waiting to assemble enough historical data about actual defaults, which are rare in the real world, he used historical prices from the CDS market. This built up the market for asset backed securities on overvalued CDS prices, which turned out to be a very bad idea. But as Li himself said of his own model: "The most dangerous part is when people believe everything coming out of it."

(b) 2002. Fannie Mae and Freddie Mac start purchasing large amounts of subprime mortgages.

(c) 2002. Home price appreciation begins. Home prices began to appreciate as investors took their money out of the bottoming stock market and put it into real estate. Demand for housing grew as both these investors and individuals, particularly subprime borrowers, purchased homes, driving up prices.

(d) 2004. Financial institutions start to issue huge amounts of mortgage-backed securities. This was due a combination of factors that made securities more profitable, especially after leveraging restrictions were lifted, allowing securities priced at many times the underlying value to be issued. Securities issuers could make a lot of money from the high prices of securities, while securities investors assumed home prices would continue to increase and that they would make money on the securities.

(e) April 2004. The SEC lifts leveraging restrictions. (see previous)

(f) 2006. Home prices began a rapid decline. This occurred because as mortgage loan terms changed and interest rates rose, families were no longer able to afford their homes. The homes went into foreclosure and the excess supply of homes put downward pressure on home prices. Subprime mortgage borrowers had been given loans that would increase in interest rates after an initial period of very low interest rates.

3. Spread of the crisis.

(a) February 2007. More than 25 subprime lending firms declare bankruptcy in February and March, while the largest subprime lender, New Century, declares bankruptcy in April. This occurs due to increasing defaults on subprime loans. As interest rates on subprime loans adjusted upwards, families could not afford to pay the increased payments, and were not able to refinance their homes because their home value had declined.

(b) July 2007. Bear Stearns announces major losses in two of its hedge funds. This was due to investments in asset-backed securities, which Bear Stearns pioneered. As subprime loans failed, the asset-backed securities that were based on the subprime loans also started to fail.

(c) August 2007. Global hedge funds and banks reveal major exposure to subprime problems through holdings of mortgage-backed securities. As it turns out, many, many banks worldwide held these asset-backed securities based on subprime loans.

(d) September 13, 2007. Northern Rock receives emergency funding from the Bank of England, after which depositors make a run on the bank. Northern Rock faced a big problem as liquidity was cut off after the subprime crisis began, and the mortgage lender could not receive loans from institutional lenders. This was a signal that there was a real liquidity crisis, or shortage in funding from other banking and investment institutions.

(e) January 21, 2008. Global stock markets suffer largest fall since September 11, 2001. This was due to fears that the proposed stimulus package in the US would not be enough to prevent a large recession. The scope of the financial crisis was just beginning to be revealed.

(f) January 24, 2008. National Association of Realtors shows 2007 had the largest drop in home sales in 25 years. Excess supply of home inventory places significant downward pressure on prices, and as foreclosures increased, people were forced to leave their homes because they could not repay their loans. Thus there were more and more homes for sale.

(g) March 14, 2008. Bear Stearns is purchased for $2 a share by JPMorgan Chase. A year earlier share prices had been $170 per share. The problems were caused by overexposure to the subprime mortgage crisis. JP Morgan Chase was prodded to purchase Bear Stearns by the US government, since Bear was on the brink of collapse.

(h) September 7, 2008. Fannie Mae and Freddie Mac are taken over by the US government. This was because they owned more than $5

trillion of mortgage backed securities. They therefore had a huge exposure to potential losses in this market. US taxpayers would be responsible for propping up these institutions where they needed financial support. It also brought both Fannie Mae, which was created by Congress during the Great Depression to help with home ownership, and Freddie Mac, created in 1970 as a competitor to Fannie Mae, back into the fold of the government after a multi-decade attempt at privatization.

(i) September 15, 2008. Lehman Brothers files for bankruptcy protection. Lehman had incurred billions of dollars in losses due to the mortgage crisis, and could not find a buyer. The US government also chose not to bail it out as an example to other institutions that they were not necessarily going to be bailed out by the government. This was later seen as a mistake on the part of the US government, since it created problems throughout the financial system.

(j) September 16, 2008. US government bails out AIG. AIG had insured mortgage-backed securities. Panic in money markets as one fund declines in value. Reserve Primary Fund dropped below $1 a share because of losses on debt issued by Lehman Brothers. A money market fund is a type of mutual fund that is required by law to invest in low-risk securities. These funds have relatively low risks compared to other mutual funds and pay dividends that generally reflect short-term interest rates. The fact that one fund declined in value meant that potentially even low-risk investments were vulnerable to the crisis. The government stepped in and guaranteed these funds in order to prevent further financial fallout.

(k) September 19, 2008. Treasury Secretary Henry Paulson proposes rescue plan called the Troubled Assets Relief Program. The plan proposed authorizing the government to buy troubled assets at discounts from financial institutions. "Troubled assets" were defined as residential or commercial mortgages or mortgage backed securities, or other securities determined by the Treasury as troubled.

(l) September 21, 2008. Goldman Sachs and Morgan Stanley convert to bank holding companies. The two investment bank conglomerates did so in order to accept bank deposits to ease cash flow concerns, take advantage of the federal reserve's lending for banks, and more easily merge with other banks. As bank holding companies, both firms would come under the supervision of national bank regulators. This would force them to lower their leverage but would in turn give them a better chance of survival.

(m) September 25, 2008. Bank failures continue.

(n) September 29, 2008. British mortgage lender Bradford and Bingley is taken over by the government. The lender found themselves short of liquidity as their share prices and new issues declined, and as TPG Capital withdrew its promise to take a 23% stake in the company. The British government

took over the bank's mortgages and sold off the savings business and the branches. Fortis receives a capital injection. As share prices declined, business customers made large withdrawals, creating massive liquidity problems. The Belgian banking and insurance company received 11.2 billion Euros from the Netherlands, Belgium and Luxembourg. Hypo Real Estate receives capital injection. Hypo Real Estate was the second largest commercial property lender in Germany, and encountered liquidity problems due to liquidity problems in its Depfa Bank subsidiary.

(o) October 2008. Currency crises loom in Eastern Europe as carry trades reverse, due to sharp declines in profitability from investing abroad. Western European banks held exposure to Eastern European mortgage loan borrowers, and as funding was reversed due to the liquidity crisis in Western Europe, Eastern European nations found themselves close to a currency crisis as their pegged currencies were suddenly devalued (since demand for foreign currency would increase), leaving borrowers with skyrocketing debt.

4. Containment of the crisis.

(a) October 3, 2008. US passes $700 financial sector bailout package. This is the TARP package, which initially set out to buy bad debts from failing institutions, but then was used to inject liquidity directly into failing institutions in return for government ownership of preferred stock. The TARP package reversed course in March 2009 to again purchase bad loans and securities from failing institutions.

(b) October 10, 2008. BNP Paribas takes over Fortis operations in Belgium and Luxembourg. Fortis had been partly nationalized a week earlier. The central banks of the United States, European Union, Britain, China, Canada, Sweden, and Switzerland make coordinated interest rate cuts. This was a move of unprecedented scope that reflected the scope of the crisis.

(c) October 28, 2008. Hungary receives loan from IMF. Hungary, Ukraine and Iceland had faced sudden banking and currency crises as foreign investment fled the country.

(d) November 6, 2008. The IMF approves a loan to Ukraine. (see above)

(e) November 9, 2008. China announces stimulus package. China's $586 billion stimulus package was the largest in its history and was a wide-ranging plan that would, among other things, expand social welfare spending and create jobs through construction of infrastructure. This was done to cope with rapidly slowing economic growth, as a downturn in investment and exports led to factory closings in southern China

(f) November 20, 2008. The IMF approves a loan to Iceland. (see above)

(g) November 23, 2008. Citigroup receives a $20 billion cash injection in return for the government taking preferred shares in the bank. The money came from the $700 billion bailout package to assist the firm which faced potential losses on $306 billion on high-risk assets.

(h) January 20, 2009. Barack Obama takes his post as the new President of the United States. His top priority was to fix the US's ailing economy by creating jobs and increasing accountability in the financial system.

(i) January 27, 2009. Iceland's government collapses due to financial turmoil, followed by that of Belgium and Latvia in February. Social and political tensions in Latvia were said to cause the worst rioting since the collapse of the Soviet Union after 1991.

(j) February 17, 2009. President Obama signs stimulus package into law. The $787 billion stimulus package would implement tax cuts, create jobs in building infrastructure, and provide further social welfare funding. The package also promised money to education and health care, as well as to science and technology.

(k) April 2, 2009. G-20 Summit resolves to improve financial regulations. The meeting committed $1.1 trillion mostly to the IMF, to assist trade, emerging economies in crisis, and in Special Drawing Rights, the IMF's synthetic reserve currency.

(l) May 2009. Results of bank "stress tests" released. "Stress tests" tested to see whether banks could survive among potential additional losses. "Stress tests" showed banks would need less capital than was feared, although US government regulators told banks they needed to raise around $75 billion more in capital.

5. Signs of (slow) recovery.

(a) June 1, 2009. Large US car company, GM, announced bankruptcy filing. GM emerged from bankruptcy about six weeks later, on July 10.

(b) June 17, 2009. US Treasury released proposal for reforming financial regulatory system. This proposal is downloadable here: http://www.financialstability.gov/roadtostability/regulatoryreform.html, and was created to prevent future crises.

(c) July 2009. China announced growth rate in GDP of 7.9% in the second quarter of 2009. This figure was up from 6.1% growth in the first quarter, due to the effects of the stimulus package.

B. Bailout Packages

1. TARP (Troubled Assets Relief Program). The $700 billion rescue package run by the US Treasury and approved by Congress in October 2008. The first half of the money was disbursed before Christmas, and mainly spent on taking stakes in banks. Some of the remaining money has also been spent on rescuing the auto industry, guaranteeing loans for small businesses and providing assistance for homeowners who want to refinance mortgages. The Obama administration has penciled in an additional $250 billion in bail-out funds in its 20009/10 budget proposals.

2. Economic Recovery Plan. The American Recovery and Reinvestment Act is the $787 billion stimulus plan to boost economic growth backed by the Obama administration. It includes a mixture of tax cuts, aid to states, and infrastructure spending. It has been passed by Congress and signed into law, but much of the spending will take place in 2010.

3. Federal Reserve. The US central bank introduced several new lending facilities to help ease credit and pressures on financial markets, including purchases of mortgage-backed securities, commercial bonds of companies, and assets held by non-bank financial institutions such as credit card or auto loan companies. This program, known as Term Asset Backed Lending Facility (TALF), has been expanded and the Fed's commitments could swell to $3 trillion - 20% of GDP. The Fed is also now directly buying up US government debt to increase the money supply and lower interest rates.

C. Highlights of Federal Tax Developments

1. 2009 Recovery Act. In February, Congress passed a nearly $800 billion economic stimulus package with significant tax incentives for individuals and businesses. Many of the incentives are temporary so taxpayers need to be proactive this year not to miss them. The Economic Recovery and Reinvestment Act of 2009 (2009 Recovery Act) gives individuals an extended and enhanced first-time homebuyer tax credit, a new Making Work Pay credit, a new vehicle sales and excise tax deduction, improved energy efficiency tax breaks, and more. The 2009 Recovery Act gives businesses extended bonus depreciation and Code Sec. 179 expensing, many expanded energy tax incentives and an expanded net operating loss carry back for small businesses. Since President Obama signed the 2009 Recovery Act into law on February 17, the IRS has issued guidance on many of the tax incentives. We'll discuss these later in more detail.

2. Making Work Pay credit. Effective April 1, 2009, employers have started withholding at reduced rates to reflect the Making Work Pay credit. The credit is automatic and many individuals will see an immediate increase in their take home pay. However, married couples whose combined incomes place them in a higher tax bracket and individuals with more than one job may want to submit a revised Form W-4 to their employers to ensure that enough withholding is held. Our office can help you determine if you should submit a revised Form W-4 to your employer

3. Economic recovery payments. The 2009 Recovery Act authorizes one-time payments of $250 to individuals receiving Social Security benefits, disabled veterans and others on fixed incomes. The Social Security Administration, which will be sending the bulk of the one-time payments, has announced it will start making the one-time payments by mail and direct deposit in May 2009.

4. Help for taxpayers. IRS Commissioner Douglas Shulman announced in January that the agency will be sensitive to taxpayers stung by the recession. The IRS will consider suspending collection actions, granting short-term extensions of time to pay, allowing taxpayers to miss a payment under an installment agreement, and revisiting offers-in-compromise to help distressed taxpayers. The IRS chief has also said that help will only be given to taxpayers who ask and taxpayers must have a history of compliance.

5. Net operating losses. The 2009 Recovery Act allows an eligible small business to carry back its 2008 net operating loss (NOL) for three, four or five years. For fiscal year taxpayers, this applies to the NOL for the tax year either beginning or ending in 2008. To qualify for the new carry back provision, a small business must have no greater than an average of $15 million in gross receipts over a three-year period ending with the tax year of the NOL. The IRS issued guidance on the new carry back in March and reminded taxpayers about some special elections to take advantage of the new provision.

6. Offshore accounts. In March, the IRS invited individuals and businesses to disclose unreported assets in foreign bank accounts. In exchange for full disclosure by taxpayers not already under investigation, the IRS will agree not to criminally prosecute tax evaders. Taxpayers must pay all back taxes plus interest and penalties, although the IRS will waive the 75 percent fraud penalty.

7. Cost-sharing arrangements. At year-end 2008, the IRS issued temporary regulations making some taxpayer-friendly changes to the cost-sharing arrangement rules under Code Sec. 482. A cost-sharing arrangement is an agreement where the parties share the costs of developing one or more intangibles in proportion to their shares of the reasonably anticipated benefits from their individual exploitation of the interests in the intangibles assigned to them under the arrangement. The IRS has identified the transfer of intangibles outside the U.S. as an area of potentially high noncompliance with the tax laws.

8. First-time homebuyer credit. The first-time homebuyer credit gives eligible individuals as much as $8,000 when they purchase a residence. The $8,000 refundable credit is only available for purchases between January 1, 2009 and December 1, 2009. In a taxpayer-friendly move, the IRS announced that individuals who purchase a home in 2009 may claim the $8,000 credit on their 2008 returns. If the home is purchased after April 15, 2009, a taxpayer may request an extension to file or file an amended return to claim the credit. Alternatively, they can wait to claim the credit when they file their 2009 returns in 2010. The IRS also announced liberal rules for allocating the credit among unmarried taxpayers

9. President Obama's budget proposals. President Obama proposed a $3.5 trillion fiscal year (FY) 2010 federal budget in February. The president proposed several tax incentives targeted to middle-income individuals, including a permanent Making Work Pay credit and a long-term alternative minimum tax (AMT) patch. Higher-income individuals, however, would pay more if Congress agrees to allow tax cuts enacted in 2001 to expire. The president has indicated that increased taxes on higher-income individuals will pay for health care reform.

10. COBRA. The 2009 Recovery Act provides a special subsidy to help individuals pay for COBRA continuation coverage. Eligible individuals pay only 35 percent of their COBRA premiums and the remaining 65 percent is reimbursed to the employer or other coverage provider through a payroll tax credit. Additionally, an individual generally must have been involuntarily terminated from employment between September 1, 2008 and December 31, 2009 and fall within certain income limitations. A limited retroactive window is also available. The IRS posted information about the COBRA subsidy on its website in March and issued guidance in April.

11. Unemployment benefits. Individuals receiving unemployment benefits in 2009 can exclude the first $2,400 from their incomes. The IRS reminded taxpayers about the exclusion (which, unlike other tax incentives has no income limitations) in March. The exclusion is only available for 2009. Individuals who are receiving unemployment compensation can elect to have income tax withheld. Our office can help you determine if withholding will be beneficial for you.

12. Broker basis reporting. In 2008, Congress passed the Emergency Economic Stabilization Act which, among other things, requires mandatory broker basis reporting. Brokers must report the adjusted basis of publicly-traded securities when reporting sales transactions and indicate whether gain is long-term or short-term. Reporting will be effective for stock acquired in 2011, mutual funds acquired in 2012, and other securities acquired in 2013. The IRS announced in February that it was developing guidance on broker basis reporting and requested comments from interested parties.

13. Automatic enrollment. The Obama Administration is touting automatic enrollment in 401(k)s and similar plans as an effective way to encourage workers to save for retirement. In February, the IRS issued final regulations to

facilitate automatic enrollment in 401(k)s, 403(b) tax sheltered annuities and 457(b) government deferred compensation plans.

14. Private tax collection. Several years ago, the IRS hired private collection agencies to handle certain collection cases. The move was immediately controversial. Supporters argued that these were cases that the IRS would otherwise not be working. Opponents argued that IRS employees and not private entities should be contacting taxpayers about their tax debts. In March, the IRS announced that it was ending the private collection initiative. The IRS collected about $70 million from the program over two years.

15. Ponzi scams. Ponzi and similar scams have victimized taxpayers for years. Recently, a prominent investment advisor pleaded guilty to a massive Ponzi scheme involving securities fraud, money laundering and mail and wire fraud. The IRS released guidance in March clarifying the tax treatment of fraudulent investment scams. Among other things, the investor may be entitled to an ordinary theft loss rather than just a capital loss.

16. Making Work Pay credit. Many wage earners are seeing an increase in their tax-home pay because of the Making Work Pay credit. Employers started using new withholding tables reflecting the credit in April. However, individuals with multiple jobs and some pension recipients may discover they had too little tax withheld when they file their 2009 returns in 2010. In May, the IRS issued a withholding option for pension plans to offset the Making Work Pay credit. The IRS also reminded individuals with more than one job to adjust their withholding.

17. Cash for clunkers. You may have been hearing about the new federal program to encourage people to trade-in old "clunkers" for new fuel efficient vehicles. Under the "cash for clunkers" program, consumers are eligible for tax-free vouchers of either $3,500 or $4,500 toward the purchase or lease of a new, more fuel-efficient vehicle. The consumer will not recognize taxable income as the result of the voucher. The amount of the voucher generally depends on the type of vehicle purchased and the difference in fuel economy between the purchased vehicle and the trade-in vehicle. You will not receive a paper or electronic voucher. Rather, vouchers are applied to the purchase price of the vehicle by participating dealers. The cash for clunkers program began on July 1, 2009 and will end on November 1, 2009, or when the $1 billion allotted for the program is depleted.

18. First-time homebuyer credit. In April, the IRS reminded taxpayers that they cannot claim the first-time homebuyer tax credit in anticipation of a future purchase. Taxpayers qualify for the credit when they finalize the purchase of their home, which for most purchasers occurs at the time of the closing, the IRS explained. The first-time homebuyer credit reaches $8,000 for purchases between January 1, 2009 and November 30, 2009. Taxpayers must be qualified buyers and satisfy income requirements. In good news for home buyers, the U.S. Department of Housing and Urban Development (HUD) will allow taxpayers to

monetize the first-time homebuyer credit. Taxpayers financing through a state housing agency and other HUD-approved tax credit advance programs can monetize 100 percent of the down payment. Taxpayers using Federal Housing Administration (FHA) lenders can apply the credit to closing costs or make a larger down payment above the FHA-required 3.5 percent minimum.

19. Motor vehicle sales tax deduction. Taxpayers in states without a sales tax can deduct other fees to take advantage of the temporary motor vehicle sales tax deduction. The motor vehicle sales tax deduction is a temporary incentive created by the 2009 Recovery Act. The amount of the deduction is limited to the portion of the state sales or excise tax imposed on the first $49,500 of the purchase price of the vehicle, and is subject to adjusted gross income (AGI) phase outs. According to the IRS, Congress intended for all taxpayers and not just taxpayers in states with a sales tax to benefit from the incentive.

20. Cell phones. An employee may exclude from gross income the business use of an employer-provided cell phone as a working condition fringe benefit. Twenty years ago, the government imposed tough documentation requirements for employer-provided cell phones. At that time, cell phones were new and very expensive, and the IRS was concerned about abuses. Today, cell phones are everywhere and both the price of phones and calling costs have fallen dramatically. The IRS announced that it will revisit the documentation rules. In contrast to some reports, IRS Commissioner Douglas Shulman said that the agency is not "cracking down" on employer-provided cell phones, but is trying to make the rules less burdensome on employers and employees. Shulman said that the Treasury and the agency support the removal of cell phones from the category of so-called listed property under Code Sec. 280F, a designation that subjects business cell phones to strict substantiation requirements before their use by employees can be excluded from income. The IRS is considering three alternative methods to simplify the substantiation requirements: a minimal personal use method, a safe harbor substantiation method, and a statistical sampling method, or a combination of the aforementioned methods.

21. Vehicle depreciation dollar limits. The IRS issued the depreciation limits for business automobiles, trucks and vans first placed in service in 2009 as well as the annual income inclusion amounts for vehicles first leased in 2009. The 2009 depreciation limits for passenger automobiles are the same as the 2008 limits while the depreciation limits for trucks and vans are lower than the 2008 limits. The IRS also described the additional first year depreciation deduction provided by *2009 Recovery Act.*

22. Tax evasion. The IRS is undertaking a major initiative to encourage taxpayers to disclose unreported foreign bank accounts and assets. In exchange for full disclosure, the IRS will not criminally prosecute tax evaders. These taxpayers must pay all back taxes plus interest and penalties, although the IRS will waive the 75 percent fraud penalty. The settlement offer is temporary and is only available through mid-September 2009.

D. Tax Provisions in Key Legislation

1. Emergency Economic Stabilization Act of 2008.

(a) Renewable Energy Incentives

(i) Extension and Modification of Production Tax Credit. The bill extends the placed-in-service date for the Section 45 credit through December 31, 2009 in the case of wind and refined coal, and through December 31, 2010 in the case of other sources. The bill expands the types of facilities qualifying for the credit to new biomass facilities and to those that generate electricity from marine renewables (e.g., waves and tides). The bill updates the definition of an open-loop biomass facility, the definition of a trash combustion facility, and the definition of a non-hydroelectric dam. The bill also increases emissions standards on the refined coal credit and removes its market value test. *The estimated cost of this proposal is $5.817 billion over 10 years.*

(ii) Long-term Extension of Energy Credit. The bill extends the 30% investment tax credit for solar energy property and qualified fuel cell property, as well as the 10% investment tax credit for micro turbines, through 2016. The bill increases the $500 per half kilowatt of capacity cap for qualified fuel cells to $1,500 per half kilowatt of capacity, and adds small commercial wind as a category of qualified investment. The bill also provides a new 10% investment tax credit for combined heat and power systems and geothermal heat pumps. The bill allows these credits to be used to offset the alternative minimum tax (AMT). *The estimated cost of this proposal is $1.942 billion over 10 years.*

(iii) Long-term Extension and Modification of the Residential Energy-Efficient Property Credit. The bill extends the credit for residential solar property for eight through 2016, and removes the credit cap (currently $2,000) for solar electric investments. The bill adds residential small wind investment, capped at $4,000, and geothermal heat pumps, capped at $2,000, as qualifying property. The bill allows the credit to be used to offset the AMT. *The estimated cost of this proposal is $1.294 billion over 10 years.*

(iv) Sales of Electric Transmission Property. The bill extends the present-law deferral of gain on sales of transmission property by vertically integrated electric utilities to FERC-approved independent transmission companies. Rather than recognizing the full amount of gain in the year of sale, this provision allows gain on such sales to be recognized ratably over an 8-year period. The rule applies to sales before January 1, 2010. *This proposal is estimated to be revenue-neutral over 10 years.*

(v) New Clean Renewable Energy Bonds ("CREBs"). The bill authorizes $800 million of new clean renewable energy bonds to finance

facilities that generate electricity from wind, closed-loop biomass, open-loop biomass, geothermal, small irrigation, qualified hydropower, landfill gas, marine renewable and trash combustion facilities. This $800 million authorization is subdivided into thirds: 1/3 for qualifying projects of State/local/tribal governments; 1/3 for qualifying projects of public power providers; and 1/3 for qualifying projects of electric cooperatives. The bill also extends the termination date for existing CREBs by one year. *The estimated cost of this proposal is $267 million over 10 years.*

(b) Carbon Mitigation and Coal.

(i) Carbon Capture and Sequestration (CCS) Demonstration Projects. The bill provides $1.5 billion in new tax credits for the creation of advanced coal electricity projects (Section 48A) and certain coal gasification projects (Section 48B) that demonstrate the greatest potential for carbon capture and sequestration (CCS) technology. Of these $1.5 billion of incentives, $1.25 billion will be awarded to advanced coal electricity projects, and $250 million will be awarded to coal gasification projects. These tax credits will be awarded by Treasury through an application process, with applicants that demonstrate the greatest CO_2 sequestration percentage receiving the highest priority. Applications will not be considered unless they can demonstrate that either their advanced coal electricity project would capture and sequester at least 65% of the facility's CO2 emissions or that their coal gasification project would capture and sequester at least 75% of the facility's CO_2 emissions. Once these credits are awarded, recipients failing to meet these minimum levels of carbon capture and sequestration would forfeit these tax credits. The bill also clarifies that gasification projects producing transportation grade liquid fuels are eligible under Section 48B. *The estimated cost of this proposal is $1.424 billion over 10 years.*

(ii) Solvency for the Black Lung Disability Trust Fund. The bill would enact the President's FY 2009 proposal to bring the Black Lung Disability Trust Fund out of debt. Under current law, an excise tax is imposed on coal at a rate of $1.10 per ton for coal from underground mines and $0.55 per ton for coal from surface mines (the aggregate tax per ton capped at 4.4% of the amount sold by the producer). Receipts from this tax are deposited in the Black Lung Disability Trust Fund, which is used to pay compensation, medical and survivor benefits to eligible miners and survivors and to cover costs of program administration. The Trust Fund is permitted to borrow from the General Fund any amounts necessary to make authorized expenditures if excise tax receipts do not provide sufficient funding. Reduced rates of excise tax apply after the earlier of December 31, 2013 or the date on which the Black Lung Disability Trust Fund has repaid, with interest, all amounts borrowed from the general fund of the Treasury. The President's Budget proposes that the current excise tax rate should continue to apply beyond 2013 until all amounts borrowed from the general fund of the Treasury have been repaid with interest. After repayment, the reduced excise tax rates of $0.50 per ton for coal from underground mines and $0.25 per ton for coal from

surface mines would apply (aggregate tax per ton capped at 2 percent of the amount sold by the producer). The bill also includes the President's proposal to restructure Black Lung Trust Fund debt. *The proposal is estimated to raise $1.287 billion over 10 years.*

(iii) *CO_2 Capture Credit.* The bill provides a $10 credit per ton for the first 75 million metric tons of CO_2 captured and transported from an industrial source for use in enhanced oil recovery and $20 credit per ton for CO_2 captured and transported from an industrial source for permanent storage in a geologic formation. Qualifying facilities must capture at least 500,000 metric tons of CO_2 per year. The credit applies to CO_2 stored or used in the United States. *The estimated cost of this proposal is $1.119 billion over ten years.*

(iv) *Refund of Coal Excise Taxes Unconstitutionally Collected from Exporters.* The Courts have determined that the Export Clause of the Constitution prevents the imposition of the coal excise tax on exported coal and, therefore, taxes collected on such exported coal are subject to a claim for refund. The bill creates a new procedure under which certain coal producers and exporters may claim a refund of these excise taxes that were imposed on coal exported from the U.S. Under this procedure, coal producers or exporters that exported coal during the period beginning on or after 1/1/90 and ending on or before the date of enactment of the bill, may obtain a refund from Treasury of excise taxes paid on such exported coal and any interest accrued from date of overpayment. *The estimated cost is $199 million over 10 years.*

(v) *Steel Industry Fuel.* The bill adds a credit for coal used in the manufacture of coke, a feedstock used in steel production. The credit amount is $2 per barrel-equivalent of oil, available for facilities that place in service before January 1, 2010. *The estimated cost of this proposal is $61 million over 10 years.*

(vi) *Carbon Audit of the Tax Code.* The bill directs Treasury to request that the National Academy of Sciences undertake a comprehensive review of the tax code to identify tax provisions with the largest effect on carbon and other greenhouse gas emissions, and to estimate the magnitude of those effects. *This proposal has no revenue effect.*

(c) Transportation & Domestic Fuel Security

(i) *Plug-in Electric Drive Vehicle Credit.* The bill establishes a new credit for plug-in electric drive vehicles. The credit for passenger vehicles and light trucks ranges from $2500 to $7500. Taxpayers may claim the full amount of the allowable credit up to the end of the first calendar quarter after the quarter in which the total number of qualified plug-in electric drive vehicles sold in

the U.S. exceeds 250,000. The credit is available against the alternative minimum tax (AMT). *The estimated cost of this proposal is $758 million over 10 years.*

(ii) Incentives for Idling Reduction Units and Advanced Insulation for Heavy Trucks. The bill provides an exemption from the heavy vehicle excise tax for the cost of idling reduction units, such as auxiliary power units (APUs), which are designed to eliminate the need for truck engine idling (e.g., to provide heating, air conditioning, or electricity) at vehicle rest stops or other temporary parking locations. The bill also exempts the installation of advanced insulation, which can reduce the need for energy consumption by transportation vehicles carrying refrigerated cargo. Both exemptions are intended to reduce carbon emissions in the transportation sector. *The estimated cost of this proposal is $95 million over 10 years.*

(iii) Bicycle Commuters. The bill allows employers to provide employees who commute to work by bicycle limited fringe benefits to offset the costs of such commuting (e.g., storage). *The estimated cost of this proposal is $10 million over 10 years.*

(iv) Expansion of Allowance for Cellulosic Biofuels Property. Taxpayers are allowed to immediately write off 50% of the cost of facilities that produce cellulosic biofuels ethanol if such facilities are placed in service before January 1, 2013. The bill makes this benefit available for the production of other cellulosic biofuels in addition to cellulosic ethanol. *This proposal is estimated to be revenue neutral over 10 years.*

(v) Extension of Biodiesel Production Tax Credit; Extension and Modification of Renewable Diesel Tax Credit. The bill extends the $1.00 per gallon production tax credit for biodiesel and the 10¢/gallon credit for small biodiesel producers through 2009. The bill also extends the $1.00 per gallon production tax credit for diesel fuel created from biomass. The bill eliminates the current-law disparity in credit for biodiesel and agri-biodiesel, and eliminates the requirement that renewable diesel fuel must be produced using a thermal depolymerization process. As a result, the credit will be available for any diesel fuel created from biomass without regard to the process used, so long as the fuel is usable as home heating oil, as a fuel in vehicles, or as aviation jet fuel. Diesel fuel created by co-processing biomass with other feedstocks (e.g., petroleum) will be eligible for the 50¢/gallon tax credit for alternative fuels. Biodiesel imported and sold for export will not be eligible for the credit effective May 15, 2008. *The estimated cost of this proposal is $451 million over 10 years.*

(vi) Extension and Modification of Alternative Fuels Credit. The bill extends the alternative fuel excise tax credit under Section 6426 through December 31, 2009 for all fuels except hydrogen (which maintains its current-law expiration date of September 30, 2014). Beginning 10/1/09, qualified

fuel derived from coal through the Fischer-Tropsch process must be produced at a facility that separates and sequesters at least 50% of its CO_2 emissions. This sequestration requirement increases to 75% on 12/31/09. The proposal further provides that biomass gas versions of liquefied petroleum gas and liquefied or compressed natural gas, and aviation fuels qualify for the credit. *The estimated cost of this proposal is $61 million over 10 years.*

(vii) Extension and Expansion of the Alternative Refueling Stations Credit. The bill extends the 30% credit for alternative refueling property, such as natural gas or E85 pumps, through 2010. The bill also adds electric vehicle recharging property to the types of property eligible for the credit. The credit for hydrogen refueling property is unchanged. *The estimated cost of this proposal is $87 million over 10 years.*

(viii) Publicly Traded Partnership Income Treatment of Alternative Fuels. The proposal permits publicly traded partnerships to treat income derived from the transportation, or storage of certain alternative fuels, as well as anthropogenic CO_2, as qualifying income for purposes of the publicly traded partnership rules. *The estimated cost of this proposal is $119 million over 10 years.*

(ix) Percentage Depletion for Marginal Wells. The proposal extends for 2009 the suspension on the taxable income limit for purposes of depreciating a marginal oil or gas well. *The estimated cost of this proposal is $124 million over 10 years.*

(x) Refinery Expensing. The Energy Policy Act of 2005 established a temporary expensing provision for refinery property which increases total capacity by 5% or which processes nonconventional feedstocks at a rate equal or greater to 25% of the total throughput of the refinery. This bill extends both the refinery expensing contract requirement and the placed-in-service requirement for this expensing provision for two years. The bill also qualifies refineries directly processing shale or tar sands for this provision. *The estimated cost of this proposal is $894 million over 10 years.*

(d) Energy Conservation and Efficiency

(i) Qualified Energy Conservation Bonds. The bill creates a new category of tax credit bonds to finance State and local government initiatives designed to reduce greenhouse emissions. There is a national limitation of $800 million, allocated to States, municipalities and tribal governments. *The estimated cost of this proposal is $276 million over 10 years.*

(ii) Extension and Modification of Credit for Energy-Efficiency Improvements to Existing Homes. The bill extends the tax credit for energy-efficient existing homes for 2009, and includes energy-efficient biomass fuel

stoves as a new class of energy-efficient property eligible for a consumer tax credit of $300. The proposal also clarifies the efficiency standard for water heaters. *The estimated cost of this proposal is $827 million over 10 years.*

(iii) Extension of Energy-Efficient Buildings Deduction. Current law allows taxpayers to deduct the cost of energy-efficient property installed in commercial buildings. The amount deductible is up to $1.80 per square foot of building floor area for buildings achieving a 50% energy savings target. The energy savings must be accomplished through energy and power cost reductions for the building's heating, cooling, ventilation, hot water, and interior lighting systems. This bill extends the energy-efficient commercial buildings deduction for five years, through December 31, 2013. *The estimated cost of this proposal is $891 million over 10 years.*

(vi) Extension of Credit for Energy-Efficiency Improvements to New Homes. Under current law, contractors receive a credit for the construction of energy-efficient new homes that achieve a 30% or 50% reduction in heating and cooling energy consumption relative to a comparable dwelling. The credit equals $1,000 for homes meeting a 30% efficiency standard, $2,000 for homes meeting a 50% standard. The bill extends the new energy efficient home tax credit through 2009. *The estimated cost of this proposal is $61 million over 10 years.*

(v) Modification and Extension of Energy-Efficient Appliance Credit. Manufacturers receive a tax credit for the production of energy-efficient dishwashers, clothes washers and refrigerators. Credit is provided only for appliances that are U.S. produced. The bill increases the credit's standards and amounts, and extends the credit for appliances manufactured through 2010. *The estimated cost of this proposal is $322 million over 10 years.*

(vi) Accelerated Depreciation for Smart Meters and Smart Grid Systems. The bill provides accelerated depreciation for smart electric meters and smart electric grid equipment. Under current law, taxpayers are generally able to recover the cost of this property over a 20-year period. The bill allows taxpayers to recover the cost of this property over a 10-year period, unless the property already qualifies under a shorter recovery schedule. *The estimated cost of this proposal is $915 million over 10 years.*

(vii) Extension and Modification of Qualified Green Building and Sustainable Design Project Bond. The bill extends the authority to issue qualified green building and sustainable design project bonds through the end of 2012. The bill also clarifies the application of the reserve account rules to multiple bond issuances. *The estimated cost of this proposal is $45 million over 10 years.*

(viii) Investments in Recycling. The bill allows taxpayers to claim accelerated depreciation for purchase of equipment used to collect, distribute or recycle a variety of commodities. *The estimated cost of this proposal is $162 million over 10 years.*

(e) Revenue Provisions

(i) Modification to Section 199. Section 199 provides a deduction -- currently 6% -- equal to a portion of the taxpayer's qualified production activities income. The Section 199 deduction is scheduled to increase to 9% in 2010. This bill would freeze the Section 199 deduction at 6% for gross receipts derived from the sale, exchange or other disposition of oil, natural gas, or any primary product thereof. *This proposal is estimated to raise $4.906 billion over 10 years.*

(ii) Basis Reporting by Brokers on Sales of Stock. This provision creates mandatory basis reporting measures to the IRS by brokers for transactions involving publicly traded securities, such as stock, debt, commodities, derivatives and other items as specified by Treasury. *The proposal is estimated to raise $6.67 billion over 10 years.*

(iii) FUTA Surtax. The Federal Unemployment Tax Act ("FUTA") imposes a 6.2 percent gross tax rate on the first $7,000 paid annually by covered employers to each employee. In 1976, Congress passed a temporary surtax of 0.2 percent of taxable wages to be added to the permanent FUTA tax rate. The temporary surtax subsequently has been extended through 2008. The President's FY 2009 Budget proposes extending the FUTA surtax. The Treasury Department states that "extending the surtax will support the continued solvency of the Federal unemployment trust funds and maintain the ability of the unemployment system to adjust to any economic downturns." The bill would enact the President's proposal for one year (through 2009). *This proposal is estimated to raise $1.474 billion over 10 years.*

(iv) Modification of Section 907. The proposal eliminates the distinction between foreign oil and gas extraction income ("FOGEI") and foreign oil related income ("FORI"). FOGEI relates to upstream production to the point the oil leaves the wellhead. FORI is defined as all downstream processes once the oil leaves the wellhead (i.e. transportation, refining). Currently, FOGEI and FORI have separate foreign tax credit limitations. This proposal combines FOGEI and FORI into one foreign oil basket, and applies the existing FOGEI limitation. *This proposal is estimated to raise $2.23 billion over ten years.*

(v) Oil Spill Liability Trust Fund. The proposal extends the oil spill tax through December 31, 2017, increases the per barrel tax from 5 cents to 8 cents from 2009 though 2016, and to 9 cents in 2017. The bill also

repeals the requirement that the tax be suspended when the unobligated balance exceeds $2.7 billion. *This proposal is estimated to raise $1.715 billion over 10 years.*

(f) Alternative Minimum Tax (AMT)

(i) *AMT Patch.* Currently, a taxpayer receives an exemption of $33,750 (individuals) and $45,000 (married filing jointly) under the AMT. Current law also does not allow personal credits against the AMT. At the end of last year, H.R. 3996 increased the exemptions to $44,350 and $66,250, respectively, and allowed the personal credits against the AMT to hold the number of taxpayers subject to the AMT at bay. The provision expired December 31, 2007. The proposal increases the exemption amounts to $46,200 (individuals) and $69,950 (married filing jointly) for 2008. The proposal will also allow the personal credits against the AMT. *The estimated cost of this proposal is $61.817 billion over ten years.*

(ii) *Extension and Modification of AMT Credit Allowance Against Incentive Stock Options (ISOs).* Many companies offer Incentive Stock Options (ISOs) as compensation. Under the regular tax, ISOs are not taxed upon exercise. Under the AMT, however, a taxpayer must pay tax on the stock value when the option is exercised. The economic downturn in 2000 resulted in many individuals having to pay tax on "phantom income" because the stock prices dropped dramatically since the date of exercise. In 2006, Congress provided relief for these situations, but additional relief is needed to correct this problem. Under current law, an individual is allowed a refundable AMT credit amount that is the greater of (1) the lesser of $5,000 or the unused AMT credit amount or (2) 20 percent of the unused AMT tax credit. The AMT credit amount is reduced for those with adjusted gross income (AGI) above $150,000 (joint filers) and $100,000 (single filers). The proposal would allow 50% of long-term unused minimum tax credits to be refunded over each of two years instead of 20% over each of five years, eliminate the income phase-out, and abate any underpayment of tax outstanding on the date of enactment related to ISOs and the AMT including interest. *The estimated cost of eliminating the income phase-out is $966 million over ten years and for the incentive stock option proposal is $1.325 billion over ten years. The total estimated cost of this proposal is $2.291 billion over ten years.*

(g) Individual Extender Provisions

(i) *Deduction of State and Local General Sales Taxes.* The American Jobs Creation Act (AJCA) provided that a taxpayer may elect to take an itemized deduction for State and local general sales taxes in lieu of the itemized income tax deduction. The provision expired on December 31, 2007. The proposal would extend the provision to the end of 2009. The proposal is effective for tax years beginning after December 31, 2007. *The estimated cost of this proposal is $3.304 billion over ten years.*

(ii) Qualified Tuition Deduction. The Economic Growth and Tax Relief Reconciliation Act (EGTRRA) created an above-the-line tax deduction for qualified higher education expenses. The maximum deduction was $4,000 for taxpayers with AGI of $65,000 or less ($130,000 for joint returns) or $2,000 for taxpayers with AGI of $80,000 or less ($160,000 for joint returns). This deduction expired on December 31, 2007. The proposal would extend the deduction to the end of 2009. *The estimated cost of this proposal is $5.333 billion over ten years.*

(iii) Teacher Expense Deduction. The bill extends the provision allowing teachers an above-the-line deduction for up to $250 for educational expenses. The provision expired on December 31, 2007. The proposal extends the deduction to the end of 2009. The proposal is effective for taxable years beginning after December 31, 2007. *The estimated cost of this proposal is $410 million over ten years.*

(iv) Additional Standard Deduction for Real Property Taxes. The Housing and Economic Recovery Act of 2008 added a real property tax calculation to the standard deduction for taxpayers who do not itemize. The real property tax deduction is the lesser of the amount allowable as a deduction of State and local and foreign real property taxes, or $500 ($1,000 in the case of a joint return). The provision expires at the end of 2008. The proposal extends the provision to the end of 2009. The proposal is effective on the date of enactment. *The estimated cost of the proposal is $1.495 billion over ten years.*

(v) IRA Rollover Provision. The Pension Protection Act of 2006 (PPA) created a provision allowing taxpayers to make tax-free contributions from their IRA plans to qualified charitable organizations. This tax benefit expired on December 31, 2007. The proposal would extend the provision through 2009. The proposal is effective for distributions after December 31, 2007. *The estimated cost of this proposal is $795 million over ten years.*

(vi) Treatment of Certain Dividends of Regulated Investment Companies (RICs). The bill extends a provision allowing a RIC, under certain circumstances, to designate all or a portion of a dividend as an "interest-related dividend," by written notice mailed to its shareholders not later than 60 days after the close of its taxable year. In addition, an interest-related dividend received by a foreign person generally is exempt from U.S. gross-basis tax under sections 871(a), 881, 1441 and 1442 of the Code. The proposal extends the treatment of interest-related dividends and short-term capital gain dividends received by a RIC to taxable years of the RIC beginning before January 1, 2010. The proposal is effective for dividends with respect to taxable years of RICs beginning after December 31, 2007. *The estimated cost of this proposal is $134 million over ten years.*

(vii) Estate Tax Look-Through for Certain RIC Stock held by Nonresidents. Although stock issued by a domestic corporation generally is treated as property within the United States, stock of a RIC that was owned by a nonresident non-citizen is not deemed property within the United States in the proportion that, at the end of the quarter of the RIC's taxable year immediately before a decedent's date of death, the assets held by the RIC are debt obligations, deposits, or other property that would be treated as situated outside the United States if held directly by the estate (the "estate tax look-through rule for RIC stock"). This estate tax look-through rule for RIC stock does not apply to estates of decedents dying after December 31, 2007. The proposal permits the estate tax look-through rule for RIC stock to apply to estates of decedents dying before January 1, 2010. The proposal is effective for decedents dying after December 31, 2007. *This proposal has a negligible revenue effect.*

(viii) Extend the Treatment of RICs as "Qualified Investment Entities". The proposal would extend the inclusion of a RIC within the definition of a "qualified investment entity" under section 897 of the Code through December 31, 2009, for those situations in which that inclusion otherwise expired at the end of 2007. The proposal is effective on January 1, 2008. *The estimated cost of this proposal is $20 million over ten years.*

(ix) Research and Development Credit. The bill would extend the research tax credit equal to 20 percent of the amount by which a taxpayer's qualified research expenses for a taxable year exceed its base amount for that year. The provision expired December 31, 2007. The proposal would extend current law to the end of 2009. In addition, the proposal would increase the alternative simplified credit from 12% to 14% for the 2009 tax year, and repeal the alternative incremental research credit for the 2009 tax year. The proposal is effective for amounts paid or incurred after December 31, 2007. *The estimated cost of this proposal is $19.084 billion over ten years.*

(x) New Markets Tax Credit. Current law provides a credit for taxpayers who hold a qualified equity investment on a credit allowance date. The provision expires December 31, 2008. The proposal would extend the provision through 2009. The proposal is effective for investments made after December 31, 2008. *The estimated cost of this proposal is $1.315 billion over ten years.*

(xi) Exception under Subpart F for Active Financing Income. The U.S. parent of a foreign subsidiary engaged in a banking, financing, or similar business is eligible for deferral of tax on such subsidiary's earnings if the subsidiary is predominantly engaged in such business and conducts substantial activity with respect to such business. The subsidiary must pass an entity level income test to demonstrate that the income is active income and not passive income. The provision expires December 31, 2008. The proposal would extend the provision to the end of 2009. The proposal is effective for tax years beginning after

December 31, 2008. *The estimated cost of this proposal is $3.97 billion over ten years.*

(xii) Look-Through Treatment of Payments between Related CFCs under the Foreign Personal Holding Company Rules. The bill allows deferral for certain payments (interest, dividends, rents and royalties) between commonly controlled foreign corporations (CFC). This provision allows U.S. taxpayers to deploy capital from one CFC to another without triggering U.S. tax. The provision expires December 31, 2008. The proposal extends present law to the end of 2009. The proposal is effective for tax years beginning after December 31, 2008. *The estimated cost of this proposal is $611 million over ten years.*

(xiii) 15-Year Straight-Line Cost Recovery for Qualified Leasehold, Restaurant, and Retail Improvements. In AJCA, Congress shortened the cost recovery of certain leasehold improvements and restaurant property from 39 to 15 years. The proposal would extend the provision to the end of 2009 and allows retail owners and new restaurants to receive the shortened recovery period for 2009 only. The extension is effective for property placed in service after December 31, 2007. The allowance of the 15 year depreciation to retail and new restaurants is effective for property placed in service after December 31, 2008. *The estimated cost of this proposal is $8.721 billion over ten years.*

(xiv) Modification of Tax Treatment of Certain Payments to Controlling Exempt Organizations. In general, interest, rent, royalties, and annuities paid to a tax-exempt organization from a controlled entity are treated as unrelated business income of the tax-exempt organization. The PPA provided that if a payment to a tax-exempt organization by a controlled entity is less than fair market value, then the payment is excludable from the tax-exempt organization's unrelated business income. The provision expired on December 31, 2007. The proposal would extend the provision to the end of 2009. The proposal is effective for payments received or accrued after December 31, 2007. *The estimated cost of this proposal is $47 million over ten years.*

(xv) Basis Adjustment to Stock of an S Corporation Making Charitable Contributions of Property. Prior to the PPA, if an S corporation made a contribution to a charity, shareholders reduced the basis in their stock by their pro rata share of the fair market value of the contribution. The PPA provided the amount of a shareholder's basis reduction in the S corporation stock will be equal to the shareholder's pro rata share of the adjusted basis of the contributed property. The provision expired December 31, 2007. The proposal would extend the provision to the end of 2009. The proposal would also make a technical correction clarifying the application of this provision. The proposal is effective for tax years beginning after December 31, 2007. *The estimated cost of this proposal is $132 million over ten years.*

(xvi) Temporary Increase in Limit on Cover over of Rum Excise Tax Revenues to Puerto Rico and the Virgin Islands. The present law imposes a $13.50 per proof gallon excise tax on distilled spirits produced in or imported into the United States. The Code provides a payment to Puerto Rico and the Virgin Islands of the excise tax on rum imported into the United States. The payment is limited to $10.50 per proof gallon. This was increased to $13.25 per proof gallon during the period July 1, 1999 through December 31, 2007. The proposal would extend the provision to the end of 2009. The proposal is effective for articles brought into the United States after December 31, 2007. *The estimated cost of this proposal is $192 million over ten years.*

(xvii) American Samoa Economic Development Credit. Certain domestic corporations operating in American Samoa were eligible for a possessions tax credit, which offsets their U.S. tax liability on income earned in American Samoa from active business operations, sales of assets used in a business, or certain investments in American Samoa. Further, the credit was held to an economic activity-based limit, measuring the credit against wages, depreciation, and American Samoa income taxes. The provision expired December 31, 2007. The proposal extends the provision to the end of 2009. The proposal is effective for tax years beginning after December 31, 2007. *The estimated cost of this proposal is $33 million over ten years.*

(xviii) Mine Rescue Team Training Credit. Present law provides a credit of up to $10,000 for the training of mine rescue team members. The provision expires on December 31, 2008. The proposal extends present law to the end of 2009. *The estimated cost of the proposal is $4 million over ten years.*

(xix) Election to Expense Advanced Mine Safety Equipment. Present law provides 50% immediate expensing for qualified underground mine safety equipment (that goes above and beyond current safety equipment requirements), including: (1) communications technology enabling miners to remain in constant contact with an individual above ground; (2) electronic tracking devices that enable an individual above ground to locate miners in the mine at all times; (3) self-contained self-rescue emergency breathing apparatuses carried by the miners and additional oxygen supplies stored in the mine; and (4) mine atmospheric monitoring equipment to measure levels of carbon monoxide, methane, and oxygen in the mine. This provision will encourage mining companies to invest in safety equipment that goes above and beyond current safety equipment requirements. The provision expires December 31, 2008. The proposal would extend present law to the end of 2009. *The proposal is estimated to be revenue neutral over ten years.*

(xx) Deduction Allowable with Respect to Income Attributable to Domestic Production Activities in Puerto Rico. The bill extends a provision allowing a section 199 domestic production activities deduction for activities in Puerto Rico. This provision expired on December 31, 2007. The

proposal would extend the provision to the end of 2009. The proposal is effective for tax years beginning after December 31, 2007. *The estimated cost of this proposal is $243 million over ten years.*

(xxi) Qualified Zone Academy Bonds (QZABs). QZABs help school districts with low-income populations save on interest costs associated with public financing school (below the post-secondary level) renovations and repairs. QZABs cannot be used for new construction but can be used for the following activities: renovating and repairing buildings, investing in equipment and up-to-date technology, developing challenging curricula, and training quality teachers. The QZABs offer the holder a federal tax credit instead of interest (there has been an allocation of $400 million of QZABs each year since 1998). The QZAB provision expired on December 31, 2007. This proposal allows another $400 million of issuing authority to state and local governments for 2008 and 2009 for qualified zone academy bonds. The proposal also modifies the provision. The proposal is effective for obligations issued after December 31, 2007. *The estimated cost of this proposal is $379 million over ten years.*

(xxii) Indian Employment Credit. The proposal allows a business tax credit for employers of qualified employees that work and live on or near an Indian reservation. The credit is for wages and health insurance costs paid to qualified employees (up to $20,000) in the current year over the amount paid in 1993. Wages for which the Work Opportunity Tax Credit is available are not qualified wages for the Indian employment tax credit. This provision expired on December 31, 2007. The proposal would extend the provision to the end of 2009. The proposal is effective for taxable years beginning after December 31, 2007. *The estimated cost of this proposal is $119 million over ten years.*

(xxiii) Accelerated Depreciation for Business Property on Indian Reservation. A special depreciation recovery period applies to qualified Indian reservation property placed in service before January 1, 2008. In general, qualified Indian reservation property is property used predominantly in the active conduct of a trade or business within an Indian reservation, which is not used outside the reservation on a regular basis and was not acquired from a related person. This proposal would extend the placed-in-service date for the special depreciation recovery period for qualified Indian reservation property to the end of 2009. The proposal is effective for property placed in service after December 31, 2007. *The estimated cost of this proposal is $295 million over ten years.*

(xxiv) Extend and Expand 50% Tax Credit for Certain Expenditures for Maintaining Railroad Tracks. The railroad maintenance credit provides Class II and Class III railroads (short-line railroads) with a tax credit equal to 50% of gross expenditures for maintaining railroad tracks that they own or lease. The credit expired on December 31, 2007. The proposal extends the provision to the end of 2009, and allows the credit against the AMT. The proposal is effective for

expenses paid or incurred during the taxable years beginning after December 31, 2007. *The estimated cost of this proposal is $331 million over ten years.*

(xxv) 7-Year Recovery Period for Certain Motorsports Racetrack Property. The bill extends a special 7-year cost recovery period or property used for land improvement and support facilities at motorsports entertainment complexes. The provision expired on December 31, 2007. This proposal extends the provision to the end of 2009. The proposal is effective for property placed in service after December 31, 2007. *The estimated cost of this proposal is $100 million over ten years.*

(xxvi) Expensing of "Brownfields" Environmental Remediation Costs. The bill extends a provision allowing for the expensing of costs associated with cleaning up contaminated sites. The provision expired on December 31, 2007. This proposal extends present law to the end of 2009. The proposal is effective for property placed in service after December 31, 2007. *The estimated cost of this proposal is $357 million over ten years.*

(xxvii) Extend Work Opportunity Tax Credit (WOTC) for Hurricane Katrina Employees. The proposal extends through August 28, 2009 the work opportunity tax credit for those employed within the Hurricane Katrina core disaster area. The proposal is effective on August 28, 2007. *The estimated cost of this proposal is $29 million over ten years.*

(xxviii) Extension of Increased Rehabilitation Credit for Structures in the Gulf Opportunity Zone. The Gulf Opportunity Zone Act of 2005 increased the rehabilitation credit, within the Gulf Opportunity Zone, from 10 percent to 13 percent of qualified expenditures for any qualified rehabilitated building other than a certified historic structure. It also increased the credit from 20 percent to 26 percent of qualified expenditures for any certified historic structure. This provision expires at the end of 2008. This proposal would extend the provision through December 31, 2009. *The estimated cost of this proposal is $50 million over ten years.*

(xxix) Enhanced Charitable Deduction for Qualified Computer Contributions. The bill would extend for two years, through 2009, a provision that encourages businesses to contribute computer equipment and software to elementary, secondary, and postsecondary schools by allowing an enhanced deduction for such contributions. The proposal is effective for contributions made during taxable years beginning after December 31, 2007. *The estimated cost of this proposal is $356 million over ten years.*

(xxx) Tax Incentives for Investments in the District of Columbia. The bill provides for the designation of certain economically depressed census tracts within the District as the DC Enterprise Zone. Businesses and

individual residents within this enterprise zone are eligible for special tax incentives. First time home buyers receive a $5,000 credit for DC. The bill extends the provision through the end of 2009. The proposal is effective for tax years beginning after December 31, 2007. *The estimated cost of this proposal is $179 million over ten years.*

(xxxi) Enhanced Charitable Deduction for Food Inventory. The bill would extend for two years, through 2009, the provision allowing businesses to claim an enhanced deduction for the contribution of food inventory. The proposal is effective for contributions made after December 31, 2007. The proposal also eliminates the percentage limitation for contributions made by certain farmers and ranchers after December 31, 2007, but before January 1, 2009. *The estimated cost of this proposal is $149 million over ten years.*

(xxxii) Enhanced Charitable Deduction for Contributions of Book Inventory to Schools. The bill would extend a provision that allowing C corporations an enhanced charitable deduction for donations of books to schools, public libraries and literacy programs. This provision expired after December 31, 2007. The proposal extends the provision to the end of 2009. The proposal is effective for contributions made after December 31, 2007. *The estimated cost of this proposal is $49 million over ten years.*

(xxxiii) Wool Trust Fund. The bill would extend a provision that reduces import duties on a limited quantity of imported wool fabrics and places duties otherwise collected on the import of certain wool products into the Wool Trust Fund, which promotes the competitiveness of American wool. The provision is extended for five years. *The estimated cost of the proposal is $148 million over ten years.*

(xxxiv) Special Expensing Rules for Certain Film and Television Productions. Under current law, a producer can elect to take a single-year deduction of up to $15 million in production costs incurred in the U.S. If the production costs are over $15 million, this deduction does not apply. The maximum deduction is increased to $20 million if the costs are significantly incurred in economically depressed areas. No other depreciation or amortization is allowed for a production for which this deduction is taken. The provision expires December 31, 2008. The proposal would extend the provision to the end of 2009. The proposal would also allow expensing of the first $15 million ($20 million if the costs are significantly incurred in economically depressed areas), regardless of the ultimate cost of the film. The proposal is effective for taxable years beginning after December 31, 2007. *The estimated cost of this proposal is $81 million over ten years.*

(h) Tax Administration Extender Provisions

(i) Permanent Authority for Undercover Operations. IRS's authorization to use proceeds it receives from undercover operations to offset necessary expenses incurred in such operations expired on December 31, 2007. Undercover operations are an integral part of IRS efforts to detect and prove noncompliance. The temporary status of this provision creates uncertainty as the IRS plans its undercover efforts from year to year. The proposal permanently authorizes the IRS to return funds collected through undercover operations back into the IRS undercover program. The proposal is effective on the date of enactment. *The proposal raises less than $500,000 over ten years.*

(ii) Permanent Authority to Disclose Information Related to Terrorist Activities. The bill would permanently extend the current-law terrorist activity provisions. The proposal is effective for disclosures after December 31, 2007. *This proposal is estimated to have no revenue effect.*

(i) Additional Tax Relief and Other Tax Provisions

(i) Child Tax Credit. Currently, a taxpayer receives $1,000 tax credit for each qualifying child under the age of 17. If the amount of a taxpayer's child tax credit is greater than the amount of the taxpayer's income tax, the taxpayer may receive a refund if the income threshold is met. EGTRRA set the income threshold for child tax credit refundability at $10,000 (indexed). The threshold for 2008 is $12,050. The proposal lowers the refundable threshold for the child tax credit to $8,500 for the 2008 tax year. The proposal is effective for tax years beginning after December 31, 2007. *The estimated cost of the proposal is $3.129 billion over ten years.*

(ii) Provisions Related to Film and Television Productions. Under current law, many film and television show production companies are unable to take advantage of the domestic production deduction. The proposal allows more film and television show production companies to use the domestic production deduction, which will encourage more production of films and television productions. *This estimated cost of the proposal is $397 million over ten years.*

(iii) Excise Tax Exemption for Wooden Practice Arrows Used by Children. Current law imposes an excise tax of 39 cents, adjusted for inflation, on the first sale by the manufacturer, producer, or importer of any shaft of a type used to produce certain types of arrows. This proposal would exempt from the excise tax any shaft consisting of all natural wood with no laminations or artificial means to enhance the spine of the shaft used in the manufacture of an arrow that measures 5/16 of an inch or less and is unsuited for use with a bow with a peak draw weight of 30 pounds or more. The proposal is effective for shafts first sold after

the date of enactment. *The estimated cost of the proposal is $2 million over ten years.*

(iv) Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. This bill would require private insurance plans that offer mental health benefits as part of the coverage to offer such benefits on par with the medical-surgical benefits. Any cost-sharing or benefit limits imposed on mental health services must not be any more restrictive than those imposed on med-surg services. The proposal is effective January 1, 2009. *The proposal is estimated to cost $3.9 billion over 10 years.*

(v) Income Averaging for Exxon Valdez Litigation Amounts. The bill would allow commercial fishermen and other individuals whose livelihoods were negatively impacted by the 1989 Exxon Valdez oil spill to average any settlement or judgment-related income that they receive in connection with pending litigation in the federal courts over three years for federal tax purposes. The bill would also allow these individuals to use these funds to make contributions to retirement accounts. The proposal is effective on the date of enactment. *The estimated cost of the proposal is $49 million over ten years.*

(vi) Certain Farming Business Machinery and Equipment Treated as 5-year Property. The proposal provides a five year recovery period for any machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) which is used in a farming business, the original use of which commences with the taxpayer, and placed in service before January 1, 2010. For these purposes, the term "farming business" means a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity. A farming business includes processing activities that are normally incident to the growing, raising, or harvesting of agricultural or horticultural products. The proposal is effective for property placed in service after the December 31, 2008. *The estimated cost of the proposal is less than $500,000.*

(v) Modification of Penalty on Understatement of Taxpayer's Liability by Tax Return Preparer. The proposal changes the standards for imposition of the tax return preparer penalty. The preparer standard for undisclosed positions is reduced to "substantial authority." The preparer standard for disclosed positions is "reasonable basis." For tax shelters and reportable transactions to which section 6662A applies (i.e., listed transactions and reportable transactions with significant avoidance or evasion purposes), a tax return preparer is required to have a reasonable belief that such a transaction was more likely than not to be sustained on the merits. The proposal is effective for returns prepared after May 25, 2007. *The estimated cost of the proposal is $22 million over ten years.*

(j) Other Provisions

(i) Reauthorization of the Secure Rural Schools and Community Self-Determination Act of 2000 and Payment in Lieu of Taxes. The bill would reauthorize the Secure Rural Schools program through 2011. It also adjusts the funding distribution formula to make it more equitable by taking into account historic payment levels to counties, average income levels in counties and acreage of federal land. Finally, the provision increases existing funding for the Payments in Lieu of Taxes program in the current fiscal year and fully-funds the program during FY2009FY2012. *The estimated cost of the proposal is $3.3 billion over ten years.*

(ii) Transfer of Interest Earned by Abandoned Mine Reclamation Fund. The Coal Act Fairness Alliance is composed of Super Reachback Companies that fully paid Coal Act premiums. As a result of the decision in *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998), these companies sought a refund of monies paid to the United Mine Workers of America -- Combined Fund. In 2006, the Super Reachback Companies received a refund in the amount of $27 million (see 30 U.S.C. 1232(i)(C)). The Super Reachback Companies, however, did not receive any interest payments on the premiums that the Companies paid to the Combined Fund. In *Mary Helen Coal Corp. v. Hudson*, 235 F.3d 207 (4th Cir. 2000), the Fourth Circuit examined whether interest on the premium payments that were refunded as a result of the Supreme Court's decision in *Eastern Enterprises* was appropriate. The court held that a refund of the interest on the premium payments was appropriate for the final judgment companies as an element of their complete compensation and to give full effect to the *Eastern Enterprises* decision. In the case of the Super Reachback Companies, the lost interest on the premiums amount to $9 million. The provision would refund the lost interest to these Super Reachback Companies. *The estimated revenue loss of the proposal is $9 million over ten years.*

(k) Midwestern Disaster Tax Relief.

(i) The proposal provides tax relief for victims of the Midwestern disaster in Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska and Wisconsin. The proposals are applicable to floods, severe storms, and tornadoes that are declared by FEMA on or after May 20, 2008, and before August 1, 2008.

(ii) The proposals immediately below benefit taxpayers located in all counties in the ten states mentioned above that are presidentially-declared (FEMA) major disaster areas determined to warrant individual assistance, individual and public assistance, or public only assistance due to flooding, tornadoes, or severe storms.

(A) Qualified Disaster Recovery Assistance Distributions. The proposal waives the 10 percent penalty tax if a distribution from an individual retirement account ("IRA") or tax-favored retirement plan (e.g., Code sections 401(k), 403(b), or 457(b) plans) is considered a qualified Disaster Recovery Assistance distribution ("qualified distribution"). A distribution is considered a qualified distribution if it is made on or after the presidentially-declared disaster date ("applicable declaration date") and before January 1, 2010 and is made to an individual whose principal residence on the applicable declaration date is located in a Midwestern disaster area and who sustained an economic loss by reason of the disaster. Other principal features include the following: (i) the waiver is limited to amounts up to $100,000; (ii) the mandatory withholding rules applicable to eligible rollover distributions would not apply; (iii) participants receiving a qualified distribution would be permitted to spread the income tax resulting from receipt of the distribution ratably over three years; and (iv) amounts distributed may be re-contributed to the plan over a three-year period following the distribution and such re-contributed amounts would not be includible in income (e.g., if a participant received a qualified distribution in 2008 and subsequently re-contributed the distribution amount in 2009, the participant may file an amended return requesting a refund for the amount taxable in 2008). *The estimated revenue loss of this proposal is $42 million over ten years.*

(B) Recontribution of Withdrawals for Home Purchases. The proposal allows distributions for home purchases that were made from a Code section 401(k) or 403(b) plan or IRA after the date which is 6 months before the applicable declaration date and before the day after the applicable declaration date and that were not finalized because of the tornadoes and floods giving rise to the designation of the area as a disaster area to be re-contributed to the plan or IRA tax-free (i.e., the recontributions would be treated as rollovers). Amounts must be re-contributed within 5 months from the date of enactment of this bill in order to receive favorable tax treatment. *The proposal is estimated to have a negligible revenue effect over ten years.*

(C) Loans from Qualified Plans. The proposal effectively doubles the limitation on loans from a 401(k), 403(b), or a governmental 457(b) plan by allowing participants located in a Midwestern disaster area and who sustained economic loss by reason of the tornadoes and floods giving rise to the designation of the area as a disaster area to receive loans up to the lesser of $100,000, or 100 percent of the vested accrued benefit for loans made after the date of enactment and before January 1, 2010. In addition, outstanding loan payments due on or after the applicable declaration date and before January 1, 2010 may be deferred an additional 12 months, with appropriate adjustments for interest. *The proposal is estimated to have a negligible revenue effect over ten years.*

(D) Suspension of Casualty Loss Limitations. Under present law, non-business casualty losses are deductible by taxpayers who

itemize only to the extent they exceed ten percent of adjusted gross income and a one-hundred dollar floor. In some circumstances, taxpayers are permitted to include a current-year casualty loss on an amended prior year return. The proposal eliminates the ten percent and one-hundred dollar floor for casualty losses resulting from the Midwestern disaster and incurred in the disaster area, including those claimed on amended returns. *The estimated revenue loss of this proposal is $61 million over ten years.*

(E) Special Look-Back Rule for EIC and Refundable Child Credit. To deal with the situation where 2008 records are lost or destroyed in a disaster, this proposal allows low-income working families an election to use their 2007 income amount for purposes of determining their eligibility for the refundable earned income credit and the refundable child tax credit. *The estimated revenue loss of this proposal is $89 million over ten years.*

(F) Additional Personal Exemption for Housing Victims. Current law provides a personal exemption for taxpayers, their spouses, and dependents. The proposal allows taxpayers who house up to four dislocated persons from the Midwestern disaster for a minimum of sixty days in their principal residences an additional personal exemption of $500 per dislocated person (maximum additional personal exemption increase of $2,000). Family members (other than spouses and dependents) staying with the taxpayer may qualify, and the housing must be provided rent-free. This proposal would not affect any deductions or exemptions for the dislocated person on the dislocated person's tax return. The deduction can be claimed in 2008 and 2009, but cannot be claimed in both years with respect to the same person. *The estimated revenue loss of this proposal is $10 million over ten years.*

(G) Exclusion for Certain Cancellations of Indebtedness. Under current law, gross income generally includes any amount realized from the discharge of indebtedness. The proposal ensures that individuals are not taxed on personal debt that is discharged in response to damage suffered from the Midwestern disaster. For example, if a house is damaged or destroyed and the mortgage lender discharges all or part of this mortgage debt, the amount discharged is not treated as income as a result of the proposal. *The estimated revenue loss of this proposal is $6 million over ten years.*

(H) Extension of Replacement Period for Property Lost Due to Floods or Tornadoes in the Midwestern Disaster Zone. Present law allows taxpayers not to recognize gain with respect to homes that are damaged or destroyed as a result of a presidentially-declared disaster if the taxpayer replaces the property within a four-year period. Business property that is destroyed must be replaced within a two-year period to avoid gain recognition. The proposal extends the replacement period to five years for principal residences and business property that was damaged or destroyed within any presidentially-declared disaster area for the Midwestern disaster, and the replacement property must be

located in the same county. *The estimated revenue loss of this proposal is $65 million over ten years.*

(iii) The proposals immediately below benefit individuals and businesses located in all counties in the ten states above presidentially-declared (FEMA) major disaster areas determined to warrant individual assistance, or individual and public assistance, due to flooding, tornadoes, or severe storms.

(A) Employee Retention Credit. This proposal provides a 40 percent tax credit for wages paid up to $6,000 if paid after the applicable disaster date, and before January 1, 2009, by employers with 200 or fewer employees located in the Midwestern disaster area who continue to pay their employees while their business is inoperable. *The estimated revenue loss of this proposal is $93 million over ten years.*

(B) Expansion of Hope Scholarship and Lifetime Learning Credit. Current law allows a Hope Scholarship Credit in the first two years of post-secondary education equal to 100% of the first $1,200 of qualified tuition and related expenses, and 50% of the next $1,200 for a maximum credit of $1,800. There is also a Lifetime Learning Credit available to students enrolled in one or more courses at the undergraduate or graduate level (whether or not pursuing a degree), equal to 20% of the first $10,000 in qualified tuition and related expenses. The proposal doubles the Hope Credit dollar amounts so the maximum credit would be $3,000, and doubles the Lifetime Learning Credit percentage from 20% to 40%, for a maximum Lifetime Learning Credit of $4,000 for students attending undergraduate or graduate institutions in the Midwestern disaster area. Room, board, books and fees would also be considered qualified expenses. This proposal applies to tax years 2008 and 2009. *The estimated revenue loss of this proposal is $121 million over ten years.*

(C) Secretarial Authority to Adjust Taxpayer and Dependency Status for Taxpayers. The Midwestern disaster has displaced thousands of individuals. Under present law, a prolonged change in a family's living situation could affect its eligibility for various tax benefits. The proposal gives the Treasury Department the authority to ensure taxpayers do not lose deductions, credits or filing status because of dislocations from the Midwestern disaster. *The proposal is estimated to have a negligible revenue effect over ten years.*

(D) Mortgage Revenue Bonds. Section 143(d) requires that 95 percent of net proceeds of mortgage revenue bonds are used to finance residences of mortgagors who had no present ownership interest in their principal residences at any time during the 3-year period ending on the date their mortgage is executed. The proposal permits states to issue tax-exempt bonds to finance low-interest loans to taxpayers whose principal residence has been damaged as a result of a disaster. Disaster victims could use these low-interest loans to repair or reconstruct their homes. The provision is effective for qualified

disasters occurring after December 31, 2007 and before January 1, 2010. *The proposal is included in the estimate below on Tax-exempt Bonds.*

(E) Tax-exempt Bonds. Provides Iowa, Arkansas, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri and Wisconsin the authority to issue a special class of qualified private activity bonds, called Midwestern disaster area bonds, outside of the state volume caps. The maximum aggregate bond authority with respect to any state cannot exceed $1,000 times the portion of the state population which is located in a Midwestern disaster area. Midwestern disaster area bonds can be issued by States and municipalities. Bond proceeds can be used to pay for acquisition, construction, and renovation of nonresidential real property, qualified low income residential rental housing, and public utility property (e.g., gas, water, electric and telecommunication lines) located in the Midwestern disaster area. The current low-income housing targeting rules are relaxed so that more bond proceeds can be used to rebuild housing in the Midwestern disaster area. Interest payments on the bonds are not subject to the AMT. The authority to issue Midwestern disaster area bonds expires after December 31, 2010. In the case of project involving a private business use, either the person using the property suffered a loss in a trade or business attributable to severe storms, tornadoes or flooding or is a person designated by the Governor of the State as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered such loss. In the case of a project relating to public utility property, the project must involve the repair or reconstruction of public utility property damaged by sever storms, tornados or flooding. The bonds can also be used to provide financing for mortgagors who suffered damages to their principal residences attributable to severe storms, tornadoes or flooding. *The total estimated revenue loss of this proposal and the proposal for mortgage revenue bonds is $1.320 billion over ten years.*

(F) Low Income Housing. Under current law, States receive allocations of low-income housing tax credits based on population. The proposal allows States to allocate volumes of additional housing credit amounts in years 2008, 2009, 2010 of $8 per person in the Midwestern disaster area measured by population data issued before the earliest applicable disaster date for Midwestern disaster areas within the applicable state. *The total estimated revenue loss of this proposal and the proposal for representations regarding income eligibility is $2.203 billion over ten years.*

(G) Additional Depreciation. Permits businesses that suffered damages to claim an additional first-year depreciation deduction equal to 50 percent of the cost of new real and personal property investments made in the disaster area. The additional deduction applies to purchased computer software, leasehold improvements, certain commercial and residential real estate expenditures and equipment. All depreciation deductions (including bonus depreciation) would be exempt from the AMT. *The total estimated revenue loss of this proposal is reflected under the National Disaster Section.*

(H) Expensing Property. The proposal would increase by $100,000 (or the cost of qualified property, if less) the amount of expensing available for qualifying expenditures made in the disaster area through December 31, 2011. This proposal would also increase by $600,000 (or the cost of qualified property, if less) the level of investment at which benefits phase-out, thus allowing more businesses to use this tax benefit in rebuilding. *The total estimated revenue loss of this proposal is reflected under the National Disaster Section.*

(I) Expensing Demolition and Clean-up Costs. Under the proposal, 50 percent of the costs (that would otherwise be capitalized) related to site cleanup and demolition would be deductible by businesses. Effective for amounts paid or incurred beginning on the applicable disaster date and ending on December 31, 2010. *The estimated revenue loss of this proposal is $3 million over ten years.*

(J) Expensing Environmental Remediation Costs. The proposal extends the deductibility of costs of cleaning up a qualified contamination site, if the release (or threat of release) or disposal of a hazardous substance is attributable to the disaster described in the Presidential declaration in the Midwestern disaster area. Effective for expenditures paid or incurred beginning on the applicable disaster date and ending on December 31, 2010. *The estimated revenue loss of this proposal is less than $500,000 over ten years.*

(K) Increase in Rehabilitation Credit. For buildings that were damaged or destroyed in an applicable disaster, the rehabilitation credit is raised from 10 percent to 13 percent of qualified expenditures for any qualified rehabilitated building other than a certified historic structure, and the rehabilitation credit is raised from 20 percent to 26 percent of qualified expenditures for any certified historic structure. *The estimated revenue loss of this proposal is $3 million over ten years.*

(L) Five-year Net Operating Loss Carry back for Certain Amounts. The proposal extends the net operating loss carry back period from 2 to 5 years for net operating losses attributable to (i) new investment and repairing existing investment in the areas damaged by the Midwestern disaster; (ii) business casualty losses caused by the Midwestern disaster; and (iii) moving expenses and temporary housing expenses for employees working in areas damaged by the Midwestern disaster. The proposal is effective on the date of enactment. *The estimated revenue loss of this proposal is $37 million over ten years.*

(M) Tax Credit Bonds. Authorizes Midwestern disaster States to issue debt service tax credit bonds providing credits against Federal income tax instead of interest payments, so that these States can provide assistance to communities unable to meet their debt service requirements as a result of the flooding, tornadoes, and severe storms. The maturity of the bonds cannot exceed 2 years. At least 95 percent of bond proceeds must be used to

redeem or to pay principal, interest or premiums on an outstanding bond, and such proceeds so used must be matched by an equal amount of State funds. The maximum amount of tax credit bonds shall not exceed $100 million for any state with an aggregate population located in the Midwestern disaster areas within such state of at least 2 million; $50 million for states with such populations of at least 1 million but less than 2 million; and zero for any other state. *The estimated revenue loss of this proposal is $152 million over ten years.*

(N) Temporary Suspension of Limitations on Charitable Contributions. The amount allowed as a charitable deduction in any taxable year may not exceed ten percent of the corporation's taxable income or fifty percent of an individual's adjusted gross income. The proposal temporarily waives these limits regarding charitable cash contributions dedicated to Midwestern disaster relief efforts. The proposal is effective for contributions paid during the period beginning on the earliest applicable disaster date for all States and ending on December 31, 2008. *The estimated revenue loss of this proposal is $433 million over ten years.*

(O) Increase in Standard Mileage Rate for Charitable Use of Vehicles. The mileage rate individuals may use to compute a tax deduction for personal vehicle expenses associated with charitable work is statutory and has not been increased since 1997 and is currently at 14 cents per mile. For a taxpayer assisting in relief efforts related to the Midwestern disaster, the proposal sets the charitable mileage rate at seventy percent of the current standard business mileage rate, beginning on the applicable disaster date and ending on December 31, 2008. *The estimated revenue loss of this proposal is $9 million over ten years.*

(P) Exclusion from Income of Mileage Reimbursements for Charitable Volunteers. In general, reimbursements received for operating expenses of a personal vehicle used in connection with charitable work in excess of the statutory charitable mileage rate are taxable income to the recipient. However, reimbursements for charitable mileage attributable to the Midwestern disaster up to the amount of the standard business mileage rate will not be considered taxable income through December 31, 2008. *The estimated revenue loss of this proposal is $1 million over ten years.*

(Q) Tax Benefits Not Available with Respect to Certain Property. The proposals relating to additional first-year depreciation, increased expensing, and the five-year carry back of NOLs do not apply with respect to certain property. Specifically, as was done in the tax relief package for the Katrina disaster, the tax relief provisions do not apply with respect to golf courses, country clubs, massage parlors, hot tub facilities, suntan facilities, or liquor stores. The proposals also do not apply with respect to any property used directly in connection with gambling, animal racing, or the on-site viewing of such racing, and with respect to buildings or portions of buildings dedicated to such activities (except if the portion so dedicated is less than 100 square feet).

(l) Hurricane Ike Disaster Tax Relief

(i) Low Income Housing. Under current law, States receive allocations of low-income housing tax credits based on population. The proposal allows Texas and Louisiana to allocate volumes of additional housing credit amounts in years 2008, 2009, 2010 of $16 per person based on the populations of Brazoria, Chambers, Galveston, Jefferson and Orange counties in Texas and Calcasieu and Cameron parishes in Louisiana. *The total estimated revenue loss of this proposal in included in the Tax-exempt Bonds proposal immediately below.*

(ii) Tax-exempt Bonds. Provides Texas and Louisiana the authority to issue a special class of qualified private activity bonds outside of the state volume caps. The maximum aggregate bond authority with respect to any state cannot exceed $2,000 times the portion of the population of Brazoria, Chambers, Galveston, Jefferson and Orange counties in Texas and Calcasieu and Cameron parishes in Louisiana. The bonds can be issued by States and municipalities, but must be allocated to areas based in the order in which relief is most needed. Bond proceeds can be used to pay for acquisition, construction, and renovation of nonresidential real property, qualified low income residential rental housing, and public utility property (e.g., gas, water, electric and telecommunication lines) located in the Hurricane Ike disaster area. The current low-income housing targeting rules are relaxed so that more bond proceeds can be used to rebuild housing in the Hurricane Ike disaster area. Interest payments on the bonds are not subject to the AMT. The authority to issue the bonds expires after December 31, 2010. In the case of project involving a private business use, either the person using the property suffered a loss in a trade or business attributable to severe storms, tornadoes or flooding or is a person designated by the Governor of the State as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered such loss. In the case of a project relating to public utility property, the project must involve the repair or reconstruction of public utility property damaged by sever storms, tornados or flooding. *The total estimated revenue loss of this proposal and the Low Income Housing proposal immediately above is $638 million over ten years.*

(m) National Disaster Relief

The proposal provides tax relief for victims of all Federally-declared disasters occurring after December 31, 2007 and before January 1, 2010. The same limitations with respect to certain property apply to this relief.

(i) Individual Loss Provision. Individual casualty losses are itemized deductions to the extent they exceed $100 per casualty floor and 10 percent of AGI under section 165(h)(1) and (2). The proposal reforms casualty loss rules to allow more disaster victims to claim individual property losses. Under current law, taxpayers can only claim a loss that exceeds $100 and 10 percent of the taxpayer's adjusted gross income. This bill would waive the restrictive

10 percent rule, raise the $100 floor to $500, and allow non-itemizers to use these losses as a standard deduction. The provision is effective for qualified disasters occurring after December 31, 2007 and before January 1, 2010. *The proposal is estimated to cost $934 million over ten years.*

(ii) Qualified Disaster Expenses. Environment remediation expenditures incurred after December 31, 2007 are capitalized (expired section 198 allowed current expensing). Demolition costs of buildings are capitalized under section 280B. Debris removal and repairs costs are either currently expensed or capitalized depending on a facts and circumstances test under section 263(a). The proposal allows disaster victims to write off and immediately recover demolition, deductible clean up and repair (regardless of whether costs are incurred due to a casualty event), and environmental remediation expenses. The provision is effective for qualified disasters occurring after December 31, 2007 and before January 1, 2010. *The proposal is estimated to cost $32 million over ten years.*

(iii) Treatment of Net Operating Losses Attributable to Qualified Disaster Casualty Expenses. Net operating losses may be carried back two years under section 172(b)(1). The proposal extends from two to five years the time period taxpayers can claim casualty losses or qualified disaster expenses. When taxpayers carry losses back to prior years, they receive a refund of the taxes that they paid in the earlier year. This prompt refund can help them reinvest in their businesses or make ends meet in the aftermath of a disaster. The provision is effective for qualified disasters occurring after December 31, 2007 and before January 1, 2010. *The proposal is estimated to cost $162 million over ten years.*

(iv) Mortgage Revenue Bonds. Section 143(d) requires that 95 percent of net proceeds of mortgage revenue bonds are used to finance residences of mortgagors who had no present ownership interest in their principal residences at any time during the 3-year period ending on the date their mortgage is executed. The proposal permits states to issue tax-exempt bonds to finance low-interest loans to taxpayers whose principal residence has been damaged as a result of a disaster. Disaster victims could use these low-interest loans to repair or reconstruct their homes. The provision is effective for qualified disasters occurring after December 31, 2007 and before January 1, 2010. *The proposal is estimated to cost $45 million over ten years.*

(v) Additional Depreciation. Permits businesses that suffered damage as a result of the Presidentially-declared disasters to claim an additional first-year depreciation deduction equal to 50 percent of the cost of new real and personal property investments made in the Presidentially-declared disaster area. The additional deduction applies to purchased computer software, leasehold improvements, certain commercial and residential real estate expenditures and equipment. All depreciation deductions (including bonus depreciation) would be exempt from the AMT. The proposal applies to property placed in service through

December 31, 2011 (December 31, 2012 for real property). *The total estimated revenue loss of this proposal is $2.3 billion over ten years.*

(vi) Expensing Property. The proposal would increase by $100,000 (or the cost of qualified property, if less) the amount of expensing available for qualifying expenditures made in the disaster area through December 31, 2011. This proposal would also increase by $600,000 (or the cost of qualified property, if less) the level of investment at which benefits phase-out, thus allowing more businesses to use this tax benefit in rebuilding. The provision is effective for qualified disasters occurring after December 31, 2007 and before January 1, 2010. *The estimated revenue loss of this proposal is $10 million over ten years.*

(n) Revenue Proposals

(i) Current Inclusion of Deferred Compensation Paid by Certain Tax Indifferent Parties. The bill would tax individuals on a current basis if such individuals receive deferred compensation from a tax indifferent party. Current law generally allows executives and other employees to defer paying tax on compensation until the compensation is paid. This deferral is made possible by rules that require the corporation paying the deferred compensation to defer the deduction that relates to this compensation until the compensation is paid. Matching the timing of the deduction with the income inclusion ensures that the executive is not able to achieve the tax benefits of deferred compensation at the expense of the Treasury. Instead, the corporation paying the compensation bears the expense of paying deferred compensation as a result of the deferred deduction. Where an individual is paid deferred compensation by a tax indifferent party (such as an offshore corporation in a low or no-tax jurisdiction), there is no offsetting deduction that can be deferred. As a result, individuals receiving deferred compensation from a tax indifferent party are able to achieve the tax benefits of deferred compensation at the expense of the Treasury. The proposal is effective for services performed after December 31, 2008. *This proposal is estimated to raise $25.161 billion over ten years.*

2. American Recovery and Reinvestment Act of 2009

On Feb. 17, 2009, the President signed into law the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, H.R. 1, 111th Cong., 1st Sess. (2009). The legislation contains tax provisions (in Division B, Title I) and is part of a larger bill designed to stimulate the economy out of the deep recession now gripping the country. This article summarizes the major tax provisions in that portion of the bill. Provisions not found in Title I of Division B are marked as in Title II or Title III.

(a) Business provisions

(i) Expense Method Depreciation. The Act extends the 2008 level of expense method depreciation under I.R.C. § 179 ($250,000) to 2009 with the phase-out beginning at $800,000 as was the case in 2008. Act § 1202, amending I.R.C. § 179(b)(7).

(ii) "Bonus" Depreciation." The Act extends the 50 percent bonus depreciation through Dec. 31, 2009, for new property (the original use of which commences with the taxpayer), retroactive to Jan. 1, 2009.

The legislation raises the regular dollar cap for new vehicles placed in service in 2009 by $8,000 which elevates the maximum amount of first year depreciation for passenger automobiles to $10,960 ($11,160 for trucks and vans). Act § 1201, amending I.R.C. § 168(k)(2).

(iii) NOL Carry back. The 2009 legislation provides for a three, four or five year carry back of 2008 net operating losses (the choice is up to the taxpayer) but only for qualified small businesses with average gross receipts of $15 million or less. This provision is effective for tax years beginning or ending in 2008. Unless changed further, the regular two-year carry back returns for 2009. Businesses that had made an election applicable to its NOL can revoke that election within 60 days to take advantage of the longer three, four or five year carry back. Act § 1211, amending I.R.C. § 172(b)(1)(H). The provision does not change the five year carry back for "farming losses."

(iv) Work Opportunity Tax Credit. The 2009 Act creates two new categories of target groups under the Work Opportunity Tax Credit – unemployed veterans and disconnected youth (ages 16 through 24), applicable to individuals who are hired and begin work in 2009 or 2010. Act § 1221, amending I.R.C. § 51(d)(14).

(v) Discharge of Indebtedness. The 2009 Act permits eligible businesses to elect, irrevocably, to recognize discharge of indebtedness income over five years, beginning in 2014, for specified types of business debt repurchased by the business after Dec. 31, 2008 and before Jan. 1, 2011. The provision is for bonds, debentures, notes, certificates or other instruments constituting indebtedness issued by a C corporation or any other person in connection with the conduct of a trade or business carried on by the person. The Act also provides for the acceleration of deferred items under certain circumstances (such as liquidation, sale of substantially all of the assets of the taxpayer or cessation of business by the taxpayer. Act § 1231, adding I.R.C. § 108(i).

(vi) Qualified Small Business Stock. The 2009 legislation increases the exclusion for qualified small business stock from 50

percent of the gain on sale to 75 percent for stock acquired after the date of enactment (Feb. 17, 2009) and before Jan. 1, 2011. For this purpose, a "small business" cannot have assets over $50 million and must be conducting an active trade or business. Act § 1241, amending I.R.C. § 1202(a)(3).

(vii) Decreased Estimated Tax Payments. Owners of qualifying small businesses are eligible for reduced estimated tax payments for 2009 (substituting 90 percent for 100 percent) if the owner's adjusted gross income is less than $500,000 and more than 50 percent of the gross income was from a small business. Act § 1212, amending I.R.C. § 6654(d)(1)(D).

(viii) S Corporation Built-In Gains. The 2009 Act shortens, temporarily, from ten to seven years, the holding period for assets subject to the built-in gains tax imposed when a C corporation elects to become an S corporation. The provision applies to C corporations converting to S corporation status where the seventh taxable year (in the 10-year recognition period) preceded the taxable year (2009 or 2010). Act § 1251, amending I.R.C. § 1374(d)(7).

(ix) NOL Limitations on Banks. The 2009 law reinstates the net operating loss limitations in effect before the issuance of Notice 2008-83, 2008-2 C.B. 905. That notice provided relief from the net operating loss limitations for corporations acquiring a financially-strapped bank despite the I.R.C. § 382 limitations. Members of Congress registered objections with the result that the IRS action was reversed. However, the provision states that the Notice is effective for ownership changes occurring on or before Jan. 16, 2009, or that were pursuant to a binding written contract on that date. Act § 1261.

(x) New Markets Tax Credit. The 2009 tax bill increases the authorization for additional allocations of $5 billion for 2008 and $5 billion for 2009 for the New Markets Tax Credit. Act § 1403, amending I.R.C. § 45D(f)(1).

(xi) COBRA Premium Cost Sharing. The 2009 law reduces the premium payment for laid-off workers to 35 percent of the premium with the former employer responsible for the remaining amount (65 percent). The legislation allows employers to credit their share of the premium payment against wage withholding and payroll taxes. The premium is limited to those with incomes of less than $125,000 for singles, $250,000 for married filing jointly. The loss of the job must have occurred between Sept. 1, 2008 and Dec. 31, 2009. For those who lost their jobs after Sept. 1, 2008, and declined COBRA coverage, they have another chance to benefit from the new provision. Act § 3001, Title III,

(b) Individual Tax Incentives

(i) Making Work Pay Credit. The Making Work Pay provisions allows a refundable credit against income tax in an amount equal to the lesser of 6.2 percent of earned income or $400 ($800 for married taxpayers filing jointly). The credit is retroactive to Jan. 1, 2009 and extends through 2010. The credit phases out above $75,000 ($150,000 on a joint return). The provision effectively offsets an individual's share of FICA payroll taxes for the first $6452 in earnings ($12,904 for married filing jointly). The credit applies to employers and self-employed individuals. Act § 1001, adding I.R.C. § 36A. The credit is not available to non-resident aliens, estates and trusts, and any individual who may be claimed as a dependent by another taxpayer. Id.

(ii) Economic Recovery Payment ($250). The 2009 Act provides for a one-time payment of $250 to individual on fixed incomes (e.g., social security recipients, railroad retirees, disabled veterans and retired government employees). The credit reduces the Making Work Pay credit to which the individual is entitled. The payment is to arrive within 120 days after the date of enactment (Feb. 17, 2009). Act §§ 2201, 2202, Title II.

(iii) Alternative Minimum Tax. The 2009 law raises the alternative minimum tax exemption levels for 2009 to $70,950 for joint filers and surviving spouses, up from $69,950 for 2008 and to $46,700 for singles and heads of households (up from $46,200). Act § 1012, amending I.R.C. § 55(d)(1).

(iv) First-Time Home Buyers. The 2009 law increases the current maximum 10 percent first-time home buyer tax credit from $7,500 to $8,000 and eliminates any required payment after 36 months in the home. The provision applies to purchases of a principal residence by a first-time home buyer after Dec. 31, 2008, and before Dec. 1, 2009. The phase-out limits beginning at $75,000 ($150,000 for joint filers) continue to apply to both credits. Act § 1006, amending I.R.C. § 36.

(v) New Car Deduction for Taxes. The 2009 bill allows an above the-line deduction for purchases of new (not used) vehicles on or after Feb. 17, 2009, for state and local sales taxes or excise taxes paid on the purchase. The deduction is limited by the portion of the tax attributable to the first $49,500 of the purchase price of any one vehicle and by an income phase-out beginning at $125,000 ($250,000 on a joint return). The deduction applies to domestic and foreign automobiles, SUVs, light trucks, motor homes and motorcycles, weighing not more than 8,500 pounds gross weight. Taxes on a lease agreement do not qualify. Act § 1008, adding I.R.C. § 164(a)(6).

(vi) Education Tax Credit. The HOPE education credit, renamed the American Opportunity Tax Credit, is increased from $1,800 to

$2,500 per year effective in 2009 and extended to four years of post-secondary education. The provision added course materials to qualifying expenses. The phase-out level is increased to $80,000 ($160,000 for joint filers). The credit is made 40 percent refundable. Under the new credit, the maximum credit of $2,500 per year is allowed on $4,000 of qualifying payments (100 percent of the first $2,000, 25 percent of the next $2,000). Act § 1004, amending I.R.C. § 25A(i).

(vii) Child Tax Credit. The 2009 Act reduces the $8,500 income threshold for 2009 and 2010 to $3,000 (in 2008, taxpayers were allowed a refundable credit equal to 15 percent of their earned income in excess of $8,500 up to the child credit amount). Act § 1003, amending I.R.C. § 24(d)(4).

(viii) Earned Income Credit. The 2009 law increases the earned income credit for 2009 and 2010 to 45 percent of the first $12,570 of earned income for taxpayers with three or more qualifying children. The phase-out is adjusted upward for joint filers to eliminate any marriage penalty. Act § 1002, amending I.R.C. § 32(b).

(ix) Unemployment Compensation. The 2009 law temporarily excludes up to $2,400 in unemployment compensation from a recipient's gross income for taxable years beginning in 2009 only. Act § 1007, amending I.R.C. § 85(e).

(x) Transportation Benefits. The 2009 Act increases the current $120 per month income exclusion for transit passes and van pooling to $230 per month (commencing in March of 2009 and running through 2010 with an inflation adjustment for 2010). Act § 1151, amending I.R.C. § 132(f)(2).

(xi) Qualified Tuition Programs. The 2009 law allows, for 2009 and 2010, the use of tax-free distributions from qualified tuition programs to pay for computers and computer technology, including internet access. The provision allows other family members to use the technology without allocation so long as the student uses the technology. Act § 1005, amending I.R.C. § 529(e)(3)(A.

(c) Energy Provisions

(i) Residential Energy Property Credit. The 2008 legislation increases the I.R.C. § 25C residential energy property tax credit from 10 percent to 30 percent, raises the maximum cap to an aggregate amount of $1,500 for 2009 and 2010 installations, eliminates the $500 lifetime cap along with other minor changes. The changes are effective for property placed in service after Dec. 31, 2008, and before Jan. 1, 2011. Pre-2008 credits are not counted toward the $1,500 maximum. Act § 1121, amending I.R.C. § 25C. Improvements eligible for the Section 25C credit include insulation material; exterior windows, including

skylights; exterior doors; central air conditioners; natural gas, propane or oil water heaters or furnaces; hot water boilers; electric heat pump water heaters; some metal roofs; stoves using renewable plant-derived fuels and advanced main circulating fans. Id.

(ii) Residential Energy Efficient Property Credit. The 2009 Act removes the individual dollar caps under the I.R.C. § 25D residential energy efficient property credit for solar hot water property, geothermal heat pumps and wind energy property. A $500 credit cap is placed on qualified fuel cell property expenditures per half kilowatt of capacity. Act § 1122, amending I.R.C. § 25D(b).

(iii) Alternative Fuel Pump Tax Credit. The 2009 law increases the credit for alternative fuel vehicle refueling property for commercial and retail refueling stations in 2009 and 2010. The credit is increased from 30 percent to 50 percent and the cap is raised from $30,000 to $50,000. For individuals, the credit is also increased to 50 percent but the amount is capped at $2,000. For hydrogen refueling property, the credit is capped at $200,000. Act § 1123, amending I.R.C. § 30C(e)(6).

(iv) Renewable Electricity Production Credit. The 2009 Act extends the credit for electricity produced from renewable sources (such as wind) through 2013 for wind facilities in terms of the placed-in-service dates for qualified facilities. Act § 1101, amending I.R.C. § 45.

(v) Plug-In Electric Vehicles. The 2009 bill modifies the credit for plug-in electric vehicles (base amount of $2,500) with the credit reduced once the manufacturer reaches its 200,000th sale. Separate treatment is allowed for low-speed vehicles. Act §§ 1141-1144, amending I.R.C. §§ 30, 30D. A vehicle eligible for the plug-in credit is not eligible for the qualified hybrid vehicle credit under I.R.C. § 30B.

(vi) Increase in the Debt Limit. The 2009 legislation raises the U.S. debt limit to $12,104,000,000,000. Act § 1604, Title III, amending 31 U.S.C. § 3101(b).

E. Major Tax Proposals in President's FY 2010 budget.

The Congressional Research Service (CRS) has issued a concise overview of the major tax proposals in President's FY 2010 budget proposal. The overview summarizes each tax-related proposal and, in a table, compares the Administration's cost estimate for each proposal with the Joint Committee on Taxation's cost estimate. According to the CRS, the tax proposals in the budget would cost $2.8 trillion over the next 10 years, with most of the revenue losses stemming from making most of the 2001-2003 tax cuts permanent (with the exception of certain provisions affecting high-income individuals) and extending or

making permanent other expiring provisions, including the alternative minimum tax (AMT) revision. It also includes provisions making permanent some of the middle and lower income tax provisions in the 2009 stimulus package, restricting the benefits of itemized deductions, and making a number of revisions in business taxes, which would increase revenues. The business changes include repealing the LIFO method of accounting for inventories, reinstating superfund taxes, taxing carried interest as ordinary income, reforming the U.S. international tax system with 11 changes, and eliminating preferential tax rules for oil and gas companies. On the plus side, business changes in the President's budget include making the research credit permanent, and allowing more businesses to use a longer net operating loss carry back.

F. Health Reform Proposals

1. Senate Finance Committee

The Senate Finance Committee released a series of papers laying out options for health reform. While not a formal proposal, these papers offer a framework for achieving health reform goals and present the range of options the Committee will consider as it works to draft health reform legislation. Require all individuals to have health insurance. Create a Health Insurance Exchange through which individuals and small businesses can purchase health coverage, with subsidies available to individuals/families with incomes between 100 and 400% of the federal poverty level. Impose new regulations on the non-group and small group insurance markets. Expand Medicaid and CHIP and offer a temporary Medicare buy-in for the pre-Medicare population

2. Senate HELP Committee Affordable Health Choices Act

Require all individuals to have health insurance. Create state based American Health Benefit Gateways through which individuals and small businesses can purchase health coverage, with subsidies available to individuals/families with incomes up to 400% of the federal poverty level. Impose new regulations on the individual and small group insurance markets. Expand Medicaid to all individuals with incomes up to 150% of the poverty level.

3. House Tri-Committee America's Affordable Health Choices Act of 2009

Require all individuals to have health insurance. Create a Health Insurance Exchange through which individuals and employers can purchase health coverage, with premium and cost-sharing credits available to individuals/families with incomes up to 400% of the federal poverty level (or $73,240 for a family of three in 2009). Require employers to provide coverage to employees or pay into a Health Insurance Exchange Trust Fund, with exceptions for certain small employers, and provide certain small employers a credit to offset the costs of providing coverage. Impose new regulations on plans participating in the Exchange

and in the small group insurance market. Expand Medicaid to 133% of the poverty level.

4. President Obama Principles for Health Reform

President Obama outlined eight principles for health care reform in his FY 2010 Budget overview. The President has indicated that comprehensive health reform should:

- Reduce long-term growth of health care costs for businesses and government.
- Protect families from bankruptcy or debt because of health care costs.
- Guarantee choice of doctors and health plans.
- Invest in prevention and wellness.
- Improve patient safety and quality care.
- Assure affordable, quality health coverage for all Americans.
- Maintain coverage when you change or lose your job.
- End barriers to coverage for people with pre-existing medical conditions.

5. Possible Revenue Raisers

II. MICHIGAN

A. Economic Climate

	Detroit	Rank*	100-metro average	U.S. average
Employment				
Change in employment from peak	-12.3 %	98	-2.7 %	-2.9 %
One-quarter change in employment	-3.0 %	100	-1.2 %	-1.5 %
Unemployment				
Unemployment rate	14.0 %	96	8.8 %	9.0 %
One-year percentage point change in unemployment rate	6.0 points	95	3.7 points	3.8 points
Gross metropolitan product (GMP)				
Change in GMP from peak	-10.1 %	100	NA†	-3.3 %
One-quarter change in GMP	-2.9 %	100	NA†	-1.6 %
Average wages				
One-quarter change in average wage	0.7 %	55	0.4 %	1.0 %
Housing prices				
One-year change in housing prices	-9.3 %	80	-6.9 %	-6.3 %
Real estate owned properties (REOs)				
REOs per 1,000 mortgageable properties	9.75	93	3.87	3.06

* For all indicators, a rank of 1 signifies the strongest-performing metro while a rank of 100 signifies the weakest-performing metro.
† Only the U.S. average is used for comparison due to an inflation adjustment method that makes a 100-metro average incomparable.

B. Business Incentives

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Main Purpose	Name	Eligible	Amount of Abatement
Address Cost Disadvantages			
	Industrial Facilities Tax Abatement *(PA 198 of 1974)*	Businesses engaging in manufacturing or another qualified activity that require renovations or new construction to update aging facilities and/or engage in high-tech activities	Exemption from ad valorem real and/or personal property taxes for a period of 1-12 years (as determined by the local government)
	Michigan Economic Growth Authority Tax Credits *(PA 24 of 1995)*	Businesses engaging in a qualified high-technology business (including film production after PA 87 of 2008) that propose to maintain or create the required amount of jobs in Michigan and certify that the proposed project would not occur absent the MEGA grant	Credit determined by the Michigan Economic Growth Authority (MEGA) according to a list of factors, including number of jobs created, wage level, economic impact, etc.; credit may not be certified for longer than 20 years.
MBT Incentives			
	The "Start-Up" Abatement *Section 415*	Must own/operate a "qualified start-up business," as certified by the Michigan Economic Development Corporation (MEDC) without business income for two consecutive tax years	Credit equal to the amount of taxes owed after the 2nd year, as well as any consecutive years after where business income is not greater than the tax liability on the year where no business income was earned; a credit may not be claimed for more than 5 years.
	"Early Stage Venture Investment Incentive" *Section 419*	Taxpayer must have been issued or transferred all or a portion of an early stage venture investment tax voucher certificate from the Michigan early stage venture investment corporation.	Early stage venture investment tax voucher may be applied to the taxpayer's MBT liability.
	MEGA Credit Extension *Section 431*	Taxpayer must have received an authorized business certificate by the Michigan Economic Growth Authority.	Refundable credit against tax imposed by this act that is determined by MEGA but is not to exceed the payroll by new or retained employees multiplied by the tax rate, renewable for a period of time not to exceed 20 years.
	SBT Credit Extension *Section 437*	Taxpayer must have unused credits, previously approved under PA 228, 1967 or must be able to claim credits under former PA 228, 1967, which can be applied for through the Michigan Economic Growth Authority.	Credit is equivalent to the existing balance of credits previously approved or 10% of the taxpayer's investment (paid or accrued) on a qualified property (or as determined by MEGA).
	Michigan Entrepreneurial Credit *Section 441*	Taxpayer must have no more than $25M in gross receipts, have transferred/created not less than 20 new jobs and a capital investment of at least $1.25M in the previous tax year, and must not be a retail establishment as defined in the standard industrial classification code, section 52-59 and 70.	Credit equal to 100% of the taxpayer's liability under the MBT attributable to increased employment and is valid for 3 years.
Revitalize Distressed Local Economies			
	Brownfield Tax Credits *(PA 381 of 1996)*	Property must be located in an approved Brownfield Redevelopment Authorize or "economic opportunity zone" or by owned by a land bank.	Credit good towards business tax liability; size of the credit is determined by the Michigan Economic Growth Authority (MEGA), but may be granted for up to 10% of a taxpayer's investment in brownfield assessment and remediation for up to 10 years.
	New Personal Property *(PA 329 of 1998)*	Businesses owning property located in distressed areas, designated by establishment of blighted districts by local government	Credit equal to 100% of property tax liability

Main Purpose	Name	Eligible	Amount of Abatement
	New Market Tax Credits *(federal credits)*	Banks, individuals and corporations that make investments in Community Development Entities for the purpose of attracting private investment to low-income communities	Credit is equal to a reduction in tax liability totaling 39% of amount of investment over a 7-year period
	Obsolete Property Rehabilitation Tax Abatement *(PA 146 of 2000)*	Property must be commercial or commercial housing and in an established OPRA district and be deemed obsolete by a community assessor	Credit freezes property's tax liability at the taxable value prior to rehabilitation for a period of 1-12 years (as determined by the local government)
	Renaissance Zones *(PA 376 of 1996)*	Eligible residents and business owners must not be "substantially" delinquent in state and local taxes (determined by taxing local unit) and be located in a Renaissance Zone (as established by the Michigan State Administrative Board)	Credit waives all business and resident site-specific state and local taxes (including city income tax, general property taxes, and personal income tax, among others for up to 15 years
MBT Incentives			
	Renaissance Zone Extension *Section 433*	Business must be located in and conducting business within a renaissance zone.	Credit is equal to the taxpayer's liability to the extent and duration indicated in the Michigan Renaissance Zone Act (PA 376, 1996)
Encourage Beneficial Behavior			
	Commercial Rehabilitation Tax Abatement *(PA 210 of 2005)*	Property must be intended for commercial (or multi-family residential) use, be located in a commercial rehabilitation district, and be deemed sufficiently obsolete by a community assessor	Credit freezes property's tax liability at the taxable value prior to rehabilitation for a period of 1-10 years (as determined by the local government)
	State Historic Preservation Tax Credit *(MBT Section 455 and Section 266 of PA 281 of 1967)*	Historic building, structure, site, open space, object, etc. (residential or commercial) located in a historic district undergoing historic preservation and/or restoration as approved by the State Historic Preservation office.	Credit good for up to 25% of Single Business or Income Tax liability for expenditures associated with restoration or rehabilitation
	Michigan NextEnergy Authority Credits *(PA 593 of 2002)*	Eligible property includes alternative energy systems/vehicles and personal property belonging to alternative energy technology businesses (or researching such technologies); eligible businesses include those solely involved in the research, development, or manufacture of alternative energy technology	Exemption from the property tax or credits towards the business tax.
	Water Pollution Control Credit *(PA 451, 37 of 1994)*	Facilities must be designed/operated primarily for the control, capture, and removal of industrial waste from water	Credit equal to 100% of property and sales tax liability
	Air Pollution Control Credit *(PA 451, 59 of 1994)*	Facilities must be designed/operated primarily to collect/dispose of air pollution that, if released, would be harmful to Michigan's public health and/or property	Credit equal to 100% of property and sales tax liability
MBT Incentives			
	"The R&D Incentive" *Section 405*	Qualify and owe taxes under the MBT	Credit equal to 1.9% of research and development expenses in Michigan in the tax year (not exceeding 75% of liability when combined with Section 403)
	"R&D Donation Credits" *Section 407*	Michigan Economic Growth Authority Approval; donation to a business engaged in R&D w fewer than 50 employees	Credit equal to 30% of taxpayer's eligible contribution to eligible business (not to exceed $300,000)

Main Purpose	Name	Eligible	Amount of Abatement
	"Higher Learning Donation Credits" *Section 421*	Taxpayer must not be subject to the income tax act of 1967 and must donate to eligible charities that support higher learning, including to public libraries, broadcasting stations, institutions of/supporting higher learning, and/or the Michigan Housing and Community Development Fund.	Credit equal to 50% of the amount of eligible charitable contributions made by the taxpayer during the tax year ; credit not to exceed 5% of taxpayer liability or $5000.00.
	"Cultural Institute Donation Credits" *Section 422*	Taxpayer must make charitable contributions in excess of $50,000.00 (in aggregate) to benefit an art, historical or zoological institute.	Credit against taxpayers MBT liability is equal to 50% of the amount of eligible charitable contribution in excess of $50,000.00, not to exceed $100,000 for any tax year.
	"Foundation Donation Credit" *Section 425*	Taxpayer must not have claimed a credit under Section 261 of the income tax act of 1967 and must have donated to an endowment fund of a community or education foundation	Credit equal to 50% of the taxpayer's contribution to the endowment fund, not to exceed 5% of the taxpayer's liability for the previous year or $5000.00.
	"Shelter Donation Credits" *Section 427*	Taxpayer must not have claimed a credit under Section 261 of the income tax act of 1967 and must have made a donation to an entity (which is tax-deductible according to the IRS) whose primary purpose is to provide overnight accommodation and/or food for the indigent.	Credit equal to 50% of the taxpayer's contribution to an eligible entity, not to exceed 5% of the taxpayer's liability for the previous year or $5000.00.
	NextEnergy Credit Extension *Section 429*	Taxpayer must be certified under the Michigan next energy authority act or be a qualified alternative energy entity.	Credit is equal to the amount the taxpayer's liability attributable to "qualified business activity" exceeds the baseline liability for that activity (for those certified under the Michigan next energy authority act) or a refundable credit equal to the taxpayer's qualified payroll amount (if alternative energy entity)
	Historic Rehabilitation Incentive *Section 435*	Taxpayer must have a certified rehabilitation plan for the rehabilitation of a historic resource	Credit worth 25% of eligible expenditures on the rehabilitation project.
	"Inventory Acquisition Incentive" *Section 445*	Taxpayer must be a new motor vehicle dealer.	Credit is equal to2% of the amount paid to acquire new motor vehicle inventory in the tax year, not to exceed $10,000.00 and capable of being carried forward to subsequent tax years.
Industrial Policy			
	Film Incentives (*PA 79 of 2008)*	Recipients must be deemed eligible by the Michigan Film Office as film production companies doing a project in Michigan.	Amends Income Tax legislation to offer a credit against income tax liability equal to 40% of direct expenditures (or 42% if filmed in a core community as defined in Section 2 of the OPRA Act), not to exceed liability for the tax year
MBT Incentives			
	Film Expenditure Incentives *Section 455*	Recipients must be deemed eligible by the Michigan Film Office as film production companies doing a project in Michigan.	Credit towards MBT liability equal to 40% of direct film expenditures (or 42% if filmed in a "core community" as defined in Section 2 of the OPRA act).
	Motorsport Complex Credit *Section 409*	Qualify and Owe taxes under MBT; engage in capital expenditures or renovation/construction between 2008 and 2013; own/operate a motorsports complex	Credit equal to the amount of renovation/construction etc., not to exceed 1700M of the taxpayer's liability

Main Purpose	Name	Eligible	Amount of Abatement
	Film Production Investment Incentives *Section 457*	Recipients must be deemed eligible by the Michigan Film Office as film production companies, and must invest/expend at least $250,000 for a qualified film/digital media infrastructure project in the state (after December 31, 2008).	Credit equal to 25% of the taxpayer's base investment (in the qualified media infrastructure project), not to exceed $20M in total credits allocated in any one tax year.
	"Stadium Owners Incentive" *Section 410*	Collectively or individually own/operate more than one facility/stadium utilized by at least 14,000 patrons for sporting events	Credit equal to 65% of taxpayer's liability (2008-2010), 45% of liability (2011), and 25% of liability (2012)
	"Industrial Personal Property Credits" *Section 413*	Qualify and owe taxes under the MBT; owns/operates and industrial facility, natural gas pipelines classified as "utility personal property" or personal property of a telephone company	Credit is refundable and is equal to 35% of taxes paid on industrial personal property, 23% of property taxes paid on telephone company personal property, or 10% of taxes paid on utility personal property (natural gas pipelines) levied after December 31, 2008
	"Steel Mill Incentive" *Section 439*	Taxpayer must consume low-grade hematite in an industrial or manufacturing process they engage in as their business activity.	Credit against MBT liability is equal to $1.00 per ton of low-grade hematite consumed in business activity and, though not refundable, credit may be carried over to future years for a maximum of 5 years.
	"Big-Box Store Incentive" *Section 447*	Taxpayer must maintain headquarters in the state, operate 17,000,000 sq. ft of enclosed retail space and 2,000,000 sq. ft of warehouse space in which all of the following are sold and 35% of sales can be attributed to: food products, health and beauty products, medications, libations, pet products, and carbonated beverages.	Credit against MBT liability equal to .535% of taxpayer's compensation in this state, not to exceed $4.5M.
	"The Little, Big-Box Store Incentive" *Section 449*	Taxpayer must maintain headquarters in the state, operate 2,500,000 sq. ft of enclosed retail space and 1,400,000 sq. ft of warehouse space in which all of the following are sold and 35% of sales can be attributed to: food products, health and beauty products, medications, libations, pet products, and carbonated beverages.	Credit against MBT liability equal to .125% of taxpayer's compensation in this state, not to exceed $300,000.00.

Source: AEG research of Michigan Statutes, February 2009
Note: Statutes can be amended without notice; policy summary is not intended as tax advice. Additionally, labels on incentive programs are descriptive and may not appear in the statutes.

C. Business Tax Credits Relating to Batteries for Motor Vehicles.

Michigan enacted several Michigan Business Tax (MBT) credits relating to high-powered batteries for motor vehicles. These include a plug-in traction battery pack credit; a vehicle research and development expenses credit; an advanced battery engineering credit; and an integrative cell manufacturing facility credit. (L. 2009, H6611 (P.A. 580), eff. 01/16/2009 .)

D. Tax Treatment of Wind Energy Systems. At its April 14, 2009 meeting, the Michigan State Tax Commission (STC) adopted a number of positions regarding the property tax treatment of wind energy systems. (STC memo—Wind energy, 04/15/2009).

E. Michigan Economic Development Corporation Loan Guidance

1. The Michigan Economic Development Corporation (MEDC) has allocated $32,000,000 in funding for its Michigan Supplier Diversification Fund (MSDF) and Michigan Collateral Support Program (MCSP) in order to assist Michigan businesses diversify into new growth industries.

2. Under the programs, the MEDC works with area banks to purchase up to 49.9% of a loan or provide cash collateral up to 49.9% of a loan, with a general cap of $500,000.

3. Eligible businesses include those in mining, manufacturing, research and development, wholesale and trade, film and digital media productions, office operations, and certain high technology businesses.

4. Further details can be found at:

a. http://ref.michiganadvantage.org/cm/attach/37FFAD3A-5093-4485-9D6D-DB089CD6278C/MCSP_fact_sheet.pdf; and

b. http://ref.michiganadvantage.org/cm/attach/514f5b55-47c3-40d8-8fc6-ebdf8f822aa0/MLPP_fact_sheet.pdf

F. Michigan Pre-Seed Capital Fund Micro Loan program

1. Michigan Pre-Seed Capital Fund Micro Loans range from $10,000 to $50,000.

2. Companies must meet the following criteria before applying for funding:

- Be located in Michigan
- Have the rights (ownership or license) to innovative technology, or be seeking a strong IP position
- Meet the definition of a small business (per the SBA)
- Funding is to be used for the development of a business that is focused on the commercialization of technology of interest to the 21st Century Jobs Fund
- Loans may not be made into a publicly held company, but may be utilized to spin technology out of a public company and establish a new private entity.
- Have potential for rapid growth with majority of future sales revenue outside the state

G. Streamlined sales tax agreement. On January 23, 2009, the Michigan Department of Treasury revised its certificate of Compliance with the Sales Tax Governing Board. The state also issued a revised Taxability Matrix with

the Board. (Streamlined Sales Tax Certificate of Compliance, 01/23/2009; Streamlined Sales Tax Taxability Matrix, 01/23/2009.)

H. Late payment fees. Late payment fees paid to the taxpayer by its customers do not constitute interest and so the monies received through the imposition of late payment fees is properly included in the taxpayer's tax base or gross receipts for purposes of determining its Single Business Tax (SBT) liability for the years in dispute. (Michigan Bell Telephone Co. v. Department of Treasury, Dkt. Nos. 279401; 279496, 01/29/2009 (unpublished)).

I. Purchase of a Partial Interest In an Aircraft Is Subject to Michigan Use Tax. The Michigan Court of Appeals has held that a taxpayer's purchase of a partial interest in an aircraft was a purchase of tangible personal property rather than of services, and so was subject to Michigan use tax. The tax applied even though the actual airplane purchased never entered Michigan because the taxpayer "used" its fractional ownership interest in the airplane in Michigan for purposes of the use tax law. (Fisher & Co. v. Department of Treasury, Mich. Ct. App., Dkt. Nos. 280476; 280498, 01/29/2009 .)

J. Capital acquisition deduction. In a Single Business Tax (SBT) dispute, the Department of Treasury could offset a refund for tax improperly collected on the gain from a casual property transfer by the amount of the unused capital acquisition deduction (CAD) granted for the same property. In a prior appeal to the appeals court, the taxpayer successfully argued that the Department wrongfully assessed a tax deficiency against it when it included the gain on real property transferred in lieu of foreclosure, because the transfer qualified as a casual transaction under Mich. Comp. Laws Ann. § 208.4(1) and the resulting gain should not have been included in the taxpayer's SBT base. On remand, the Department refused to agree to a final judgment, arguing that it should be permitted to offset the unused CAD granted for the same property against the total refund. Under the law of the case doctrine, the Court of Claims had to treat the transfer as a casual transaction, but the Court of Claims was not bound to hold that the CAD recapture provisions of the SBT did not apply to a property that is ultimately transferred under a casual transaction. The provisions of Mich. Comp. Laws Ann. § 208.23b(a) do not suggest that the adjustments for CAD recapture do not apply to transfers that qualify as a casual transaction. Finally, the taxpayer did experience a CAD triggering event—although the taxpayer did not receive cash, it did receive a benefit since the taxpayer was liable for a debt of $12,964,083 on a property with an adjusted basis of $8,251,603. By avoiding a foreclosure, the taxpayer reduced its overall liability and saved the expenses associated with foreclosure, despite the fact that the taxpayer lost its sole asset and went out of business. (Craig Manske, et al. v. Department of Treasury, Mich. Ct. App., Dkt. No. 281988, 02/17/2009 .)

K. Low-profit LLCs.

1. L. 2009, S1445 (P.A. 566), effective 01/16/2009, allows the creation of low-profit limited liability companies (LLCs). The bill defines a low-profit

LLC as an LLC that has included in its articles of organization a purpose that meets, and that at all times conducts its activities to meet, all of the following requirements: (1) The LLC significantly furthers the accomplishment of one or more charitable or educational purposes described in Internal Revenue Code Sec. 170(c)(2)(b) and would not have been formed except to accomplish those charitable or educational purposes. (2) The production of income or appreciation of property is not a significant purpose of the LLC. However, in the absence of other factors, the fact that an LLC produces significant income or capital appreciation is not conclusive evidence of a significant purpose involving the production of income or the appreciation of property. (3) The purposes of the LLC do not include accomplishing one or more political or legislative purposes described in Internal Revenue Code Sec. 170(c)(2)(d) .

2. L. 2009, S1446 (P.A. 567), effective 01/16/2009, requires that the name of a low-profit limited liability company (LLC) contain the words "low-profit limited liability company" or the abbreviation "L.3.C" with or without periods or other punctuation. The bill also allows the Attorney General to bring an action for dissolution if the LLC is a low-profit LLC that ceases to meet any of the requirements for such an entity and, for 60 days after it ceased to meet those requirements, fails to file a certificate of amendment amending its name to conform with the naming requirements for an LLC.

L. Shareholders and officers. The Department of Treasury has clarified the confusion that arises when filling out 2008 Michigan Business Tax Form 4577, Schedule of Shareholders and Officers, column F, percentage of stock with attribution. Form 4577 Instructions state the following. "Column F: Enter the percentage of outstanding stock each shareholder owns, including attribution of ownership from family members under Internal Revenue Code Sec. 318(a)(1) . If no attribution exists, enter the percentage from column E in column G and leave column F blank." The Department explained that Column F should be filled out only if and when attribution exists. (Form 4577, 2008 Michigan Business Tax Schedule of Shareholders and Officers, 03/01/2009.)

M. Taxpayers with no tax due. The Department of Treasury has issued a notice reminding taxpayers that there is no Michigan Business Tax form comparable to the Single Business Tax Form C-8030. Under the former SBT, a taxpayer who was not required to file an SBT return was required to file a C-8030 Notice of No SBT Return Required. Under the Michigan Business Tax, a taxpayer with apportioned or allocated gross receipts less than $350,000 is not required to file a return. It is not necessary to file a notice to the Department that an MBT return will not be filed. (Notice, 03/01/2009.)

N. Estimated tax calculation. Public Act 8 of 2009, effective retroactive for tax years beginning after 12/31/2007, amends the Michigan Business Tax to allow a taxpayer that calculates and pays estimated payments for federal income tax purposes under Internal Revenue Code Sec. 6655(e) , to use the same methodology as used to calculate the annualized income installment or the adjusted

seasonal installment, whichever is used as the basis for the federal estimated payment, to calculate the estimated MBT payments required each quarter. A penalty for underpayment of an estimated MBT will not be assessed for a tax year that ends before December 1, 2009 if the taxpayer paid 75% of the tax due for the tax year.

O. Michigan Accepting Online Payment of Business Taxes. The Michigan Department of Treasury has announced that electronic funds transfer (EFT) payments for select business taxes can now be made online for ACH Debit filers. The existing touch tone payment process will continue to be available. (On-line payments for business taxes now available, 04/27/2009; Electronic funds transfer payments, 04/24/2009 .)

P. Interest Rate on Tax Underpayments and Overpayments for Second Half of 2009. The Michigan Department of Treasury has set the interest rate applicable to underpayments and overpayments of Michigan taxes at 4.7% for the period starting on July 1, 2009 and ending on December 31, 2009. The interest rate also applies to excessive refund claims during that period. The announced rate is a decrease from the 6% interest rate that applies during the period January 1, 2009 through June 30, 2009. The interest rate is set at one percentage point above the "adjusted prime rate" charged by three commercial banks to large businesses and it is adjusted every six months. (Michigan Revenue Administrative Bulletin 2009-4, 05/04/2009 .)

Q. Single Member LLC Was Not Required to File As Disregarded Entity. A single member limited liability company (LLC) that had elected to be a disregarded entity for federal tax purposes was not required to also file as a disregarded entity for Michigan Single Business Tax Purposes. Therefore, the LLC could file a separate SBT return, and the Department could not require it to submit its income, deductions, credits, assets and liabilities with its corporate parent. (Kmart Michigan Property Services, LLC v. Department of Treasury, Mich. Ct. App., Dkt. No. 282058, 05/12/2009.)

R. Rental receipts included in sales factor. A taxpayer's rental receipts from residential apartment buildings and complexes were properly included in the sales factor of the taxpayer's Single Business Tax apportionment formula. The taxpayer was a Delaware limited partnership, which was in the business of owning and operating residential apartment buildings and complexes, both in Michigan and in other states. For purposes of the sales factor Mich. Comp. Laws Ann. § 208.7(1) clearly provides that "sales" includes gross receipts arising from consideration for performance of services. Accordingly, included as a portion of "sales" are the performance of services, which constitute business activities under the SBT. Therefore, rental receipts from transferring possession of real property are included as part of the sales factor. The taxpayer was unsuccessful in arguing that since the SBT taxes it on the depreciation of its apartment buildings and complexes, a tax on rental revenues would subject it to a double tax. The taxpayer was allowed a full deduction for the cost of the asset in the year of acquisition under Mich. Comp.

Laws Ann. § 208.23 . In return, the taxpayer was expected to make an adjustment to its tax base in subsequent years to reflect the depreciation for that year. (Home Properties LP v. Department of Treasury, Mich. Ct. App., Dkt. No. 280939, 06/16/2009 (unpublished)).

S. **Property tax cap.** The General Property Tax Act requires that the taxable value of real property must be uncapped when a "transfer of ownership" occurs, which include transfers by will to the deceased owner's devisees or by intestate succession to the deceased owner's heirs. Title to a decedent's real property passes at the time of his or her death, whether by will or by intestate succession. If however the land that passes at the time of death is, at that time, subject to a "conservation easement" as defined by Mich. Comp. Laws Ann. § 324.2140 or is eligible for a deduction as a "qualified conservation contribution" under Internal Revenue Code Sec. 170(h) , that transfer of land, but not buildings or structures located on the land, is exempt from uncapping. But a "conservation easement" or a deduction for a "qualified conservation contribution" that is not created until after the death of a property owner will not avoid uncapping of the property' taxable value for the transfer that occurred at death. Finally, qualified agricultural property is exempt from taxes levied for school operating purposes under Mich. Comp. Laws Ann. § 211.7ee and a transfer of such property is exempt from the uncapping of its taxable value under Mich. Comp. Laws Ann. § 211.27a(7)(n) . (Attorney General Opinion, 7233 , 06/16/2009.)

T. **Audit sampling procedures.** The Department of Treasury may use the following sampling methods in sales and use tax audits: electronic statistical sampling; manual random sampling; and judgmental block sampling. When electronic records are available, statistical sampling procedures may be applied through use of the Department's statistical sampling software. The auditor may use detail audit procedures and review all electronic records for the entire audit period, if the auditor determines this to be more efficient than using electronic statistical sampling. When electronic records are not available, manual random sampling may be used. If the auditor determines that manual random sampling cannot be used effectively, a detailed review of the records can be made with supervisory approval. A judgmental block sample is a non-random selection from a population from which a conclusion is drawn. A block sample may be used where the auditor determines it to be the most efficient and cost effective. (Michigan Internal Policy Directive 2009-2, 06/22/2009)

U. **Condominium common areas.** The Tax Tribunal court erred when it agreed with the city that a portion of a condominium project that was vacant land designated in the master deed as "general common element and convertible area" could be taxed separately. The taxpayer filed a master deed that included a reservation of development rights, by which the taxpayer retained an unconditional ability to withdraw lands from the project and develop them into a wholly separate project simply by amending the master deed. Under the Michigan Condominium Act, a condominium project consists of "units" and "common elements" only. Any part of the project that is not a unit must be a common element. The Act further

provides that each unit is assessed for property taxes and special assessments for its individual value and then the value of the common areas, or "common elements," is prorated by the value of each unit and added to the unit's tax bill. Although a developer may retain rights to withdraw or develop land within the project, until it records an amended master deed the land remains part of the project and under Mich. Comp. Laws Ann. § 559.231 , no part of the project is taxed separately from the units. Under the Michigan Condominium Act, the Tax Tribunal has no authority to tax any part of a condominium project separately from the units unless that part has been withdrawn according to the procedures set forth in the Act. (Richmond Street, LLC v. City of Walker, Mich. Ct. App. Dkt. No. 286454, 07/14/2009 (unpublished))

V. S corporation status under SBT. The term "corporation" as used in Mich. Comp. Laws Ann. § 208.3(3) of the former Single Business Tax (SBT) includes S corporations, so the taxpayer could not exclude the gain from a one time asset sale as a "casual transaction." Under the SBT, persons "other than a corporation" and a partnership can exclude "casual transactions"—a transaction other than in the ordinary course of repeated and successive transactions of a like character—from their tax bases because the computation of their business incomes does not include, by definition, "casual transactions." A corporation is not entitled to the casual transaction exclusion because its business income is determined by its federal taxable income and not by its business activity. While the SBT does not define the word "corporation," given the legislature's choice not to parse or further define the term, the court held that the term as used in Mich. Comp. Laws Ann. § 208.3(3) encompasses all types of corporations, including S corporations. Finally the appeals court found that because the statute is clear and unambiguous, and the taxpayer is ineligible for the casual transaction exclusion, the trial court's finding that a negligence penalty was unlawful was vacated and remanded for a new hearing. (TMW Enterprises Inc. v. Department of Treasury, Mich. Ct. App., Dkt. No. 284446, 07/28/2009)

W. SBT treatment of LLC. A limited liability company (LLC) is not treated as a corporation for purposes of calculating the former Single Business Tax's small business tax credit and so the income limitations under Mich. Comp. Laws Ann. § 208.36(2) did not disqualify the LLC from claiming the credit. Under Mich. Comp. Laws Ann. § 208.36(2)(b)(i), a corporation whose officers earned more than $115,000 during the taxable year is not entitled to a small business tax credit. In the present case, instead of electing to be classified as a disregarded entity, the taxpayer elected to be classified as an association, and under federal tax law, an association is a corporation. Under Kmart Michigan Prop Services, LLC v Department of Treasury, Mich. Ct. App., Dkt. No. 282058, 05/12/2009, how an entity elects to be classified under the federal "check-the-box" system does not determine how it will be classified for SBT purposes. The taxpayer is an LLC, and under Michigan law LLCs are not corporations. Business entities such as the taxpayer that are neither a corporation nor a partnership should not be required to elect a classification inconsistent with its organization under state law. (Alliance Obstetrics

& Gynecology, PLC v. Department of Treasury, Mich. Ct. App., Dkt. No. 280125, 08/04/2009)

X. Allocation of attorney billings. A law firm, in which its attorneys billed their clients in 15-minute intervals, properly apportioned every 15-minute interval that was billed in Michigan to Michigan for purposes of the former Single Business Tax while apportioning every 15-minute interval that was billed outside of Michigan to the state the service was performed in. The law firm had its headquarters and maintained offices in Michigan, and provided legal services to clients inside Michigan and to clients in other states. The legislature specifically authorized the taxing of services performed wholly within the state and aggregation and apportionment of services that were partially performed within and outside of the state. The record did not provide a factual basis to find that the income received by the law firm for the out of state billings were in fact the product of work that was performed partially within the state and partially outside of it. The court rejected the Department of Treasury's argument that because the attorneys hold Michigan licensure and because the firm has significant offices within the state, it must be presumed that the contract for services was entered into in Michigan. The court found that neither the mere existence of the law firm, nor membership in the State Bar in Michigan, nor the contact with the client via phone, fax or email in Michigan generates the law firm's income. Instead, it is the work performed on the client's behalf that generates the income and because each quantum of work performed by the law form's attorneys was a distinct service, the income was properly apportioned by the law firm. Because the trial court properly found that the tax payment was improperly assessed and collected, the Department was required to refund the entire payment, plus interest. (Honigman Miller Schwartz and Cohn LLP v. Department of Treasury, Mich. Ct. App., Dkt. No. 282768, 07/30/2009 (unpublished))

Y. Interest payments by subsidiaries. Interest payments on loans obtained by the taxpayer on behalf of its subsidiaries should have been included in the Single Business Tax base of the subsidiaries and not the taxpayer, because the subsidiaries were responsible for reimbursing the taxpayer for the loan payment amounts. (Aramark Service, Inc. v. Department of Treasury, Mich. Ct. App., Dkt. No. 284267, 08/11/2009 (unpublished))

Z. Business loss—CAD. A taxpayer who was a 99% limited partner in a limited partnership was entitled to a business loss deduction (BLD) against the former Single Business Tax on the transfer of assets from the partnership to the taxpayer for losses incurred by the partnership before it discontinued operations in Michigan, but the taxpayer was not entitled to a capital acquisition deduction (CAD). Under the former SBT, a transferee should be able to take advantage of the transferor's BLD when the transferor ceases operations in Michigan and is no longer liable for the SBT. The plain language of Mich. Comp. Laws Ann. § 208.23b(h) does not provide for allowing a transferee to claim a BLD only if the transferor discontinues operations worldwide; accordingly, as used in Michigan

Revenue Administrative Bulletin 1992-3, 01/09/1992, (3)(E), "completely discontinues operations" should be read to refer only to Michigan operations. With regards to its claim for a CAD, the taxpayer did not prove that it expended any amount of money during the tax year to acquire the assets, but instead merely provided evidence that it acquired the assets through a non-liquidating distribution. Therefore, either the taxpayer owned the assets in full through its partnership interest prior to the non-liquidating distribution, or it did not prove that it paid any additional money for the assets, and therefore the incremental investment is zero. In either situation, the taxpayer is not entitled to a substantive CAD. (First Industrial, L.P. v. Department of Treasury, Mich. Ct. App., Dkt. No. 282742, 08/18/2009 (unpublished))

AA. FUTA Tax Increase. Employers pay federal unemployment tax ("FUTA") at the rate of 6.2% on the first $7,000 of each employee's annual wages. Employers that pay their state unemployment taxes in a timely manner receive a tax credit of 5.4%, making the net FUTA rate 0.8%. However, federal law provides that when a state has an outstanding federal loan for two or more years, the FUTA tax credit is reduced by 0.3% each until the outstanding balance of the loan is paid off. Because Michigan has had an outstanding federal loan for two years, employers must increase their FUTA rate by 0.3%. Thus, Michigan employers must pay FUTA at the rate of 1.1% for 2009, 1.4% for 2010, etc. until the loan is repaid. The only exceptions are for Indian Tribes, nonprofit organizations, and governmental entities. Although, FUTA tax is deposited quarterly, any liability due as a result of the credit reduction is required to be paid with the employer's 4th quarter deposit.

BB. Practice Pointer: MBT Apportionment. The MBT uses "sales" as the sole factor to apportion income and gross receipts between Michigan and non-Michigan sources. the definition of "sales" (MCLA 208.1115(1)) is separate from the definition of gross receipts (MCLA 208.1111(1)). While the definition of gross receipts is very broad, the definition of "sales" is more narrowly worded, and includes amounts received from: (a) the transfer of inventory, (b) the performance of services, and (c) the rental or licensing of property. In order to apportion sales to business activities outside of Michigan, two thresholds must be overcome. First, the taxpayer must have nexus with at least one other state. Under RAB 2008-4, § IV, a taxpayer has nexus with another state if the taxpayer has a physical presence in that state for more than one day per year, or if the taxpayer actively solicits sales in that state and has $350,000 or more of gross receipts sourced to that state. Second, it is necessary to determine where the sales are apportioned or "sourced." There are three potentially applicable sourcing rules under the MBT:

1. Service income is sourced to the state where the customer receives the benefit of the services. MCLA 208.1305(2)(a).

2. If the location where the customer receives the benefit of a sale cannot be determined, the sales are sourced to the customer's location. MCLA 208.1311.

3. Transportation services are apportioned to various states based on miles traveled in those states. MCLA 208.1305(11).

CC. Unitary Business Group Control Test. The Michigan Department of Treasury (Department) has circulated a draft RAB on the unitary business group control test. The RAB is intended to be effective retroactively to January 1, 2009. Under the draft RAB, a person is deemed to satisfy the control test when it owns or controls, directly or indirectly, more than 50% of the ownership interest with voting or comparable rights of another person. This greater than 50% requirement can be met by either (1) more than 50% of the total combined voting power, or (2) more than 50% of the total value of all ownership interests with voting or comparable rights.

Key provisions of indicate:

- The Department will consider all facts and circumstances in reviewing whether ownership interests owned by a person possess the necessary rights. The Department may consider the effect of express or implied agreements, including documents relating to proxies and options.
- Brother-sister groups of entities may satisfy the control test even if unrelated individuals own no more than 50% of each entity.
- An entity may qualify to be considered a member of more than one controlled group; if it also meets the relationship test with more than one group, an election must be made, with such election in effect until the unitary relationship is discontinued or by permission of the Department.
- Department interpretation of indirect ownership and attribution rules does not appear to be supported by statute and may be inconsistent with other MBT provisions.

On May 12, 2009, the Michigan Court of Appeals ruled in Kmart Michigan Property Services, LLC v Department of Treasury that the federal "check-the-box" regulations do not apply to the Michigan Single Business Tax Act. The Court rejected the Department's interpretation contained in RAB 1999-9. Leave to Appeal to the Michigan Supreme Court has been filed.

DD. Tax Provisions in Governor's Budget Proposal

1. $684.8 million in tax credit reductions and tax increases in the budget year that starts Oct. 1 and $662.9 million in the 2011 budget year.

2. Raise the cigarette tax by a quarter to $2.25 a pack.

3. Assess the sales tax on live entertainment, vending machine sales and service contracts such as landscaping.

4. A one percent tax on bottled water.

5. Cut the film credit by $7.8 million in 2010 and $19.8 million in 2011.

6. Other tax credits would be reduced by $130 million in the coming budget year and $156 million in 2011.

7. A liquor license fee increase.

8. A fee for allowing bars to stay open extended hours.

9. A freeze in the amount of personal exemptions from the state income tax.

10. The earned income tax credit to low-income households would be reduced by $83.3 million in 2010 and $88.8 million in 2011.

11. Phase-out of the 22 percent Michigan Business Tax surcharge over three years, beginning in 2011.

III. EMPLOYEE BENEFITS

A. Worker, Retiree, and Employer Recovery Act of 2008. The Worker, Retiree, and Employer Recovery Act of 2008 (the "Act") primarily makes technical corrections to the Pension Protection Act of 2006 (PPA), but also provides some relief from required minimum distribution rules and funding difficulties created by the current economic downturn and includes other provisions.

1. 2009 Required Minimum Distribution Relief

(a) Qualified retirement plans, including 40 l(k), 403(b) and 457 plans, and individual retirement accounts and annuities, are subject to annual required minimum distributions (RMDs) under Internal Revenue Code section 401 (a)(9). For employer-sponsored plans, employees must generally begin taking RMDs by the later of April 1 following the year in which the employee attains age 70 1/2 or April 1 following the year of retirement. For traditional IRAs, required minimum distributions must begin by April 1 following the year the IRA owner attains age 70 1/2. A RMD for a defined contribution plan or IRA is determined by taking the account balance of the plan or IRA as of December 31 of the previous year and dividing it by a number based on life expectancy of the plan participant or IRA

owner. If a RMD is not distributed by the required date, a 50% excise tax is imposed on the shortfall not distributed (sec. 4974).

(b) The current economic downturn has made RMDs particularly burdensome to older retirees in defined contribution plans and IRAs, because RMDs for 2008 are based on December 31, 2007 account balances. Since most account balances have significantly declined since that date, distributions for 2008 are likely to be unusually large relative to the current smaller account balances of many retirees. The Act provides relief for the 2009 calendar year for defined contribution employer-sponsored qualified retirement plans (including 403(b) plans and 457(b) plans maintained by a government employer) and IRAs by waiving the RMD requirement for 2009 for participants and beneficiaries. Persons who reach age 70-1/2 in 2009 will need to take their first RMD by December 31, 2010. Beneficiaries taking RMDs under the 5-year rule get an extra year to complete the payments.

(c) The Act does not waive RMDs for 2008, which are generally required by December 31, 2008. Although the Treasury Department and Internal Revenue Service had signaled that they may issue some form of RMD relief for 2008, the Treasury Department has informed Congress that they will not provide RMD relief for 2008.

(d) Due to the waiver in 2009, distributions that would otherwise be RMDs may become "eligible rollover distributions." The Act provides that the direct rollover notice, written explanation, and 20% income tax withholding requirements are not required to apply to distributions that would otherwise be RMDs in 2009. Rather, plans may choose whether or not offer to handle these as direct rollovers.

(e) Plans and IRAs are not required to be amended to qualify for the RMD relief until the 2011 plan year.

B. DB Funding Relief

1. "Smoothing" Relief. The IRS regulations on the valuation of pension plan assets under the new PPA rules did not continue the use of traditional asset smoothing methods, but only allowed averaging over a period up to 24 months. The Act would permit some asset smoothing by allowing plans to take expected earnings into account when determining the value of plan assets. This will result in somewhat smaller underfunded amounts and thus somewhat smaller required contributions. However, the smoothed value of assets still must be within 10% of actual fair market value of plan assets. Due to the dramatic market drop, plan sponsor groups asked Congress to widen this 10% "corridor" (prior law had a 20% corridor), but the Act does not do so.

2. Funding Target Transition Relief. Under the new PPA funding requirements, if a plan's assets are less than the funding target, the minimum

required contribution is the plan's normal cost plus an amortization of the plan's funding shortfall (the difference between the plan's funding target and the plan's assets). This new PPA funding target is phased-in over three years. Plans with a funding target at or below the set phase-in level for the year *(e.g.,* 92% for 2008, 94% for 2009; 96% for 2010) only need to fund up to that percentage limitation. Under the PPA rules, if the plan does not meet those phased-in funding target percentages, the plan would no longer be eligible for the phase-in period, and the employer would have to fund based on 100% of funding target. The Act would eliminate this so-called" cliff" effect of the transition rule, and instead generally require plans that were at least 90% funded in 2007 to fund up to the specified phased-in funding threshold for the 3 transition relief years. This will modestly reduce the contributions that some plan sponsors will have to make to their plans.

3. "Look Back" Period. Under the PPA funding rules, if a single-employer pension plan is less than 60% funded for a plan year (as certified by the plan's actuary), the plan sponsor is required to freeze all future benefit accruals for participants. The Act would temporarily allow plans to "look back" to the plan's funding status during the previous plan year to determine whether the plan was at least 60% funded for this purpose. This provision would apply for plan years beginning on or after October l, 2008 and before October l, 2009. This would mean that for plan years beginning January 1, 2009, a plan's funded status as of January 1, 2008 would be used for purposes of the rule.

4. "At-Risk" Status Transition Rule. Under the PPA funding rules, a plan generally is considered "at-risk" if it is (i) less than 80% funded using the general funding actuarial assumptions and (ii) less than 70% funded using special "at-risk" actuarial assumptions. The 80% test under the first prong is phased-in over four years *(i.e.,* 65% for 2008, 70% for 2009,75% for 2010, and 80% for 2011). The Act would also apply the phase-in transitional rule for determining "at-risk" status for purposes of the 70% funded test, which will keep some plans out of "at risk" status.

5. Lump Sum Payments. Under the PPA funding rules, plans that have a funding percentage less than 60%, or where the plan sponsor is in bankruptcy, are not permitted to make any lump-sum payments to participants. The Act provides that lump sum payments of $5,000 or less (or $1,000 if the plan lowered the threshold) can be paid even if an underfunded plan is otherwise prohibited from paying lump sums.

6. Target Normal Cost. The Act would require that plan sponsors include in the calculation of "target normal cost" the amount of plan-related expenses to be paid from plan assets during the year and mandatory employee contributions expected to be made during the year. This change applies to plan years beginning after December 31, 2008. Thus, the inclusion of plan-related expenses and mandatory employee contributions in target normal cost would not affect 2008 minimum contribution requirements.

7. *Multiemplover Plan Relief.* For plan years beginning on or after October I, 2008 and before October 1, 2009, the Act would permit multiemployer plan sponsors to elect to temporarily freeze their actuarial funding certification of endangered status, critical status or neither based on the previous year's funding level. The Act would also extend the current funding improvement or rehabilitation period for multiemployer plans in "endangered" or "critical" status and that have funding improvement and rehabilitation plans in place in 2008 and 2009 by 3 years, from 10 to 13 years. Seriously endangered plans can extend their funding improvement period to 18 years.

C. Other Provisions

1. Non-Spouse Rollovers. Under the PPA, individual non-spouse beneficiaries are now allowed to rollover amounts from a tax-qualified plan, 403(b) annuity or governmental 457 plan directly to an IRA beginning in 2007. The IRA is then treated as an inherited IRA for purposes of the minimum distribution rules. The IRS has interpreted the PPA provision as permitting, but not requiring, plans to provide such a rollover opportunity. The technical corrections in the Act clarified that tax-qualified plans are required to allow non-spouse rollovers and provide direct rollover notices (sec. 402(f)) as a condition of plan qualification. The correction is effective for plan years beginning after December 31, 2009.

2. Automatic Enrollment Programs. The PPA included several provisions intended to promote the use of automatic enrollment programs, including a provision allowing a participant in certain arrangements to make a "permissible withdrawal" of automatic contributions within 90 days of the date the first automatic contribution was made on behalf of the participant. One requirement to be an automatic enrollment arrangement eligible for this relief is that the plan has to invest contributions under the arrangement pursuant to the DOL qualified default investment alternative regulations in the absence of a specific investment election by the participant. This requirement would be eliminated. In addition, the permissible withdrawal rule would apply to SIMPLE IRAs and SARSEPs, and a permissible withdrawal would not be taken into account in applying the annual limit on elective deferrals (Code sec. 402(g)(l)), *i.e.,* $16,500 in 2009.

3. Combined Deduction Limit for Defined Benefit and Defined Contribution Plans. The PPA included certain changes designed to loosen the impact of the combined plan deduction limit for plan sponsors that maintain both defined benefit plans and defined contribution plans. Under one change, for plan years beginning in 2006 and 2007, the combined plan limit applies only to the extent contributions to one or more defined contribution plans do not exceed 6 percent of compensation of beneficiaries under the plans. In Notice 2007-28, the IRS determined that even if defined contribution plan contributions do not exceed 6 percent of compensation, the combined plan limit still applies to the defined benefit plan. The Act clarifies that the combined plan deduction limit will not apply to either

a sponsor's defined contribution or defined benefit plans if contributions to the defined contribution plans do not exceed 6 percent of compensation.

4. Effective Date of Cash Balance Vesting Requirement. In general, the PPA requires cash balance and other hybrid plans to provide for 100 percent vesting after 3 years of service. The Act provides that this requirement only applies with respect to participants with an hour of service after the applicable effective date for a plan. The proposed cash balance plan regulations issued in December 2007 provide that this 3-year vesting requirement applies to the entire benefit in the case of a plan that includes both a cash balance and traditional formula (e.g., a plan providing for the greater of the two formulas).

5. Roth Rollovers. The PPA permits rollovers from a tax-qualified plan, 403(b) annuity or governmental 457 plan directly to a Roth IRA, subject to the following conditions: (i) the rolled-over amount generally must be included in income (except to the extent it represents "basis"), and (ii) adjusted gross income limits are imposed on the ability to perform such rollovers in 2008 and 2009 (the limits do not apply in 2010). Under the PPA, these conditions technically apply even in the case of rollovers to Roth IRAs from designated Roth accounts in a 401(k) or 403(b) plan. The Act clarifies that these conditions do not apply to direct rollovers to a Roth IRA from a Roth 401(k) or Roth 403(b).

6. Extension of PFEA Amendment Date. The Act extends the deadline in the Pension Funding Equity Act of 2004, for amending a defined benefit plan to conform to certain temporary interest assumptions in calculating 2004 and 2005 lump sums for section 415 testing purposes from the end of the 2008 plan year to the end of the 2009 plan year. It also clarifies when the new mortality table may be used for this purpose.

D. Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART).

1. Amendments to Conform to HEART. There are at least two broad issues in HEART which will require plan amendments: the treatment of differential wage payments to employees in the military and benefits for employees who die or become disabled in the military. HEART requires plan amendments for these issues by the last day of the 2010 plan year (one year after the PPA amendment deadline). This delay will give the IRS an opportunity to provide guidance on some of the ambiguous issues surrounding HEART.

2. HEART and Final 415 Regulation Amendments. HEART overlaps the final 415 regulations in dealing with compensation. The final regulations state that post-severance payments to persons in the military are compensation for plan purposes only if the plan document so provides. In other words, the plan has the option whether or not to count post-severance military payments. The final regulations are effective for limitation years beginning after

June 30, 2007. HEART says that beginning in 2009: (a) active-duty members of the military who receive differential wage payments from their employer are deemed to still be in service, and (b) those payments are compensation for plan purposes. Thus, under HEART, most payments to persons in the military do not come under the post-severance compensation rules of the final 415 regulations. Thus, while the two issues overlap, they do not conflict. However, since an employer must count differential wage payments beginning in 2009, the employer may be more interested in counting them for prior years as well under the optional provisions of the final regulations. In any case, HEART does not require a different approach to final 415 regulation amendment and does not postpone the deadline for adopting that amendment.

3. HEART and PPA Amendments. HEART addresses one issue in the Pension Protection Act (PPA): Qualified Reservist Distributions (QRDs). To be eligible for a QRD under PPA, a reservist must have been called to active duty between September 11, 2001 and December 31, 2007. HEART removes the December 31, 2007 deadline. Thus, QRDs continue to be available.

E. Qualified Retirement Plan Determination Letter Submission Deadlines. The IRS is now accepting determination letter applications for Cycle D individually designed plans and pre-approved defined contribution plans. As detailed below, the deadlines for restating and submitting these plans to the IRS for a favorable determination letter are approaching.

1. Cycle D Individually Designed Plans' Submission Period Ends January 31, 2010. Effective February 1, 2009, the IRS began accepting determination letter applications for Remedial Amendment Period Cycle D individually designed plans. In general, Cycle D plans must be submitted for a determination letter before February 1, 2010 to rely on the extended period during which qualification amendments may be retroactively adopted. Cycle D plans include those sponsored by employers with tax identification numbers ending in a four or nine, as well as multiemployer plans. As an alternative to submitting a plan in Cycle D, the sponsor of a Cycle D individually designed plan whose plan year beginning on or after January 1, 2009 ends after January 31, 2010, may defer submission of its plan until Cycle E (February 1, 2010 through January 31, 2011).

2. Pre-Approved Defined Contribution Plans' Submission Period Ends April 30, 2010. Effective May 1, 2008, the IRS began accepting determination letter applications for pre-approved defined contribution plans. Employers using a pre-approved plan document, such as Reinhart's volume submitter document, to restate a defined contribution plan for the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and other changes in qualification requirements, must adopt the EGTRRA-approved plan document and, if applicable, submit it to the IRS for a favorable determination letter by April 30, 2010.

F. Employers Must Act by the Last Day of the 2009 Plan Year to Amend Tax-Qualified Plans Pursuant to the Pension Protection Act of 2006. The Pension Protection Act of 2006 made numerous changes to rules regarding employee benefit plans, including tax-qualified defined benefit and defined contribution plans. Although the changes took effect at various dates (and plans have been required to operationally comply with each change as of the specified effective date), amendments reflecting these changes generally do not have to be adopted until the last day of the plan's 2009 plan year (December 31, 2009 for calendar year plans). These amendments are referred to below as the "PPA amendments." In addition, employers that currently maintain an IRS pre-approved defined contribution plan (prototype or volume submitter plan) must be required to amend and restate that plan by no later than April 30, 2010 in order to maintain such plan's qualified status (referred to as the "EGTRRA restatement"). However, because the PPA amendments are due by the end of the 2009 plan year, some employers may want to adopt both the required IRS restatement and the PPA amendments by the end of the 2009 plan year.

G. New Optional Withholding Adjustment Procedure for Pension Plans. The Internal Revenue Service (IRS) issued Notice 1036-P (available at http://www.irs.gov/pub/irs-pdf/p15t.pdf) containing a new optional withholding adjustment procedure for 2009 pension plan payments to address potential under withholding. In February 2009, the IRS issued new withholding tables that reflect the Making Work Pay earned income tax credit adopted as part of the American Recovery and Reinvestment Act of 2009 (ARRA). Plan sponsors and employers were required to utilize the new withholding tables by April 1, 2009. However, pensioners without earned income are ineligible for the new tax credit. Therefore, the February 2009 withholding tables may result in under withholding for pensioners. According to the IRS, the new withholding calculation procedure in Notice 1036-P will make withholding more accurate for pensioners. Pension payors are not required to apply the new withholding adjustment procedure and instead may continue to use the February 2009 withholding tables. In addition, employers may want to contact any retiree who submitted a Form W-4P (Withholding Certificate for Pension or Annuity Payments) after the February 2009 tables became effective to request additional withholding, to determine if the retiree wants to continue the additional withholding or submit a new Form W-4P.

H. IRS Proposed Relief for Employers Sponsoring 401(k) Safe Harbor Plans with Nonelective Contributions. The IRS issued proposed regulations under Internal Revenue Code (the Code) sections 401(k) and 401(m) providing employers that cannot afford to make safe harbor nonelective contributions with an alternative to terminating their 401(k) plans. The regulations are proposed to be effective for amendments adopted after May 18, 2009. Employers may rely on the proposed regulations pending the issuance of final regulations. If the final regulations are more restrictive than the proposed regulations, the IRS states that the more restrictive provisions of the final regulations will not apply retroactively.

I. PBGC Reporting Relief for Small Plans' Missed Quarterly Contributions. ERISA section 4043 and underlying regulations require plan administrators of single employer defined benefit plans to notify the Pension Benefit Guaranty Corporation (PBGC) within 30 days after specified reportable events (*i.e.*, post event reporting), including the failure to make a required contribution. In past years, the PBGC automatically waived the reporting of missed quarterly contributions where the employer had 100 or fewer participants covered by its plans, or had between 100 and 500 participants covered by its plans and missed contributions to a plan that was well funded. As reported in Reinhart's April 2009 Employee Benefits Update, the PBGC announced earlier this year that it would not grant an automatic waiver for 2009 of the requirement to notify the PBGC of missed quarterly contributions. In response to practitioners' concerns, the PBGC issued Technical Update 09-3, waiving the reporting obligation or reducing the reporting burden for 2009 for certain small plans with missed quarterly contributions. In general, Technical Update 09-3 provides that if a required quarterly contribution for the 2009 plan year is not timely made to a plan, and the failure to make the contribution is not motivated by financial inability, the PBGC reporting requirement is waived if the plan has fewer than 25 participants for the prior plan year. If the plan has at least 25 but fewer than 100 participants for the prior plan year and the failure to make a contribution is not motivated by financial inability, the PBGC's reporting requirement will be satisfied if a simplified notice is filed with the PBGC by the due date of the reportable event report for the first missed quarterly contribution for the 2009 plan year.

J. Roth IRA Conversions. As part of the Tax Increase Prevention and Reconciliation Act enacted in 2006, the federal government is eliminating permanently, starting Jan. 1, 2010, the $100,000 income limit for Roth conversions, as well as the restriction on spouses who file separate tax returns. That should make it easier for people with higher incomes to invest through Roth accounts. The changes also should enable more retirees—who rolled over their holdings from 401(k)s and other workplace savings plans into IRAs—to convert to Roths. Of course, there's still the matter of taxes. When you convert assets from a traditional IRA or workplace plan to a Roth, you have to pay income tax on all pretax contributions and earnings included in the amount you convert. The law does provide some wiggle room, however: You can report the amount you convert in 2010 on your tax return for that year. Or, you can spread the amount converted equally across your 2011 and 2012 tax returns, paying any resulting tax in those years. For example, if you convert $50,000 next year and choose not to declare the conversion on your 2010 return, you must declare $25,000 on your tax return for 2011 and $25,000 on you return for 2012. The two-year option is a one-time offer for 2010 conversions.

K. Recharacterization of Roth conversions. The market free fall of 2008 was relentless. Many clients who did a Roth conversion last year have seen their account values decline, some drastically so. These clients now have a tax bill on value that they no longer have. Fortunately, though, in one of the great breaks

provided by the tax code, clients like Allen can recharacterize their Roth accounts and eliminate the tax liability on the lost account value. Simply stated, a Roth recharacterization is the process of undoing a Roth conversion by transferring the converted funds back to an IRA. Anyone can do a recharacterization for any reason. After the recharacterization, the funds are treated as if they never left the IRA. Now is the time to look at recharacterization opportunities for any client who converted plan or traditional IRA funds to a Roth in 2008 because the deadline to recharacterize those conversions is Oct. 15, 2009. The recharacterization must be done as a trustee-to-trustee transfer.

L. IRS Guidance on Employer-Owned Life Insurance Contracts. The IRS issued Notice 2009-48, providing guidance in the form of Q&As on employer owned life insurance contracts. The PPA added Code sections 101(j) and 6039I establishing income tax exclusion rules and reporting requirements applicable to an employer that is a direct or indirect beneficiary of a life insurance contract covering one or more of its employees. Code section 101(j)(2) provides exceptions to the income tax exclusion rules for certain employer-owned life insurance contracts when notice and consent requirements are satisfied. Those exceptions are based on either: (1) the insured's status as an employee at any time during the 12-month period before the insured's death or as a director, a highly compensated employee or highly compensated individual at the time the contract is issued; or (2) the extent to which death benefits are paid to (or used to purchase an equity interest in the applicable policyholder from) a family member, trust or estate of the insured employee. Code sections 101(j) and 6039I generally apply to life insurance contracts issued after August 17, 2006. Among other topics, Notice 2009-48 provides guidance on the notice and consent requirements for employer-owned life insurance contracts. To satisfy the notice and consent requirements, Notice 2009-48 provides that before the policy is issued, the employee must be given written notice explaining: (1) that the employer (or other applicable policyholder) intends to insure the employee's life; (2) that the employer (or other applicable policyholder) will be a beneficiary of any proceeds payable upon the death of the employee; and (3) the maximum face amount for which the employee could be insured at the time the contract was issued. In addition, the employee must provide written consent to being insured and acknowledge that the coverage may continue after he or she ends employment. Notice 2009-48 also provides additional guidance on IRS information reporting under Code section 6039I and Form 8925. The IRS's guidance in Notice 2009-48 is effective as of June 15, 2009. Notice 2009-48 provides that the IRS will not challenge a taxpayer who made a good faith effort to comply with Code section 101(j) based on a reasonable interpretation before June 15, 2009.

M. Recent IRS Guidance

1. Revenue Ruling 2009-30 provides guidance on how automatic enrollment in a § 401(k) plan can work when there is an escalator feature included. An escalator feature means that the amount of an employee's compensation that is

contributed to the plan, without the employee's affirmative election, is increased periodically according to the terms of the plan. Two situations are described, one involves a basic automatic contribution arrangement and the other involves an eligible automatic contribution arrangement described in § 414(w) of the Code. Revenue Ruling 2009-30 is part of the "Savings Initiative" guidance issued by the Service.

2. Revenue Ruling 2009-31 provides guidance on the tax consequences of an amendment to a tax-qualified retirement plan to permit annual contributions of an employee's unused paid time off under the employer's paid time off plan. A paid time off plan generally refers to a sick and vacation arrangement that provides for paid leave whether the leave is due to illness or incapacity. The amendment relates to a contribution (including a section 401(k) contribution) or cash out of the unused paid time off, determined as of the end of the plan year (December 31). Rev. Rul. 2009-31 is companion guidance to Rev. Rul. 2009-32 and is part of the "Savings Initiative" guidance issued by the Service.

3. Revenue Ruling 2009-32 provides guidance on the tax consequences of an amendment to a tax-qualified retirement plan to permit contributions for an employee's accumulated and unused paid time off under the employer's paid time off plan at a participant's termination of employment. A paid time off plan generally refers to a sick and vacation arrangement that provides for paid leave whether the leave is due to illness or incapacity. The amendment relates to a post-severance contribution (including a section 401(k) contribution) or cash out of the accumulated and unused paid time off. Rev. Rul. 2009-32 is companion guidance to Rev. Rul. 2009-31 and is part of the "Savings Initiative" guidance issued by the Service.

4. Notice 2009-65 provides two sample amendments that sponsors of § 401(k) plans can use to add automatic enrollment features to their plans. The first sample amendment can be used to add a basic automatic contribution arrangement with, if elected by an adopting employer, an escalation feature. The second sample amendment can be used to add an eligible automatic contribution arrangement ("EACA") as described in § 414(w) of the Code with, if elected by an adopting employer, an escalation feature. Final regulations under § 414(w) were published in the Federal Register on February 24, 2009 (74 F.R. 8200). Notice 2009-65, by providing sample amendments, facilitates the use of EACAs in § 401(k) plans. Notice 2009-65 is part of the "Savings Initiative" guidance issued by the Service.

5. Notice 2009-66 provides guidance to facilitate automatic enrollment in SIMPLE IRA plans, including questions and answers relating to the inclusion in a SIMPLE IRA plan of an automatic contribution arrangement. This notice also requests comments on whether the Department of the Treasury and the Service should issue guidance regarding SIMPLE IRA plans that include eligible automatic contribution arrangements under § 414(w).

6. Notice 2009-67 provides a sample amendment that can be used by a sponsor of a SIMPLE IRA Plan described in § 408(p) of the Code to add an automatic contribution arrangement to the plan. Only SIMPLE IRA plans that use a designated financial institution described in § 408(p)(7) can use the sample amendment. Notice 2009-67 is companion guidance to Notice 2009-66 and is part of the "Savings Initiative" guidance issued by the Service.

7. Notice 2009-68 contains two safe harbor explanations that may be provided to recipients of eligible rollover distributions from an employer plan in order to satisfy § 402(f) of the Code. The first safe harbor explanation applies to a distribution not from a designated Roth account, as described in § 402A. The second safe harbor explanation applies to a distribution from a designated Roth account. These safe harbor explanations update the safe harbor explanations that were published in Notice 2002-3, 2002-1 C.B. 289, to reflect changes in the law. Notice 2009-68 is part of the "Savings Initiative" guidance issued by the Service.

IV. ESTATE PLANNING

A. Federal Estate Tax Repeal.

1. Federal Estate Tax Update 2002-2010. The Economic Growth and Tax Relief Reconciliation Act of 2001 includes the repeal of federal estate taxes for people dying after December 31, 2009. Between January 1, 2002 and December 31, 2009, the current federal estate tax will gradually decrease as shown in the following table.

Year	Highest Estate and Gift Tax Rate	Amount Exempt from Estate Tax
2002	50%	$1 million
2003	49%	1 million
2004	48%	1.5 million
2005	47%	1.5 million
2006	46%	2 million
2007	45%	2 million
2008	45%	2 million
2009	45%	$.5 million
2010	Top Individual Rate (for gift tax only)	Unlimited - Taxes Repealed

It is very important to be aware that this repeal is temporary; the entire law "sunsets" (expires) after December 31, 2010. This means that the provisions of this 2001 Tax Act will no longer be effective on January 1, 2011 and the tax structure as

it existed in 2001 will take effect again (in 2011, federal estate tax will be assessed on property in excess of $1 million with a maximum tax rate of 55%.)

2. Federal Gift Tax. Congress did NOT repeal the federal gift tax, although it raised the lifetime gift tax exemption (the amount that may be passed without gift tax) to $1 million, effective in 2002. This means that a person could make a total of $1 million of gifts over his/her lifetime before owing any federal gift tax. Gifts of more than $1 million WILL be taxed, regardless of the exemption for transfers at death. Beginning in 2010, the gift tax rate will equal the highest individual income tax rate (currently scheduled to be 35% in 2010).

3. Basis of Inherited Property. "Step-up in basis" will continue until December 31, 2009. The "basis" of a piece of property is generally the purchase price of that property and is used to calculate taxable gain when property is sold. The greater the increase in value of property, the greater the taxable gain when sold. A "step-up in basis" means that the basis of inherited property increases to the value of the property on the date of death.

For the year 2010, "step-up" will be replaced by "carry-over basis" rules. Carry-over basis generally means the basis of inherited property remains the same as it was for the deceased owner; which potentially increases the amount of gain (and tax) when the property is sold. When property is inherited, the heir can choose to take a "step-up" in basis for only $1.3 million of the property. For any amount inherited over $1.3 million, the heir's basis will be the smaller of the deceased owner's basis or the date-of-death market value. The basis of property passing to a surviving spouse can be increased by an additional $3 million. Basis of property given to the decedent by someone other than his/her spouse within 3 years of death cannot be increased. Remember, in 2011, step-up in basis generally resumes as it existed prior to this Act, because all provisions of this tax act expire after December 31, 2010.

4. State Death Tax. Currently, there is a credit against federal estate taxes for death taxes paid to a state. This state death tax credit will be reduced from current levels as follows:

2002 - reduced by 25%
2003 - reduced by 50%
2004 - reduced by 75%
2005 - Completely Repealed

Beginning January 1, 2005, a deduction will be allowed for death taxes actually paid to any state or to the District of Columbia.

B. Current Prospects for the Estate Tax

1. Under the Obama plan detailed during the campaign, the estate tax would be locked in permanently at the rate and exemption levels that took effect this year. That would exempt estates of $3.5 million -- $7 million for couples -- from any taxation. The value of estates above that would be taxed at 45%. If the tax were returned to Clinton-era levels, it would exclude $1 million from taxation with the rest taxed at 55%.

2. In making their case for the restoration, Democrats contend that such a large additional tax break for the rich shouldn't go into force halfway through Mr. Obama's proposed economic-recovery package. They argue that the deficit is already in record territory, while their plan wouldn't have any impact on the economy since it would merely keep the estate-tax rate at its current level. Mr. Obama and his party also say that the affluent already have benefited handsomely from the Bush tax cuts.

3. Congress is likely this year to pass a one-year extension of the 2009 estate tax unless lawmakers alter the landscape by first enacting a statutory "pay as you go" budgeting law, John Buckley, chief tax counsel for House Ways and Means Committee Democrats, said September 2, 2009.

C. CBO Budget Options Include Several Estate Planning-Related Items.

In Congressional Budget Office, Budget Options, Volume 2: Health Care (Aug. 6, 2009), http://www.cbo.gov, the Congressional Budget Office evaluated the cost of several budget options to pay for health care reform. This discussion includes the following items that are related to estate planning:

1. limiting the income tax deduction for charitable contributions to contributions in excess of two percent of a taxpayer's adjusted gross income

2. limiting the income tax deduction for a charitable gift of appreciated property to the amount of the taxpayer's adjusted basis

3. allowing non-itemizers to deduct a certain amount of charitable deductions

4. eliminating the income tax exclusion for proceeds of employment-based life insurance

5. including investment income from life insurance and annuities in taxable income

6. modifying the estate and gift tax provisions of EGTRRA, which includes four options:

- Alternative one would reunify the estate and gift tax, set the exemption for the combined tax at $5 million starting in 2010, index that amount for inflation, set the tax rate equal to the top rate on capital gains (currently set for 15 percent in 2010 and 20 percent thereafter), retain the stepped-up basis for assets transferred from a decedent, and eliminate the deduction for state death taxes.
- Alternative two would reunify the estate and gift tax, make the same changes as Alternative one 1, except that instead of a single tax rate, the first $25 million of the taxable estate would be taxed at the top capital gains rate, and taxable transfers above $25 million would be taxed at 30 percent, and the $25 million threshold would be indexed for inflation.
- Alternative three would reunify the estate and gift tax, set the exemption at $3.5 million beginning in 2010, index that amount for inflation, set the tax rate at 45 percent, retain the stepped-up basis for assets transferred from a decedent, and retain the estate tax deduction for state death taxes.
- Alternative four would repeal the estate and GST taxes permanently in 2010, eliminating the 2011 reinstatement.

D. IRS Adopts New Procedures for Establishing Estate Tax Deferral and Requesting Bonds or Special Liens. On August 4, 2009, the IRS released SB/SE-05-0609-010, which updates its internal procedures for processing elections to defer of estate taxes on business interests under Section 6166 and requesting bonds or special liens. These internal guidelines discuss the standards that must be met to qualify for deferral of estate taxes under Section 6166, what happens if the estate qualifies for a Section 6166 election and fails to pay or underpays the non-deferred tax, the operation of the interest-only period, late payments or non-payments of interest during the interest-only period, late or non-payment of principal after the interest-only period, how Section 6166 elections apply to examined returns where there is an unagreed deferral term and agreed tax or an unagreed deferral term and unagreed tax, advisory bond/lien determinations, and monitoring accounts during the deferral period.

E. IRS Internal Memo Discusses Use of Bonds to Secure Deferred Estate Taxes. In a recently released internal program manager technical assistance memo, POSTS-113182-07 (Feb. 25, 2009) (not a precedent), the IRS addressed several questions regarding bonds or liens required to secure the estate tax attributable to a closely held business and payable in installments under Code Sec. 6166. The IRS stated the following: (1) the required bond amount can include

interest on the deferred taxes, if the interest does not exceed the amount of deferred taxes; (2) the Appeals office can compromise the amount of the bond or lien, based on the facts and circumstances of that particular situation; (3) the Office of Appeals can determine values for the lien property and the types of property that are adequate security; (4) how the appeals office determination of the value of property used as security should be made; (5) the net equity in pledged or mortgaged property may be used for the Code Sec. 6324A lien; (6) how the Appeals Office should issue a determination that it has favorably settled a nondocketed case.

F. IRS Announces Plan to Set Deadline for Reporting Gifts and Bequests From Covered Expatriates. In Ann. 2009-57, 2009-29 IRB 158 (July 20, 2009), the IRS announced that it will issue guidelines for reporting gifts and bequests from covered expatriates that will be taxable under Code Sec. 2801.

G. Split-Dollar Life Insurance. In PLR 200925003 (June 19, 2009), the IRS stated that a pre-September 17, 2003, collateral assignment split-dollar life insurance agreement among a grantor, an irrevocable trust, and a partnership would produce no adverse income, gift, or estate tax consequences, if the trust pays for the life insurance benefit it receives under the agreement at least an amount equal to that prescribed under Rev Rul 64-328, 1964-2 CB 11 and Rev Rul 66-110, 1966-1 CB 12 and Notice 2002-8, 2002-1 CB 398 . The IRS also stated that, if the grantor disposes of the ownership of 100% of the stock of the corporate general partner, then the grantor will not be deemed to hold incidents of ownership over the policy and the proceeds of the policy payable to the trust will not be included in grantor's gross estate under Code Sec. 2042(2).

H. Treasury Legislative Proposal Would Require Consistent Basis Reporting, Reduced Valuation Discounts, and 10-Year Minimum Term for GRATs. The Treasury's "General Explanation of the Administration's Fiscal Year 2010 Revenue Proposals" (May 11, 2009) includes estate and gift tax-related proposals to:

- require that the adjusted basis of property received by gift or from a decedent be reported consistently with the values used for transfer tax purposes;
- greatly expand the scope of Code Sec. 2704(b) , so that other restrictions on the use or control of the assets in a partnership or other family-owned entity would be ignored in valuing such assets for estate or gift tax purposes; and
- require that all GRATs have a term of not less than ten years, effective for trusts created after the date of enactment.

I. Sale of a Life Insurance Policy. In two revenue rulings, the IRS reviewed the income tax consequences to the seller and buyer of a life insurance policy owned by the insured (Rev Rul 2009-13, 2009-21 IRB (May 26, 2009) and Rev. Rul. 2009-14, 2009-21 IRB (May 26, 2009)). In Rev. Rul. 2009-13, the IRS posed three situations involving the sale (or surrender) of a policy by the insured. Generally, the IRS stated that (1) an insured policy owner who surrenders the policy for its cash surrender value generally recognizes as ordinary income, under Section 72, the excess of the cash surrender value over the total premiums paid by the insured; (2) an insured policy owner who sells a cash value policy to an unrelated third-party generally recognizes the difference between the amount paid for the policy and the insured's basis in the policy, which is equal to the premiums paid, less the cost of the pure life insurance protection during the insured's ownership of the policy. The recognized gain is ordinary income, to the extent that a surrender of the policy would produce ordinary income (generally, the cash surrender value less the aggregate premiums), and the balance of the gain is a capital gain; and (3) an insured policy owner who sells a term policy to an unrelated third-party generally recognizes the difference between the amount paid for the policy and the insured's basis in the policy, which is equal to the unexpired portion of the last premium, and that this amount is entirely capital gain. The IRS stated "the holdings of this revenue ruling with respect to Situations 2 and 3 will not be applied adversely to sales occurring before August 26, 2009." In Rev. Rul. 2009-14, the IRS posed three situations regarding the buyer of the policy from the insured owner. The IRS stated that (1) the death benefit received by the unrelated purchaser of a life insurance policy from the insured owner will be taxable as ordinary income, above the amount paid to buy the policy and the premiums paid to maintain the policy, with no reduction in basis to reflect the cost of the insurance for the insured; (2) the gain on the resale of the policy by the unrelated buyer would be the difference between the sales price and the amount paid to buy the policy and the premiums paid to maintain the policy, with no reduction in basis to reflect the cost of the insurance for the insured, and that this gain would be a capital gain; and (3) that the amount received as a death benefit by a foreign third-party buyer on a policy issued by a U.S. insurer and insuring the life of a U.S. insured would be U.S. fixed and determinable periodic income, taxable in the United States.

J. American Recovery and Reinvestment Act Expands Rules for Qualified Tuition Programs. The American Recovery and Reinvestment Act, signed by the President on February 17, 2009, Pub. L. 111-5, 111th Cong., 1st Sess. (Feb. 17, 2009),123 Stat 115, expands the definition of "qualified higher education expenses," that can be paid by a qualified tuition program without income tax, to include, for expenses paid or incurred in 2009 or 2010 the costs "for the purchase of any computer technology or equipment or Internet access and related services, if such technology, equipment, or services are to be used by the beneficiary and the beneficiary's family during any of the years the beneficiary is enrolled at an eligible educational institution." Section 529(e)(3)(A)(iii). Expenses for computer software for sports, games or hobbies are not treated as qualified higher education expenses, unless the software is predominantly educational in nature.

K. Guidance Relaxes Investment Restriction Under Qualified Tuition Program Accounts for 2009. In Notice 2009-1, 2009-2 IRB (Dec. 23, 2008), the IRS adopted a rule under which a qualified tuition program may allow investments in a Code Sec. 529 account to be changed during 2009 on a more frequent basis than under the prior rules. The new notice states that a plan may permit a change in the investment strategy twice in the 2009 calendar year and on a change in the designated beneficiary of the account. The IRS also stated that the Treasury and the IRS intend to include this. For more on Section 529 plans, see special rule in the final regulations under Section 529.

L. Private Collateral Assignment Split Dollar Arrangement. In PLR 200910002 (March 6, 2009), the IRS stated that the contributions by the grantors of an irrevocable life insurance trust to the premium payments on the policy held by the trust, were not taxable gifts and that the proceeds were not included in the grantors' gross estates for estate tax purposes, because of the private collateral assignment split-dollar agreement between the grantors and the trustee of the trust. The IRS also stated that the amount that must be repaid to the grantors under the agreement at the death of the surviving grantor, would be included in the surviving grantor's gross estate.

M. Return QPRT Offers New Planning Option. In PLR 200901019 (Jan. 2, 2008), the IRS stated that the remainder beneficiaries of a qualified personal residence trust (QPRT) could create a "return QPRT" for their donor. Such a return QPRT would give the original donor donor the continued use of the property for an additional term of years. Note. This arrangement must be entered into independently of the original gift of the residence to the QPRT, or else the residence may be included in the original donor's gross estate under Section 2036(a). Thus, the initial QPRT must first distribute the residence outright to the designated remainder beneficiaries, and they must then independently create new QPRTs for the benefit of the original donor.

N. Post-Death Events. Section 2053 of the Internal Revenue Code of 1986, as amended (the "Code"), provides that the value of a decedent's taxable estate is to be determined by deducting claims from the value of the gross estate. The Regulations under Code section 2053 are almost 50 years old. New rules proposed by the Internal Revenue Service and Treasury Department would permit a deduction only for the amount paid by an estate with respect to a claim, instead of for the value of those claims as of the date of death. Similar rules would apply to deducting expenses, indebtedness and taxes. They would require practitioners to file protective claims with almost every estate tax return. Prop. Reg. §§ 20.2053-1, 20.2053-3, 20.2053-4, 20.2053-6, 20.2053-9 and 20.2053-10 (REG-143316-03, 4/21/07).

O. Miscellaneous Planning Ideas

1. Combine gifts of appreciated securities with a zero percent long-term capital gain rate and the $8,000 first-time home buyer credit to help a child buy his or her first home. Consider also using a parental loan at the AFR.

2. Children may borrow from their deceased parent's marital trust at the Section 7872 interest rate. Each child can receive his or her note as part of the child's distributive share from the marital trust. Perhaps even better, the family trust can borrow from the marital trust. This can provide more funds to the children, and lock in the value of the marital trust assets for estate tax purposes. PLR 9418013.

V. M&A

A. Deal Metrics

M & A Metrics: Aggregate Statistics

	Number of Deals			*Agg. Base Equity ($Bil)*			
	12 Months Ended			**12 Months Ended**			*Average*
Deal Size	*4/30/2009*	*4/30/2008*	*Change*	*4/30/2009*	*4/30/2008*	*Change*	*P/E*
$1 Billion +	81	186	-56.5%	$ 550.0	$ 640.2	-14.1%	22.5
$500M to $999.9M	64	162	-60.5%	45.9	112.2	-59.1%	22.4
$250M to $499.9M	128	230	-44.3%	44.9	80.0	-43.9%	26.8
$100M to $249.9M	206	373	-44.8%	32.1	59.4	-45.9%	29.3
$50M to $99.9M	200	430	-53.5%	14.5	30.0	-51.5%	21.8
$25M to $49.9M	262	449	-41.6%	9.3	16.1	-42.3%	16.6
$10M to $24.9M	319	535	-40.4%	5.2	8.6	-39.9%	17.0
Under $10M	629	1,067	-41.0%	2.2	3.8	-42.1%	11.5
Undisclosed	5,057	6,830	-26.0%	N/A	N/A	N/A	N/A
Total	**6946**	**10262**	-32.3%	**704.2**	**950.3**	-25.9%	**21.3**

Exhibit 1

Source: Mergerstat

B. EBITDA Multiples

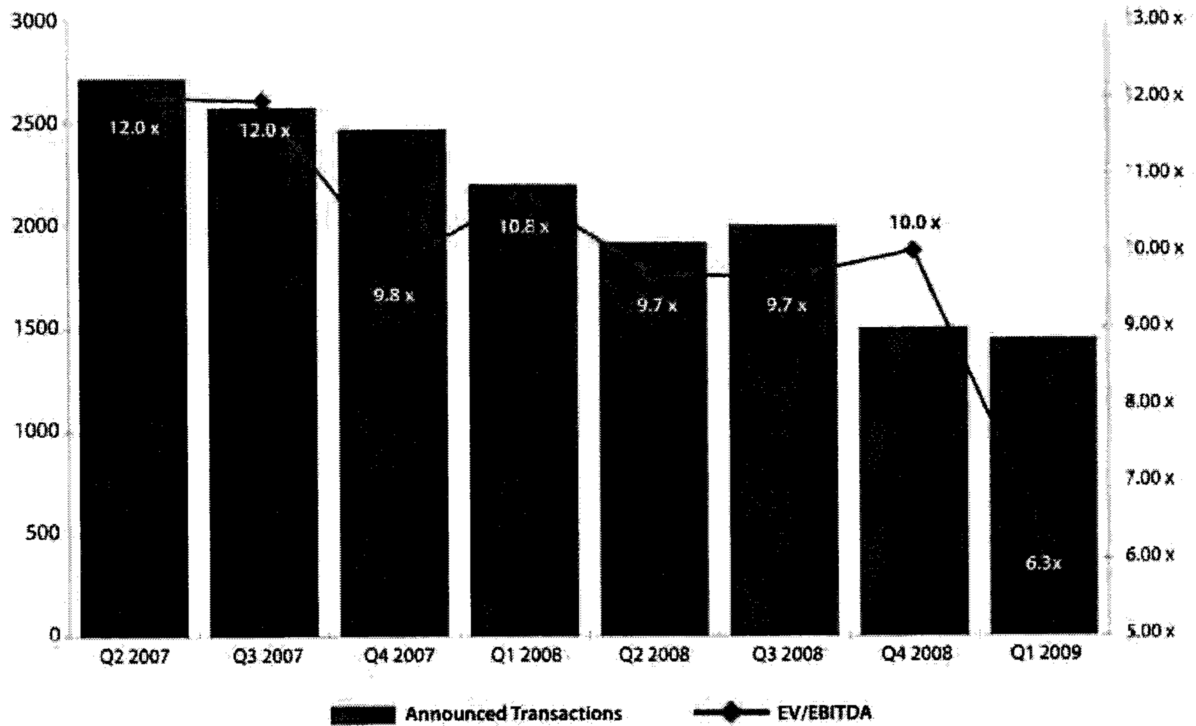

Exhibit 2

C. Transactions

BUYER STRUCTURE				
	Buyer Mix		Financial Buyer Mix	
Year	Strategic	Financial	Platform	Add-On
2002	67%	33%	88%	13%
2003	68%	32%	63%	38%
2004	55%	45%	76%	24%
2005	61%	39%	100%	0%
2006	73%	27%	63%	38%
2007	57%	43%	86%	14%
2008	62%	38%	94%	6%
All Years	62%	38%	86%	14%

TRANSACTION STRUCTURE					
	Cash			Stock	Cash & Stock
Year	For Stock	For Assets	Subtotal	For Stock	For Stock
2002	71%	17%	88%	4%	8%
2003	64%	24%	88%	4%	8%
2004	71%	24%	95%	3%	3%
2005	82%	16%	98%	0%	2%
2006	69%	18%	87%	2%	11%
2007	79%	18%	97%	1%	3%
2008	75%	18%	93%	0%	7%
All Years	74%	19%	93%	1%	5%

	EARN-OUTS	ROLLOVERS	SELLER NOTES
% Included in Subject Transactions			
All	11%	17%	5%(2)
2008	13%	18%	6%
2007	12%	18%	5%
Median % of Purchase Price			
All	11%	11%	10%(2)
2008	11%	12%	12%
2007	7%	8%	17%

D. Indemnification

ENTERPRISE VALUE/EBITDA MULTIPLES				
	Less than $100 M		Greater than $100 M	
Year	Mean	Median	Mean	Median
2002	6.7x	6.8x	7.0x	6.9x
2003	6.9x	6.8x	6.3x	6.7x
2004	7.4x	7.2x	8.6x	7.5x
2005	7.3x	6.7x	8.8x	8.7x
2006	10.7x	9.9x	10.2x	9.9x
2007	8.6x	8.5x	9.1x	9.4x
2008	7.9x	7.0x	8.9x	7.8x
All Years	7.8x	7.3x	9.1x	8.7x

ENTERPRISE VALUE/REVENUE MULTIPLES				
	Less than $100 M		Greater than $100 M	
Year	Mean	Median	Mean	Median
2002	1.09x	0.86x	0.44x	0.52x
2003	0.99x	0.75x	1.04x	0.77x
2004	0.96x	1.07x	1.26x	1.30x
2005	1.24x	0.94x	1.95x	1.19x
2006	2.08x	1.48x	2.28x	1.74x
2007	1.19x	1.05x	1.69x	1.38x
2008	1.32x	1.11x	1.76x	1.45x
All Years	1.26x	1.06x	1.76x	1.39x

E. Financing Climate

1. Financing alternatives such as seller notes, earn outs, mezzanine debt with equity warrants, and seller equity roll-over requirements, which were less common during recent years when the deal market was at its peak, are returning.

2. During 2005 through 2007, and prior to the collapse of the credit markets in 2008, middle market buyouts could be financed with equity

investments of 40% or less. Even smaller middle market deals used comparatively high levels of leverage with total debt to EBITDA (cash flow) ratios reaching 4.0x or higher. Ample debt combined with low interest rate spreads enabled leveraged buyout groups to pay higher prices and still achieve their target rates of return.

3. Today, banks and other senior debt lenders have reduced considerably the amount of leverage they will provide to finance a transaction. Where once senior debt-to-EBITDA levels in middle market buyouts may have reached 3.5x EBITDA or higher, now senior debt to EBITDA levels may only reach 1.5x to 2.5x EBITDA. Also, loan pricing spreads are wider and loan covenants more restrictive.

4. To some degree, mezzanine lenders have helped fill the gap left by senior lenders, particularly in deals where the company has limited assets available as loan collateral. Mezzanine lenders look almost exclusively to a company's cash flows for repayment and generally provide debt financing of levels around 1.0x EBITDA over and above senior debt multiples. In today's environment, middle market mezzanine lenders are able to get fixed current annual interest rates of 12% or more, an additional 4% in payment-in-kind interest that accrues to principal, and equity warrants that generate potential all in target rates of returns near 20%.

5. As a result of the scarcity and/or relatively high cost of debt capital, buyers are now required to contribute more equity to fund acquisitions and it is not uncommon in today's financing environment for equity to represent 50% or more of the capital structure at closing. Two common ways in which sellers are asked to help finance buyouts are through the acceptance of some portion of the purchase price in the form of an interest bearing note (i.e., "seller note") or by "rolling over" a significant portion of the equity value they receive in the transaction back into the deal at the new leveraged equity price.

6. While private equity groups have always preferred owners staying with the business to keep some "skin in the game," the amount of "skin" required has gone up. As a result, sellers may be required to contribute what equates to 20% or more of the equity at closing in the form of a seller note, roll over equity, or some combination of the two.

7. Another form of potential seller financing is an "earn out." Earn outs are essentially promises by the buyer to pay additional purchase price to the seller over time based on some predetermined performance benchmarks. Common reasons earn outs may be used include bridging a valuation gap between a buyer and seller – i.e., if you believe your business is worth more, then demonstrate it through sustained positive financial performance – or as a retention incentive for key selling shareholders.

F. Statement of Financial Accounting Standards 141R, "Business Combinations," and 160, "Noncontrolling Interests in Consolidated Financial Statements."

1. These standards — the first to be developed jointly by the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB) — were published in late 2007. The FASB standards took effect on Dec. 15, 2008, and thus apply to most current deals, and the companion IASB standards — International Financial Reporting Standard 3R and International Accounting Standard 27R — took effect more recently on July 1, 2009. The new standards change the accounting for business combinations and will likely affect integration decisions by acquirers in M&A deals. Historically, companies have been able to adjust goodwill to absorb post-deal cost surprises, which allowed for more streamlined due diligence. Under the new rules, however, the financial impact of an M&A deal must be booked at the time of the acquisition. With no recourse to a retroactive adjustment based on later analyses or data, there is less margin for error or oversight in due diligence, which is thus likely to require more time and create pressure for accurate calculations to be completed earlier in the process.

2. Many M&A transactions are driven by the prospect of eliminating redundant jobs and consolidating operations. Relocating workers and reducing headcount incur short-term costs but deliver long-term savings. Historically, the anticipated severance and related costs were rolled into the deal costs. Under the new rules, if these expenses will be booked as deal costs, they must be specifically identified at the date of acquisition.

3. Deal expenses and fees from internal resources and external advisers, normally capitalized into goodwill, now must be expensed as a normal profit and loss (P&L) cost in the period incurred (before or after a deal is announced).

4. Deals that result in partial ownership or increase a company's interest must be measured at fair value, regardless of whether the buyer attains a controlling or noncontrolling interest. The associated goodwill is measured only once — when the initial controlling interest is obtained. All subsequent adjustments to ownership or fair value will be to equity rather than to the regular P&L accounts or goodwill. The challenge for companies is that, for each additional interest acquired, the associated fair value must be assessed and accounted for. This will probably increase the number of small transactions for which fair value calculations need to be completed and could necessitate new valuation techniques for certain nontraditionally valued assets or liabilities.

VI. REAL ESTATE

A. "American Recovery and Reinvestment Act of 2009" (the "Act")

1. The Act extends a provision enacted in the 2008 stimulus legislation that allowed taxpayers to immediately write-off 50% of the cost of an asset acquired and placed in service during the year, including qualified leasehold improvements.

2. The Act permits certain taxpayers to spread recognition of cancellation of indebtedness ("COD") income over five years for certain types of business debts reacquired between January 1, 2009 and December 31, 2010. Such COD income would be included ratably over a five-year period (2014-2018), with recognition beginning in the fifth or fourth taxable year after reacquisition of the debt (fifth year for debt acquired in 2009, fourth year for debt reacquired in 2010).

3. The Act allows certain "small businesses" to receive a tax refund by using current net operating losses to offset taxes paid in prior years. Qualifying small businesses may elect to carry back net operating losses incurred in 2008 for up to five years instead of the usual two years. A business is a small business for this purpose if its average annual gross receipts for the three-taxable year period ending with such prior taxable year does not exceed $15,000,000.

B. IRS Guidance on Modifications to Commercial Mortgage Loans

1. Treasury took final action to expand the types of permitted modifications allowed to be made to commercial loans held by a real estate mortgage investment conduit (REMIC) to include changes in collateral, guarantees, and credit enhancement of an obligation and changes to the recourse nature of an obligation. The final regulations incorporate comments submitted in response to Notice 2007-17, in which the IRS and Treasury Department requested input on whether the present REMIC regulations should be amended to permit additional types of modifications incurred in connection with commercial mortgage loans. The final regulations expand the list of loan modifications that are not considered "significant modifications" of an obligation to include:

a. Release of a lien on real property that does not result in a significant modification under Treas. Reg. 1.1001-3, so long as the mortgage continues to be "principally secured by an interest in real property";

b. Release of a lien on real property occasioned by a default or a reasonably foreseeable default, so long as the mortgage continues to be "principally secured by an interest in real property";

c. A modification that releases, substitutes, adds, or otherwise alters a substantial amount of the collateral for, a guarantee on, or other

form of credit enhancement for, a nonrecourse or nonrecourse obligation, so long as the obligation continues to be "principally secured by an interest in real property"; and

d. Change in the nature of the obligation from nonrecourse (or substantially all nonrecourse) to recourse (or substantially all recourse) so long as the obligation is "principally secured by an interest in real property".

2. The IRS also issued Revenue Procedure 2009-45, which describes the conditions under which modifications to certain mortgage loans will not cause the IRS to challenge the tax status of REMICs or investment trusts. Until now, administrative tax rules applicable to Real Estate Mortgage Investment Conduits (REMICs) and investment trusts imposed severe penalties for changes made to commercial mortgage pools or investment interests after the startup date of the securitization vehicle. As a result, borrowers were unable to even begin discussions with their loan servicers until they had already defaulted or were within weeks or months of defaulting. A modification will not cause the IRS to challenge if all of the following factors are present:

a. The pre-modification loan is not secured by a residence that contains fewer than five dwelling units and that is the principal residence of the issuer of the loan;

b. If a REMIC holds the pre-modification loan, then no more than 10% of the stated principal of the total assets of the REMIC was represented by loans on which, at the time of the contribution to the REMIC, the payments on the loan were overdue by 30 days or more, or a default on the loan was reasonably foreseeable;

c. Based on "all the facts and circumstances," the holder or servicer "reasonably believes that there is a significant risk of default of the pre-modification loan upon maturity of the loan or at an earlier date." The reasonable belief must be based on a "diligent contemporaneous determination of that risk," which may take into account credible written factual representations made by the borrower if the holder or servicer "neither knows nor has reason to know that such representations are false." In determining the significance of the risk of default, a relevant factor may be how far in advance the possible default is. This is no maximum period after which default is "per se not foreseeable." For example, the Revenue Procedure states that a holder or servicer could reasonably believe that there is a significant risk of default even though the foreseen default is more than one year in the future. Further, although past performance is a factor in assessing risk, a holder or servicer may have a reasonable belief of risk of default even if the loan is performing; and

d. Based on all the facts and circumstances, the holder or servicer reasonably believes that the modified loan presents a "substantially reduced risk of default, as compared with the pre-modification loan.

3. Lastly, the IRS and Treasury issued Notice 2009-79 and are requesting comments on what additional guidance, if any, is needed regarding modifications of commercial mortgage loans held by investment trusts.

C. **State Real Estate Transfer Tax Act.** On December 19, 2008, the Michigan Legislature amended the State Real Estate Transfer Tax Act. The amendments are intended to close a perceived loophole that allowed taxpayers to avoid paying transfer taxes on transfers of real property by first conveying the real property to an LLC and then selling the LLC membership interests. Governor Granholm signed the bill which is now Public Act 473 of 2008. Under the new law, the owner of a business entity or the beneficiary of a trust must pay state transfer tax if 90% or more of the fair market value of the entity or trust assets is comprised of real property and the owner or beneficiary transfers 80% or more of the total interest in the entity or trust. PA 473 adds new exemptions to the State Transfer Tax. These include: (i) a transfer to dissolve the entity where the transfer of the property to owners or a creditor is necessary, (ii) a transfer from an LLC or partnership to its members or owners, respectively, if the interests are held by the same owners in the same proportion as the proportion prior to the transfer, (iii) a transfer of a controlling interest if the transfer would be exempt if transferred by deed between the same parties, and (iv) a transfer in connection with a reorganization where the beneficial ownership is unchanged. The tax rate remains unchanged. The rate is $3.75 for each $500.00 or fraction of $500.00 of the total value of the property being transferred. PA 473 does not address the county real estate transfer tax, which continues to apply to transfers of real property in which a deed is recorded. The county transfer tax generally is imposed at $.55 for each $500.00 or fraction of $500.00 of the total value transferred.

D. **Condominium common areas.** The Tax Tribunal court erred when it agreed with the city that a portion of a condominium project that was vacant land designated in the master deed as "general common element and convertible area" could be taxed separately. The taxpayer filed a master deed that included a reservation of development rights, by which the taxpayer retained an unconditional ability to withdraw lands from the project and develop them into a wholly separate project simply by amending the master deed. Under the Michigan Condominium Act, a condominium project consists of "units" and "common elements" only. Any part of the project that is not a unit must be a common element. The Act further provides that each unit is assessed for property taxes and special assessments for its individual value and then the value of the common areas, or "common elements," is prorated by the value of each unit and added to the unit's tax bill. Although a developer may retain rights to withdraw or develop land within the project, until it records an amended master deed the land remains part of the project and under Mich. Comp. Laws Ann. § 559.231 , no part of the project is taxed separately from the units. Under the Michigan Condominium Act, the Tax Tribunal has no authority to tax any part of a condominium project separately from the units unless that part has been withdrawn according to the procedures set forth in the Act. (Richmond Street, LLC v. City of Walker, Mich. Ct. App. Dkt. No. 286454, 07/14/2009 (unpublished))

E. LLC and LLP Members are General Partners for Code Sec. 469(h)(2) Purposes. In P.D. Garnett, 132 TC No. 19 (June 30, 2009), the U.S. Tax Court held that owners of interests in LLCs and LLPs are general partners, and not limited partners, for purposes of determining whether they have materially participated in the LLC or LLP under the temporary Code Sec. 469 material participation regulations. In J.R. Thompson, FedCl, 2009-2 USTC ¶50,501, the U.S. Court of Federal Claims held that an LLC member was a general partner for the same purpose. *Garnett* and *Thompson* offer LLC and LLP members greater opportunities than are available to limited partners for establishing that they have materially participated in the business of the LLC or LLP. LLC and LLP members still need to establish that they participated in the business in order to have any losses characterized as non-passive. Therefore, the benefit of these cases is that for otherwise active LLC or LLP members that were automatically treating their investments as passive based solely on the character of their ownership, they may now be able to use any losses from those activities to offset other types of income to reduce their overall tax liability.

F. Practice Pointer: Real Estate Workouts.

1. COD income triggering events:

- Debt Cancellation (Debt Forgiveness)
- Renegotiation of mortgage ("workout")
- Foreclosure or repossession
- Deed in lieu of foreclosure

2. No income is realized from the discharge of indebtedness to the extent that payment of the liability would have given rise to a deduction (e.g., interest, business deduction, etc.).

3. Purchase-money debt reduction for solvent debtor is treated as price reduction if:

(a) The debt of a purchaser of property to the seller of such property which arose out of the purchase of such property is reduced;

(b) The reduction does not occur

- in a title 11 case, or
- When the purchaser is insolvent; and

(c) The reduction would be treated as income to the purchaser from the discharge of indebtedness.

4. Under Section 1001, debt modification will be treated as an exchange of the original debt for a new debt instrument. There is a two-part test under which the alteration of the terms of the old debt will be deemed an exchange if there is a "significant modification" of the debt instrument.

5. Section 108(a)(1) provides five circumstances in which COD income is excluded:

(a) The discharge occurs in a Title 11 case

(b) The discharge occurs when the taxpayer is insolvent

(c) The indebtedness discharged is qualified farm indebtedness (QFI).

(d) For TP's other than a C corporation, the indebtedness discharged is qualified real property business indebtedness (QRPBI)

(e) Qualified principal residence indebtedness (QPRI) discharged before 2010.

6. TP pays a "price" for COD exclusion through the reduction of tax attributes, including basis. Under Section 108(b)(2), the following attributes are reduced in order:

(a) NOLs – from 2007 first, then carryovers

(b) General business credits

(c) Minimum tax credits

(d) Capital loss carryovers

(e) Basis of depreciable property of the taxpayer, pursuant to Section 1017

(f) Passive activity loss and credit carryovers

(g) Foreign tax credit carryovers

Any excess is permanently excluded.

7. Qualified Real Property Business Indebtedness (QRPBI)

(a) QRPBI

(i) Incurred for real property used in trade or business

(ii) It is secured by the property

(b) Qualified Acquisition Debt

(i) Incurred to construct, reconstruct or improve property

(ii) Refinanced debt – must not exceed the original debt

(c) Cannot exceed:

(i) Adjusted basis of depreciable real property held immediately before cancellation.

(ii) Limited to the excess of:

Outstanding Debt
(-) FMV of Property
(-) Other Secured Debt
= Exclusion Amount

8. Reduce basis of property in the following order (within each category in proportion to adjusted basis):

(a) Real Property that secured debt

(b) Personal Property that secured debt

(c) Inventory & AR

(d) Personal use property

9. Recapture of Basis Reductions

(a) Applies to subsequent sale of reduced basis property

(b) Property must be sold at a gain

(c) Part of gain due to basis reduction is taxable as ordinary income

10. If property is conveyed in satisfaction of a recourse debt:

(a) TP may recognize taxable gain on sale

(b) Proceeds = lesser of FMV of property or Debt Amount

(c) May recognize COD if property FMV <Debt

11. If property is conveyed in satisfaction of a nonrecourse debt:

(a) Treated as a sale by the borrower to the lender

(b) Proceeds = amount of nonrecourse debt

(c) No COD income

12. Section 108(e)(8)

(a) Prior to section 108(e)(8), taxpayers could treat the contribution of debt to the equity of a partnership by a pre-existing partner as nontaxable.

(b) Under section 108(e)(8), the partnership will now have COD income.

(c) Further, even though the contributing partners will have taken an economic loss when they contribute debt to a partnership in exchange for a partnership interest, they will not be permitted to recognize that loss under Section 721.

(d) Thus, the contributing partner could have COD income at the same time that it realizes an unrecognized economic loss – the worst of all possible worlds.

RETIREMENT PLAN ISSUES IN A TROUBLED ECONOMY

Presented by: Charles M. Lax

I. PARTIAL PLAN TERMINATION

A. A partial termination occurs if the number of plan participants is reduced by a significant percentage due to action initiated by the employer.

B. Very difficult in many cases to determine if the reduction constitutes a "significant percentage."

1. Rev. Rul. 2007-43.

a. Generally if turnover rate is greater than 20%, presumed to be a partial termination.

b. Rate is calculated by dividing the number of participants experiencing the employer initiated severance by the number of active participants in the plan at the beginning of the year (or period) plus those joining the plan during the applicable period.

c. The applicable period is generally one year, unless there are a series of termination events extending over a longer period.

d. Which participants are not counted?

i. Those terminated by voluntary action (quit), death, disability, or after the plan's normal retirement age.

ii. Those terminated because of a bad economy, clearly are counted.

2. Matz v. Household International, 388 F. 3d 570 (7th Cir. 2004).

a. Standard set by court.

i. 10% or fewer decline in participants--no partial termination.

ii. 10% to 20%--presumption of no partial termination.

iii. 20% to 40%--presumption of partial termination.

iv. 40% or greater--partial termination.

b. To overcome presumption--other factors are considered.

i. Were employees replaced?

ii. Turnover compared to turnover during the prior two years.

iii. Whether the termination resulted from a significant corporate transaction.

c. Result of partial termination.

i. Affected participants must be fully vested.

ii. Critical to identify a partial termination.

a. Difficult to identify with rolling terminations.

b. If not identified, the plan can lose its tax qualified status due to its disqualification.

d. Example.

Ajax Tool and Die Company has been affected by the economic crisis during the last year. The company has maintained a profit sharing plan for more than 20 years. The plan and company maintain calendar year ends.

The following represents a schedule of the number of participants.

Year	# of Participants as of January 1st	# of Participants Who Became Eligible	# of Participants as of December 31st
2008	50	2	44
2009	44	1	30

For plan year 2008, the decline was 15% (50 + 2 to 44), and for plan year 2009, the decline was 33% (44 + 1 to 30). Based upon these numbers, there is a presumption that no partial termination occurred during 2008, but that one occurred during 2009 and all terminated participants should have been fully vested.

Note that even if two of the participants who terminated in 2009 voluntarily quit, the decline was still 29% (44 + 1 to 32).

II. WHAT IS A "HARDSHIP DISTRIBUTION" AND HOW DOES IT WORK?

A. A "hardship distribution" is the standard that must be met in order for a 401(k) plan participant to take an in-service distribution of their 401(k) deferrals prior to age 59-1/2.

1. In a profit sharing plan, in-service distributions are permitted prior to age 59-1/2 for employer contributions.

   a. The plan may use the same "hardship distribution" criteria for the profit sharing account as for the 401(k) account.

   b. The plan may alternatively use other criteria for the distribution of a profit sharing account.

2. No in-service distributions for hardship are permitted from pension plans.

B. Hardship distribution provisions are optional, not mandatory.

C. These provisions have advantages and disadvantages.

1. Advantages.

   a. Allows participants to get money if they really need it without quitting.

   b. Will encourage participants to defer, knowing they may have access at a later date.

2. Disadvantages.

   a. Tough to administer.

   b. Frequently causes plan errors.

   c. Can be a frustration if denied.

   d. Money was intended for retirement purposes.

D. Two tests must be met to qualify.

1. Distribution must be on account of an immediate and heavy financial need ("needs test").

a. Safe harbor is only met by very specific circumstances.

i. Costs to purchase a principal residence.

ii. Payment of tuition, fees, room and board for next twelve (12) months of post secondary education for employee, spouse, and children.

iii. Payments necessary to prevent an eviction or foreclosure from a principal residence.

iv. Payment of burial or funeral expenses for parent, spouse, or children.

v. Expenses to repair damage to principal residence that would qualify as a casualty under §165 of the Internal Revenue Code.

vi. Medical care expenses that would be deductible under §213(d) of the Internal Revenue Code.

b. Without safe harbor.

i. The plan must include nondiscriminatory and objective criteria for determining hardship.

ii. Based upon all facts and circumstances, it is determined that the employee has an immediate and heavy financial need.

iii. Not available in a prototype plan.

2. The distribution must be necessary to satisfy the need ("necessity test").

   a. Safe harbor is only met if three requirements are satisfied.

      i. The distribution does not exceed the amount required to satisfy the need (it can be grossed up for taxes).

      ii. The employee has obtained all non-hardship distributions (i.e., profit sharing account) and loans available from all of the employer's plans.

      iii. The employee must be suspended from making any new deferrals for six (6) months.

   b. Without safe harbor.

      i. Based upon all facts and circumstances, it is determined that the need may not be satisfied through other resources reasonably available to the employee (including the assets of spouses and children).

      ii. Generally, this test can be met with a written representation that the need cannot be met through:

         (aa) insurance reimbursement;

         (bb) liquidating assets;

         (cc) stopping deferrals;

         (dd) other plan distributions or loans; or

(ee) borrowing from commercial sources.

iii. Not available in a prototype plan.

E. What amount may be distributed from a 401(k) account?

1. Only the deferrals may be distributed.

2. You may not distribute:

a. Earnings.

b. QNEC's.

c. QMAC's.

3. You may utilize either regular deferrals or Roth deferrals.

F. Taxation of hardship distributions.

1. Not eligible for rollover.

2. May be subject to 10% excise tax for premature distributions.

3. Withholding.

a. Not subject to 20% mandatory withholding.

b. Subject to the 10% withholding rate, which may be waived by the participant.

G. Final Thought.

1. Make sure the plan document provides for hardship distributions.

2. Do not circumvent the hardship distribution rules with a "wink-wink" termination of employment.

III. NON-HARDSHIP IN-SERVICE DISTRIBUTIONS

A. Pension Plans.

1. Applicable to both defined benefit and defined contribution pension plans.

2. No in-service distributions are available for any reason.

3. Distributions after age 62 are permitted as long as the plan document explicitly provides for them.

4. Phased retirement regulations were proposed that would allow earlier than age 62 distribution, but they have been put on hold by the IRS.

B. Profit Sharing Plans.

1. Much greater flexibility for profit sharing plan accounts.

2. Many profit sharing plans merely replicate the requirements for a hardship distribution on the 401(k) account.

3. The IRS will allow for a profit sharing plan to make an in-service distribution after a fixed number of years, attainment of a stated age, or the occurrence of some event such as a layoff or illness.

4. What kinds of requirements or standards are often utilized?

   a. Financial emergency (less than a hardship).

   b. Attaining a certain age 59-1/2 or even lower.

   c. Any contribution to the plan that was made more than two (2) years ago.

5. The entire account including earnings to the extent vested may be distributed.

6. Matching contributions (except QNEC's) are eligible.

IV. PLAN LOAN RULES

A. During economic hardship, plans encounter an increased level of requests for plan loans.

B. Exemption from prohibited transaction rules for participant loans:

1. Must be available to all participants on a reasonably equivalent basis.

2. Are not available to highly compensated employees, officers, or shareholders in amounts greater than other employees.

3. Are in accordance with the specific provisions of the plan document.

4. Bear a reasonable rate of interest.

5. Are adequately secured.

C. Plan qualification issues:

1. Loans may only be made if the plan explicitly provides for participant loans.

2. Loans must be made available to all participants, not just highly compensated employees.

3. Plans that provide joint and survivor annuity benefit options must secure spousal consent for participant loans.

D. Possible taxation under §72(p) of the Internal Revenue Code.

1. Amount limit—plan loans cannot exceed the lesser of:

   a. $50,000 with adjustments; or

   b. Greater of:

      i. 50% of vested account balance; or

      ii. $10,000.

   c. $50,000 limit is reduced by the amount by which the highest outstanding balance exceeds current loan balance.

2. By its terms, the loan must be repaid within five (5) years (unless it is a principal residence loan which may be repaid over fifteen (15) years.

3. Loans must be repaid by a substantially level amortization, not less frequently than quarterly.

4. Deemed distributions:

   a. Loans that fail the five (5) year term rule or the level amortization rule are deemed distributed at the outset and immediately taxable.

   b. If a loan payment is not timely made, the entire outstanding balance becomes immediately taxable.

      i. Plans may grant grace periods for delinquent payments.

ii. May not extend beyond the last day of the calendar quarter following the calendar quarter in which the payment was due.

c. Deemed distributions are reported on Form 1099-R and are subject to the 10% percent early distribution tax.

V. DEFINED BENEFIT PLAN ("DB PLANS") IN OUR TROUBLED ECONOMY

A. Overview.

1. Plan sponsors, of course, bear the risk of investment, and they must make up shortfalls.

2. To determine a plan's funded status, you compare the value of the plan's current assets with its current liabilities.

3. To determine current liabilities, the plan's actuaries use certain assumptions to determine the future obligations of the plan.

4. The lower the interest rate, the higher the present value of a participant's benefit.

5. Minimum funding standards have been revised to assure that plans are adequately/fully funded to the extent possible.

6. With that background, note:

   a. The S&P Index lost almost 40% in 2008.

   b. Interest rates used to determine present values dropped by approximately 200 basis points.

   c. Among the 100 largest plans, it was estimated that on January 1, 2008, they were 104% funded, but by January 1, 2009, it had dipped to only 75% funded.

d. It was also estimated that among those same plans, 2009 required contributions would approximate $108 billion--almost triple the $38 billion 2008 required contributions.

B. Benefit restrictions for underfunded plans.

1. Plans that are less than 80% funded may not adopt amendments that increase benefits.

2. Plans that are funded between 60% and 80% may not make a lump sum payment to a participant that exceeds the lesser of:

a. The present value of the maximum PBGC guaranteed benefit; or

b. 50% of the present value of the participant's benefit.

3. Plans that are 60% or less funded:

a. May not pay any benefit to a participant greater than the amount they would receive under a straight life annuity.

b. Shall have benefit accruals frozen.

4. Restrictions are lifted if the plan sponsor contributes enough to reach the next funding level.

C. Certification of funding status.

1. Actuarial certification of a plan's funding status is required each year.

2. Generally required by April 1st (if a calendar year plan). If no certification:

a. From January through March you may use prior year's funding percentage.

b. From April through September, you are presumed to be funded 10% less than prior year's level.

c. After September, you are presumed to be below 60% funded.

D. Annual funding notice.

1. PPA generally requires all plans to distribute a notice to participants and the PBGC within 120 days after the year end.

a. Replaces the Summary Annual Report requirement.

b. For plans with fewer than 100 participants, the requirement may be delayed until the plan's Form 5500 is actually filed.

2. Notice must contain the following:

a. The percentage of benefits that are currently funded.

b. The "at risk" status of the plan.

c. Value of assets and liabilities.

d. Number of participants.

e. Explanation of plan's funding policy and asset allocation.

f. A description of how the PBGC guaranteed benefit limit works.

E. Funding and quarterly contributions.

1. Generally under PPA, funding shortfalls must be made up over only 7 years.

2. Generally, plan contributions are due by September 15th of the following year.

3. Plans that are underfunded on January 1st must make quarterly contributions during the current year equal to 25% of the lesser of:

    a. 90% of the minimum required contribution for the current year; or

    b. 100% of the minimum required contribution for the preceding year.

4. The determination of whether a plan is underfunded is based upon the prior year's status.

5. Keep in mind most plans were fully funded on January 1, 2008 and therefore not deemed underfunded for 2009.

6. For 2010, the funding status will be determined as of January 1, 2009 when assets were at their lowest levels and liabilities were at their highest levels.

F. Things to consider.

1. Get to know your plan actuary really well.

2. Consider freezing plan accruals as soon as possible.

3. Consider filing for a funding waiver; however they must be made within 2-1/2 months after the year end.

4. Make sure the plan participants understand what is happening to their plan (and, if possible, that their benefits are safe).

5. Make sure you understand what will happen in 2010 and plan for it as soon as possible.

   a. 2009 contribution will be due based upon January 1, 2009 valuation.

   b. 2010 quarterly contributions will also likely be required.

VI. ROLLOVERS FOR BUSINESS START-UPS ("ROBS")

A. Newest "scheme" in the qualified plan area.

B. Sold as a means whereby an individual can access IRA or retirement plan money without paying tax to acquire a new business.

C. This is particularly attractive to individuals who recently lost jobs.

D. Often the new business is a new franchise.

E. The form of the transaction:

   1. Entity formed.

   2. New profit sharing plan or 401(k) plan is formed.

   3. Individual goes to work for entity and rolls IRA or other plan money into the profit sharing plan or 401(k) plan.

   4. Plan then invests in the entity.

F. Many possible issues already being raised by the IRS, including qualification issues and prohibited transaction issues.

<u>WHAT IS YOUR ROLE IN FRANCHISING?</u>

By: Rebecca M. Turner, Esq.

I. <u>ASSISTING THE FRANCHISOR: COMPLYING WITH THE NEW FTC RULE</u>

A. All Franchisors were required to begin compliance no later than July 1, 2008. Some of the most vital roles of an accountant in franchising are to assist a Franchisor in deciding whether or not to include a financial performance representation in the Franchise Disclosure Document, formulate the bases for a financial performance representation, collect and measure relevant data for the financial performance representation, and prepare and audit financial statements. Effective July 1, 2007, the Federal Trade Commission amended the Trade Regulation Rule "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" ("New FTC Rule") *16 CFR Parts 436 and 437.*

B. Item 19: Financial Performance Representation

1. Franchisors are permitted, but not required, to include representations about financial performance of their franchise system in the Franchise Disclosure Document. The New FTC Rule uses the phrase "financial performance representations" rather than the previously used phrase "earnings claim" to acknowledge that not all industries use earnings to measure success. For example, the hotel industry utilizes room occupancy rates to measure performance. If a Franchisor does not make a financial performance representation, it must not make any financial performance representations at any time, verbal or nonverbal.

2. To make a financial performance representation, a Franchisor must have a reasonable basis and written substantiation for the representation at the time it is make and must further disclose the bases and assumptions underlying the representation. A financial performance representation can be based on either historical performance of all or a subset of existing franchised outlets or a forecast of future projections.

   a. Historical financial performance representations must address the six different elements of the material bases of the representation as set forth below. An example of a financial performance representation based on actual historical performance results is attached as Example A.

      i. The Group Measured – Does the representation relate to the performance of all outlets system-wide or only a subset sharing a common characteristic? Does the measured group consist of franchised outlets, company owned outlets or outlets of an affiliated system with reasonably similar operations? If the group consists of company owned outlets or affiliates, the representation must be reasonable and supported by data collected from the group, and the disclosure must be clear that the representation is based on the experience of the outlets.

      ii. Time Period Measured – When was the level of performance of the measured group achieved? The time period must reflect performance that is relevant to current market conditions.

iii. Number of Outlets Measured – How many outlets in the measured group achieved the level of performance compared to how many outlets there are system-wide?

iv. Number of Outlets Reporting – How many outlets in the measured group supplied the performance data? Was the information gathered from all members of a group sharing common characteristics or from a select few of the group?

v. Number and Percentage of Outlets that Achieved the Stated Level of Performance – What proportion of the measured group achieved the claimed performance?

vi. Distinguishing Characteristics – What common characteristics of the measured group might differ from those of outlets currently being offered for sale.

b. The New FTC Rule does not specify elements which need to be addressed as it does for historical performance representations; however, a projected performance representation must still address the bases and assumptions upon which the projection is based, such as those set forth below. An example of a financial performance representation based on projected results is attached as Example B.

i. Sufficient facts to permit a prospective franchisee to make an informed judgment regarding the validity of the projection.

ii. Description of material information upon which the Franchisor relied, including market studies, statistical analyses, profit and loss statements and other information a prudent investor would evaluate.

iii. Assumptions that affect the probability that a prospective franchisee will achieve similar performance, including market conditions basic to franchisee operations, franchisee sales, cost of goods or services sold and operating expenses.

iv. Any characteristics that materially set one outlet apart from another, including geographical location, free-standing vs. in-line, market competition, services or goods sold, franchisor assistance, and company owned vs. franchisee owned.

c. If a financial performance representation is made, a Franchisor must make written substantiation for the representation available to a prospective franchisee upon reasonable request thereof.

d. A Franchisor is permitted to provide a prospective franchisee with actual operating performance results for a specific outlet being offered for sale. Such information may be provided only to prospective purchasers of that one outlet. This is the only exception to the above requirements.

C. Item 21: Financial Statements

1. A Franchisor is required to include in the Franchise Disclosure Document three fiscal years of audited financial statements.

   a. Financial Statements must be prepared in accordance with generally accepted accounting principles ("GAAP"), as the same are revised by any future government mandated accounting principles, or as may be permitted by the Securities and Exchange Commission ("SEC").

      i. The New FTC Rule acknowledges that "GAAP" may change over time.

      ii. The New FTC Rule provides flexibility for a foreign Franchisor offering outlets in the United States by providing that they may utilize GAAP or reconcile their financial statements to GAAP consistent with SEC law. Currently, the SEC permits foreign entities to prepare financial statements in "accordance with a comprehensive body of accounting principles."

   b. A Franchisor must include in the Franchise Disclosure Document the following additional financial statements, as applicable:

      i. The financial statements of a parent entity if the parent (1) commits to perform post-sale obligations for the Franchisor or (2) guarantees obligations of the Franchisor.

      ii. The financial statements of an affiliate in substitution for those of the Franchisor if the

statements meet the requirements of the New FTC Rule and the affiliate absolutely and unconditionally guarantees to assume the duties and obligations of the Franchisor to the prospective franchisee. The Franchise Disclosure Document must contain a copy of the guaranty.

iii. The financial statements of a subfranchisor if the subfranchisor steps into the shoes of the Franchisor and engages in pre-sale activities and post-sale obligations.

c. The New FTC continues to permit a Franchisor to phase-in the use of audited financial statements. A Franchisor that is new to franchising and does not have audited financial statements is eligible for the phase-in. An existing company with audited financial statements that begins franchising is not eligible for the phase-in. Spin-offs, affiliates and subsidiaries of a Franchisor that has audited financial statements are also not eligible for the phase-in.

i. Year 1: A new Franchisor may use an unaudited opening balance sheet in its first Franchise Disclosure Document.

ii. Year 2: The Franchise Disclosure Document must contain an audited opinion based on the opening balance sheet and an unaudited balance sheet prepared at the end of year 1.

iii. Year 3: The Franchise Disclosure Document must contain all required audited financial statements.

iv. The unaudited financial statements must still be prepared in a form that complies with GAAP (or SEC permitted accounting standards as described above).

II. ASSISTING THE FRANCHISEE: REVIEWING THE FRANCHISE DISCLOSURE DOCUMENT

A. For many prospective franchisees, the investment into a franchise system is the largest investment they will make. It is vital to their success that they seek the advice of professionals. The first professional a prospective franchisee calls is an accountant, the second is an attorney. Part of the accountants role is to examine Item 19: Financial Performance Representation, if a financial performance representation is made, and Item 21: Financial Statements. It is important to note that not only are you analyzing the information provided, but also identifying the information that is missing.

B. A Franchisor is required to provide a prospective franchisee with the Franchise Disclosure Document at least 14 calendar days before the prospective franchisee signs a binding agreement or makes a payment to the Franchisor or an affiliate in connection with the proposed sale. Many prospective franchisees incorrectly assume that the 14 calendar days also sets a deadline for entering into a Franchise Agreement. The 14 calendar days is a minimum requirement only.

C. Item 19: Financial Performance Representation

1. The accountant should review any financial performance representation for compliance with the requirements set forth in I.B. above.

2. The accountant should also test the numbers set forth in the financial performance representation. Assisting the prospective franchisee to develop realistic projections is vital to the prospective franchisee's success.

   a. Carefully consider if the prospective outlet is similarly situated to those in the measured group, including location, size, operational experience, etc.

   b. Identify other factors not addressed in the financial performance representation that may impact the prospective franchisee's success, such as local market, competition and attitudes.

D. Item 21: Financial Statements

1. The accountant shall review the financial statements for compliance with the requirements set forth in I.C. above.

2. The accountant should be asking the following:

   a. Do the financial statements indicate a stable Franchisor?

   b. Is the Franchisor experiencing steady growth? Does the Franchisor have a plan for growth?

   c. Is any vital information missing?

   d. Does the Franchisor make a majority of its income from royalties or the sale of franchises?

e. Does the Franchisor devote sufficient funds to support the franchise system and franchisees?

III. BE THE HERO: AUDITING THE NON-COMPLIANT FRANCHISEE.

A. The success of a franchise system is dependant upon the performance of both the Franchisor and Franchisee. Each have very specific responsibilities to the other. The Franchisee is responsible for operating its business in accordance with the system-wide standards developed by the Franchisor. In return for the right to operate in the system and the use of the standards, the Franchisee is responsible for paying royalties and other fees to the Franchisor. The Franchisor is responsible for developing the brand and system-wide standards, operating the system, creating growth for the system and brand, and maintaining and enforcing system-wide standards to ensure brand protection for all Franchisees. The successful Franchisee monitors the actions of the Franchisor, including for example, spending, advertising, and product development. The successful Franchisor monitors the actions of its Franchisees, including for example, operational and financial compliance. An audit is one method that a Franchisee can use to monitor Franchisee compliance.

B. Franchisee perspective:

1. Non-compliant and compliant Franchisees alike may be resistant to the concept of an audit. Non-compliant Franchisees will view an audit as a threat. Compliant Franchisees may see an audit as an invasion of privacy and a lack of trust. They may ask:

a. Where's the trust?

b. You want me to provide what?

c. What are you going to do with the information?

d. Will my private information be provided to other franchisees?

e. Are you spying on me?

2. How to be the hero. You can bring a level of sensitivity to the Franchisee's perspective; evaluation of the Franchisee's financial health; opportunities to improve Franchisee operations and internal controls; identify internal theft; and separation from the Franchisor that the Franchisee deals with on a day to day basis.

C. Franchisor Perspective:

1. A Franchisor may either be in favor of audits or audit adverse

a. A Franchisor may be adverse to an audit out of a fear of a breakdown in the Franchisor/Franchisee relationship. A Franchisor may also be adverse to an audit because it is uncertain as to the response it is willing to take upon identifying a non-compliant Franchisee. A Franchisor may take a hard line approach and terminate a Franchisee for failure to comply with the Franchise Agreement. Another option is for the Franchisor to develop a probationary program.

b. A Franchisor may want or need an audit to communicate a clear policy on non-compliance and under reporting of royalties. They want to maintain system-wide standards, improve brand image, increase productivity, and ensure proper reporting of sales and payment of royalties and other fees.

2. Items a Franchisor should consider when developing and implementing an audit plan include the following:

   a. Does the Franchisor want the Franchisee to become compliant and stay in the system?

   b. Is the Franchisor ready to enforce its termination rights?

   c. What will store closures do to the Franchisor's brand and image?

3. How to be the hero. You can act as a meaningful deterrent for Franchisee fraud; evaluate the consequences of action vs. inaction; develop a comprehensive auditing program; and provide separation from the Franchisees during the audit.

D. The Audit.

1. Evaluate what the Franchise Agreement permits.

   a. Many Franchise Agreements were drafted and entered into before the availability of current technical capabilities and may not contemplate the ability to send data back to the home office from POS system, distributors, vendors or video surveillance systems.

   b. Many Franchise Agreements provide only for periodic reporting of sales and basic financial statements and not necessarily full access to the books and records. However, the Franchise agreement may broadly grant the power to enforce compliance with system-wide standards.

   c. Determine what remedies are available to the Franchisor pursuant to the Franchise Agreement.

d. Determine what rights a Franchisee may have to prevent access to financial documents.

2. Developing the Audit Procedures.

a. The audit procedures should be developed as a step by step process which the auditor will follow. The steps should be tailored to the needs of the Franchisor and what items they intend to audit, such as:

i. Underreporting of royalties or advertising fees.

ii. Compliance with system-wide standards.

iii. Compliance with wage regulations.

iv. Purchases from authorized vendors or distributors.

b. The audit procedures should consider the time frame of records to be audited as well as the scope and duration of the audit. If the audit discloses non-compliance, the scope and duration can always be modified to include additional items or time.

c. Auditing Underreporting of Royalty or Advertising Fees.

i. Royalty auditing is the process of reconciling royalty and advertising fees actually paid to the Franchisor with the gross sales of the Franchisee.

ii. Analytical or comprehensive auditing analyzes financial statements and tax returns, determining which franchisees to select for detail testing. This method utilizes information previously provided to

the Franchisor by the Franchisee allowing for minimal intrusion into the Franchisee's business. This includes reviewing financial statements and tax returns for incomplete or missing items and inquiring into unusual items.

iii. Detail Testing examines the books and records of particular franchisees to discover inconsistencies in sales reported to the Franchisor. For example:

(a) Compare royalty statements and financial statements to governmental filings.

(b) Reconcile sales journals against bank statements.

(c) Reconcile cash register tapes against bank statements.

(d) Reconcile invoices against bank state-mints.

(e) Reconcile point of sale records/receipts against bank statements.

d. Auditing compliance with System-Wide Standards.

i. Perform outlet visits.

ii. Review books and records.

e. Auditing compliance with wage regulation.

Review payroll records, employee files, financial statements, and governmental filings.

f. Auditing purchases from authorized vendors or distributors.

Review books and records.

3. Determining which Franchisees to audit.

a. The method used to select Franchisees should result in a fair cross-section of Franchisees. A Franchisor should not select only "problem" Franchisees.

b. Once selected, the Franchisees should be notified in writing by certified mail. All owners, officers and operators should receive the notice. The notice should include a list of the records the auditor will want to review.

c. Advance notice for the audit should follow any requirements contained in the Franchise Agreement. If the Franchise Agreement is silent, notice should be no more than two to three weeks.

d. The Franchisees to be audited should receive a copy of the audit procedures.

4. Conducting the Audit.

a. The auditor should contact the Franchisee in advance of the audit to discuss any questions and address any concerns they may have. The auditor can also finalize the time and location at this point.

b. Upon arrival for the audit, the auditor should review the scope of the audit and the audit procedures with the Franchisee.

c. Records may be reviewed on or off site.

d. Regardless of the approach of the auditor, the goal should be to obtain the necessary information in the least amount of time with the least disruption to the Franchisee's business.

5. Follow up after the audit.

a. Once the audit results are analyzed, non-compliance should be promptly addressed.

b. Sufficient documentation must be maintained by the auditor and Franchisor to support enforcement and substantiate non-compliance in the event of a dispute.

c. All parties should receive a detailed report of the audit findings and written request for cure or other demands of the Franchisor, including termination

d. Although word will spread through the system, the Franchisor may want to consider publicizing the fact that it is completing outlet audits.

WHERE DO YOU GO WHEN THE BANK SAYS NO

By: Stuart M. Bordman

I. PRIVATE EQUITY

A. Often used to furnish cash to a techie – an individual who has a concept but needs cash for development and does not have and cannot borrow sufficient cash.

B. The techie will organize the entity with different classes of ownership interest and will issue one class of ownership interest to himself for a nominal amount of cash and will seek investors who will bring cash to the entity.

C. The investors must be accredited investors – see Exhibit A – Paragraphs 6 and 7.

D. Goals

1. Raise sufficient cash to bring the product to market. This may require more than one capital raise. Investors want to be certain that subsequent capital raises will not adversely affect (dilute) their ownership interest in the company. Often times the investors will have a pre-emptive right to invest in the company if subsequent raises are necessary.

2. Investors are protected through investors' rights agreements ("IRA"); operating or shareholder agreements, articles of organization or articles of incorporation, etc.

3. Investors may receive guaranteed returns i.e. 12% on invested capital. However, often times there is not sufficient cash to pay the guaranteed returns and the returns accumulate until such

time as the company has cash, the company sells its assets, obtains financing or engages in a public offering.

4. There is generally provision for a mandatory tax distribution.

5. The IRA or operating agreement will place limits on the compensation to the techie and any family members or related entities.

6. The IRA may require minimum shareholder or member consent for a variety of acts such as an IPO; issue new stock or membership units, etc.

7. The operating agreement may provide for capital calls.

E. Exit Strategy

1. Sale of assets

2. IPO. Often times in an IPO the membership interests of all classes will be converted to membership interests with no preferences.

II. SALE TO OUTSIDE INVESTORS

A. Typical fact pattern in a business purchase with real estate.

1. Formation of parallel limited liability companies – one for the business and one for the real estate.

2. Commercial mortgage obtained for purchase of the real estate.

3. For purchase of the business a combination of:

a. Owner investment;

b. Seller financing;

c. Equipment note;

d. Line of credit.

B. Problem in a tight credit markets - - the business needs working capital to expand but:

1. The bank threatens to pull or reduce the line of credit or actually does so;

2. The owner(s) (stockholder or members) cannot invest additional money into the business;

3. Vendors tighten credit or require cash up front.

C. Solution - - Bring a limited number of outside investors into the business.

D. Problems and Issues

1. Valuing the business.

2. Determining a rate of return for the investor.

3. Maintaining control.

4. Determining how the owner will be compensated for his efforts.

5. Establishing an appropriate rate of return for assets which the owner furnishes the business, e.g. owner leases real estate to the business.

6. Developing an exit strategy – a price or formula at which the owner can purchase the interest of the investor.

E. Attracting an Investor

1. Compliance with securities laws

2. Revised offering exemption under Michigan law as of October 1, 2009:

   a. Sales to not more than 25 purchasers in Michigan during any 12 months

   b. No general solicitation or general advertising

   c. No commission to any person other than a Michigan Registered Broker Dealer

   d. The issuer believes the investor is purchasing for investment

3. Use of term sheet (see Exhibit B)

4. Due diligence by perspective investor:

   a. Review of financial statements and tax returns

   b. Review of loan documents (loan documents often provide that a change in control of even admission of new investors will be a default under loan documents)

   c. Uniform Commercial Code search

   d. Review of contracts with customers and vendors

   e. Interview with Owner, Management, Lenders, Vendors and Customers.

F. Documentation

   1. Subscription agreement (see Exhibit C)

   2. Operating agreement

EXHIBIT B

WIDGETS, LLC

Term Sheet for Proposed Subscription of Membership Interest

Widgets, LLC (the "Company") acquired all of the operating assets of Widgets, Inc. (the "Predecessor") on August 31, 2006. The Predecessor had been engaged in the manufacture of Widgets for approximately 80 years. Real Estate, LLC ("Properties") purchased the land and the building used by the Company on August 31, 2006. Properties leases the real estate used by the Company. John Doe is the sole member of the Company and of Properties. Biographical information regarding Mr. Doe is attached to this Term Sheet.

Mr. Doe has improved manufacturing efficiency, upgraded equipment and developed new distribution channels for the Company's expanded line of products which can be viewed on its website at Widgets.com. While the business was seasonal with manufacturing in winter, shipments in the spring and summer, and down time in the fall, because of new customers and products the Company will be manufacturing and shipping throughout the year.

During its first full year in operation (2007), the Company's sales were approximately $1,700,000. Sales for 2008 are projected at $2.5 Million and sales for 2009 are projected to be $4 Million. Projections are based on current sales levels and a purchase orders received recently from a national retailer. Historical financial information and projections as well as other information will be available conditioned upon signature of a confidentiality agreement.

The Company is seeking one investor who will make a capital contribution of $1 Million in exchange for a 25% membership interest in the Company. The membership interest will be non-voting. The investor will receive a 10% cumulative preferred return on his investment. No distributions will be made by the Company until the cumulative preferred return has been paid to the investor. Thereafter, any distributions will be based upon percentage of membership interests.

The capital contribution will be used to pay down the Company's line of credit; to purchase machinery and equipment; to expand manufacturing capacity; to improve efficiency and to purchase raw materials. One of the principal raw materials is lumber for which payment is required upon delivery.

Compensation to Mr. Doe who is an employee of the Company and rent to Properties will be established before the investor makes his capital contribution.

The Company's existing line of credit and payments due the Predecessor are personally guaranteed by Mr. Doe. The investor will not be required to guaranty any debt of the Company.

Mr. Doe has contributed more than $1 Million to the capital of the Company and Properties has loaned more than $400,000 to the Company.

If the Company is sold, after the payment of all debt and payment of any cumulative preferred return to the investor, 25% of proceeds will be distributed to the investor. The Company will have the power for three years to redeem the investor's membership interest

for an amount equal to the sum of any unpaid cumulative preferred return and $1.2 Million. A subscription agreement and operating agreement will be prepared which incorporates all of the foregoing.

Any interested party should contact Mr. Doe at ______________________________.

THE MEMBERSHIP INTEREST OFFERED ABOVE INVOLVES A HIGH DEGREE OF RISK.

THE OFFERING PRICE HAS BEEN ARBITRARILY SELECTED BY THE COMPANY. NO MARKET EXISTS FOR THE MEMBERSHIP INTEREST AND UNLESS A MARKET IS ESTABLISHED A PURCHASER MIGHT NOT BE ABLE TO SELL THE MEMBERSHIP INTEREST.

THERE IS NO ASSURANCE THAT THE OPERATIONS OF THE COMPANY WILL BE PROFITABLE OR THAT LOSSES WILL NOT OCCUR.

THE MEMBERSHIP INTEREST OFFERED ABOVE HAS NOT BEEN FILED WITH OR REGISTERED with ANY GOVERNMENTAL AGENCY.

EXHIBIT C
SUBSCRIPTION AGREEMENT

This Subscription Agreement is made and entered into by I.M. RICH, ("Subscriber") and WIDGETS, LLC, a Michigan limited liability company ("Company").

RECITALS

A. John Doe ("JD") is the sole member of the Company.

B. Subscriber desires to acquire a membership interest in the Company.

C. The Company has borrowed money from Chase Bank and Comerica (the "Banks").

NOW, THEREFORE, in consideration of the recitals, covenants and agreements hereinafter contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Subscriber and Company agree as follows:

1. Subscription for Membership Interest. Subscriber hereby tenders this Subscription Agreement and applies to purchase a Class A membership interest in the Company (the "Membership Interest"). The Membership Interest shall represent a twenty-five (25%) percent interest in the Company.

2. Subscription Price. In exchange for the Membership Interest, Subscriber shall pay to Company One Million ($1,000,000) dollars ("Subscription Price") which will be paid when this Agreement is signed.

3. Effective Date. The effective date of this transaction shall be May 1, 2009 (the "Effective Date").

4. Representations and Warranties of Subscriber. Subscriber makes the following representations and warranties to Company:

A. The Membership Interest subscribed for herein will be acquired solely by and for the account of Subscriber, for investment, and not for resale or distribution. Subscriber has no contract or arrangement with any person to sell, transfer or pledge to such person or anyone else all or any part of the Membership Interest, and Subscriber has no present plans or intentions to enter into any such contract or arrangement.

B. Subscriber (i) is not a party to any litigation or arbitration proceeding, (ii) has not been threatened with any such action, and (iii) has not received a notice of intent regarding any such action.

C. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement will not constitute a default under or require any notice under any agreement to which Subscriber is a party or by which Subscriber is bound.

D. Subscriber acknowledges that the Company has made all financial statements, including without limitation the Company's December 31, 2008 financial statement and all other documents, records and books pertaining to the Company available for inspection and has allowed Subscriber an opportunity to ask questions

and receive answers relative thereto and to verify and clarify any information contained in the information supplied.

E. Subscriber is able to bear the economic risk of this investment in the Company for an indefinite period of time, including the risk of losing all of Subscriber's investment.

F. Subscriber has obtained independent legal advice and representation with respect to this investment, has been given the opportunity to have the proposed investment and all aspects thereof examined and explained by Subscriber's own counsel, tax adviser and financial consultant, and has the experience in business enterprises or investments entailing risks of a type or to a degree substantially similar to those entailed in an investment in the Company.

G. Subscriber acknowledges (a) the Company is a closely held business, and as such, the Membership Interest (i) is not a liquid asset, and (ii) is a risky investment; (b) Subscriber has not received, and no one has made, any representations, warranties, or any other promises whatsoever relative to the Membership Interest, including, but not limited to, its value, returns or risks; (c) there may be no distribution or payment of profits or income with respect to the Membership Interest and that any excess operating cash flow may be reinvested back into the Company or used to pay the amount due the Banks.

5. Representations and Warranties of Company. Company makes the following representations and warranties to Subscriber:

A. After the Company accepts this Subscription from Subscriber the membership interests of the Company will be owned as follows:

Subscriber	25% (Class A)
JD	75% (Class B)

B. Company has full power and authority to execute and deliver this Agreement and to perform all of the Company's obligations under this Agreement, and this Agreement constitutes the valid and legally binding obligation of the Company, enforceable in accordance with its terms.

C. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement will not constitute a default under or require any notice (other than to the Banks) under any agreement to which Company is a party or by which Company is bound.

D. Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Michigan.

6. Operating Agreement. At the Closing, JD and Subscriber shall enter into an Amended and Restated Operating Agreement for the Company which was prepared by Subscriber's counsel.

7. Nonassignability. This Agreement shall not be assignable by Subscriber without Company's prior written consent.

8. Tax Return. For the period January 1, 2009 through April 30, 2009 the income and expense of the Company shall be reflected on the tax return of JD. Beginning May 1, 2009

the income and expense of the Company shall be reported on IRS Form 1065, U.S. Return of Partnership Income.

9. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan. This Agreement embodies the entire agreement and understanding of the parties with respect to its subject matter and supersedes all prior discussions, agreements, and undertakings between the parties.

Executed this ______ day of May, 2009.

SUBSCRIBER

____
I.M. RICH

COMPANY

WIDGETS, LLC, a Michigan limited liability company

By: ____________________________
John Doe
Its: Member

SELECTED FORM 5500 ISSUES

By: Marc S. Wise

I. NEW MANDATORY ELECTRONIC FILING REQUIREMENTS

A. General.

Beginning with the 2009 Plan Year, the U.S. Department of Labor ("DOL") will require retirement and welfare plans to file their annual reports ("Form 5500") electronically. This new filing system is referred to as "EFAST2." The term "EFAST" stands for the ERISA Filing Acceptance System.

B. Mandatory Electronic Filing System.

The EFAST2 requirements are effective for Plan Years beginning on or after January 1, 2009. Plans will be able to commence filing electronically on January 1, 2010. Any Plan that has a Form 5500 due before January 1, 2010 will have an automatic extension until ninety days following the date on which the Form 5500 is available for filing electronically. This new filing system is referred to as "EFAST2." This date will be March 31, 2010, unless the DOL modifies the date on which electronic filings will be available.

1. Filing electronically: Plan sponsors will have three options for entering data on the Form 5500 and related schedules and filing electronically:

   i. a private web-based system;

   ii. use of a third-party software which will transmit the information to the DOL via the Internet;

   iii. the DOL'S web-based system (IFILE).

2. Which Plans must file electronically?

Except for a Plan covering the sole owner (and his or her spouse) or a plan which covers only partners in a partnership (and their spouses) and no employees, all plans, including retirement, welfare and 403(d) plans will need to file the Form 5500 electronically. Owner only plans will file a paper copy of the Form 5500-EZ with the IRS. In addition, owner only plans which do not hold employer stock may elect to file a Form 5500-SF electronically with the DOL.

3. Signing the Form 5500 electronically

Plan sponsors will be required to obtain a signer I.D. and a PIN code. The Plan sponsor will be required to go to a DOL website (IREG) and enter personal information. The Plan sponsor will then receive an email with a link to a website where they will receive their signer I.D. and PIN code. The credentials are personal to each individual obtaining the credentials. If a plan sponsor has different company officers signing the Form 5500, each officer would need to obtain his or her own credentials. When the individual obtains the signing credentials, the individual must certify to the government that he or she will not share the credentials with anyone, including a third-party record keeper or financial institution.

4. Signing Electronic Forms 5500

A plan sponsor who completes its own filing will enter the electronic signature in the appropriate place on Form 5500. Under a web-based system, the preparer will invite the plan sponsor to an electronic signing ceremony where an authorized

representative of the plan sponsor will enter his or her signer I.D. and PIN code.

C. EFAST2 Credentials

If more than one company official may sign the Form 5500, each official will need to obtain his or her own credentials. Since the use of the credentials is the equivalent of the individual's signature on the Form 5500, sharing of such credentials is not permitted since the signing of a Form 5500 is made under penalties of perjury.

1. Other credentials that may be necessary under EFAST2

a. Filing author and schedule author credentials. The credentials needed by a Form 5500 preparer will depend on which part of the Form 5500 and schedules the preparer completes and which system is used to complete the forms. A preparer that prepares a Form 5500 using the DOL's web-based system will need filing author credentials. The filing author credentials will permit the preparer to complete a Form 5500 and the accompanying schedules. The filing author credentials will also permit the preparer to submit the filing and determine if the filing has been accepted. If the filing author would like to delegate responsibility to another preparer to complete one or more schedules, the other preparer will need to obtain schedule author credentials.

b. Using third-party software will not need a filing author or a schedule author credentials. Because of the restriction on sharing a signer credentials, generally, only an employer preparing its own 5500 and schedules will be able to use third-party software to prepare and transmit

the forms directly to the DOL via the Internet. Instead, the preparer will either use a third-party web-based system or will use a third-party software and upload the file to IFILE. The preparer that uses third-party software to prepare the forms and then uploads the form to IFILE will need to obtain filing author and schedule author credentials.

c. A preparer using a third-party web-based system will not need to obtain any credentials. The company official signing the filing will need signer credentials.

d. Summary of credentials needed:

The following chart will assist preparers in determining which credentials are necessary for different types of systems:

	IFILE	Third-party Software	Third-party Software uploaded to IFILE	Third-party Web-based System
Filing signer	**Yes**	**Yes**	**Yes**	**Yes**
Filing author	**Yes**	**No**	**Yes**	**No**
Schedule Author	**Yes***	**No**	**Yes***	**No**
Transmitter	**No**	**Yes**	**No**	**No**

* A plan only will need a Schedule Author if a preparer other than the Filing Author is completing a schedule. For example, the preparer completes the Form 5500 and all schedules other than the Schedule SB which is prepared by an actuary. In such a case, the actuary would obtain Schedule Author credentials to complete the schedule.

D. Availability of Credentials

Each person at the plan sponsor who may sign a Form 5500 must obtain EFAST2 credentials. In addition, employees of the preparer

must obtain filing author and/or schedule author credentials. The DOL IREG website will be available as of January 1, 2010.

E. Attachments and plan audits under EFAST2

1. Electronic Filing

All attachments and plan audits relating to the Form 5500 must be filed electronically. The DOL only accepts two electronic formats:

a. Portable document format (PDF);

b. Plain text files (ASCII files).

Potentially, there are 51 separate attachments to a Form 5500 filing.

2. Accountant's Opinion

a. Unless the plan is exempt from the accountant's opinion requirement, the preparer may not file the Form 5500 without the accountant's opinion. If the preparer attempts to file the Form 5500 without the opinion, the filing will not be accepted.

b. Prior to EFAST2, if the opinion was not ready by the extended deadline for filing the Form 5500, preparers would file the Form 5500 without the opinion to avoid the late filing penalties and then later, when the accountant completed the opinion, amend the filing to include the opinion. Due to the manual process previously used by the DOL, by the time the DOL got around to scanning the Form 5500 filing, the opinion was included. Under the new EFAST2 procedures, the DOL will be aware that

a filing is late immediately following the deadline. Thus, the DOL or IRS will be able to send out letter assessing penalties immediately.

3. Actuarial Schedules

   a. As required by the Pension Protection Act, the Form 5500 Schedule (B) (Defined Benefit Plan Actuarial Information) will be replaced by two separate schedules for Defined Benefit Plans. Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information) must be filed for Single-Employer Plans, including multiple – Employer Defined Benefit Pension Plans. Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan, Actuarial Information) must be filed for Money Purchase Plans including target benefit plans) that are currently amortizing waivers and all Multiemployer Defined Benefit Plans.

   b. The Schedule SB or MB will require a "wet" signature on the part of the actuary. The actuary will need to prepare the schedule, print it, and include the wet signature. The actuary will then need to scan the schedule into a PDF format to be attached to the filing. The actuary will also need to provide the schedule in electronic format to be included with the filing. Thus, the filing will include both an electronic and PDF version of the schedule. It appears that the reason for the "wet" signature is a requirement imposed by the Board of Actuaries.

F. Electronic Filing Procedures Under EFAST2

The general steps that a Form 5500 preparer will follow in filing a Form 5500 under IFILE (or a third-party software uploaded to IFILE), after entering the data, is as follows:

1. Contact the plan sponsor through an email option and IFILE and invite the plan sponsor to an electronic signing ceremony.

2. If the plan sponsor does not have signing credentials (filing signer), the contact will not occur. The filing author will then need to contact the plan sponsor via telephone or e-mail to inform the plan sponsor of the procedures for obtaining the signing credentials.

3. The plan sponsor will then enter its signer I.D. and PIN code.

4. If the same individual signs as plan sponsor and plan administrator, the individual will need to repeat the signing ceremony.

5. The author will monitor IFILE to confirm the plan sponsor has entered the signer I.D. and PIN code.

6. Once the filing author confirms that the signing credentials have been entered, the filing author must then transmit the Form 5500 filing to the DOL.

7. If the format is not correct, IFILE will inform the filing author of the error.

8. Once the filing has been received, the DOL has up to 24 hours to determine if it will accept the filing. The filing author will be able to determine the plan's filing status by monitoring IFILE.

9. If the filing is not accepted, IFILE will inform the filing author of the errors. The filing author will need to correct the errors and resubmit.

G. When is the Form 5500 filed?

1. The DOL has indicated that if it accepts a submission within the 24 hours period, it will consider the Form 5500 filed on the date submitted. However, if the DOL does not accept the filing, the submission date is irrelevant. Upon receiving an acceptable submission, the DOL then has 90 days in which to make the Form 5500 publically available. The DOL has indicated that it intends to make the electronic versions of the Form 5500 filing immediately available to the public on its website.

2. The Schedule SSA under EFAST2

   The Schedule SSA will no longer be part of a Form 5500 filing and is not part of EFAST2. Under this change, the preparer will complete a new Form SSA using paper copies of the form. The preparer will then file the form directly with the IRS. The IRS has indicated that it intends to provide electronic filing for the Form SSA filing in 2011.

3. New Form 5500-SF

   a. The new Form 5500-SF (short form) under EFAST2 is a new form that is 2 pages long. A pension or welfare plan is eligible to file a Form 5500-SF if the plan meets the following requirements:

      i. the plan must cover fewer than 100 participants (the 80/120 Rule applies);

      ii. the plan is eligible for the audit waiver;

iii. the plan has no employer securities; and

iv. has 100% of its assets invested in investments with readily ascertainable market values.

v. the Form 5500-SF does not require any schedules other than the Schedule SV for a defined benefit plan.

b. Filing a Form 5500-EZ or 5500-SF. The Form 5500-EZ is filed directly on a paper form with the IRS. The plan sponsor may elect to file a Form 5500-SF electronically in lieu of the Form 5500-EZ.

c. A sole owner who has no employees should be aware that the Form 5500-SF will be publically disclosed on the DOL website. Thus, the plan sponsor should be aware that their retirement account will be publically disclosed when filing the Form 5500-SF electronically.

H. Deadlines - The DOL and IRS will apply the same deadlines for filing a Form 5500 under EFAST2 as it applies under the current EFAST, the last day of the 7th month after the close of the plan year.

Extensions. The plan sponsor will continue to use the Form 5558 to obtain an extension to file the Form 5500 under EFAST2. This form will continue to be filed with the IRS rather than the DOL. The automatic extension rules will continue to apply under EFAST2. Thus, if the plan sponsor's taxable year and the plan year are the same, and the plan sponsor extends the due date of its income tax return, the plan sponsor will qualify for and extension for filing its Form 5500 until the extended due date of the plan sponsor's tax return. The Form 5558 will no longer be required to be attached to the Form 5500 filing.

The preparer will check the appropriate box on the Form 5500 indicating the type of extension obtained.

I. The Delinquent Filer voluntary compliance ("DFVC") Program and EFAST2.

The DFVC Program will continue to be available under the new filing requirements. The Form 5500 preparer will check the box D of the Form 5500 indicating that it is filing under the DFVC Program. Since the DOL and IRS will know immediately of the late Form 5500 filing, it is expected that the DFVC program will be used at a greater rate.

II. FILING REQUIREMENTS FOR VARIOUS PLANS

A. Pension Benefit Plans

All pension benefit plans covered by ERISA are required to file a Form 5500, except as otherwise provided. The return/report is due whether or not the plan is qualified and even if benefits are no longer accrue, contributions were not made during the plan year, or contributions are no longer made.

B. The following pension benefit plans are not required to file a Form 5500:

1. an unfunded excess benefit plan;

2. a Savings Incentive Match Plan for Employees of Small Employers ("SIMPLE") that involves all SIMPLE IRAs under Code Section 408 (p);

3. a Simplified Employee Pension ("SEP") or a salary reduction SEP that conforms to the alternative method of compliance under DOL regulations;

4. a church plan not electing coverage under Code Section 410 (d);

5. a pension plan that is a qualified form plan within the meaning of Code Section 404A(e).

6. an unfunded pension plan for a select group of management or highly compensated employees that meets the requirements of Department of Labor regulations, including timely filing of a registration statement with the DOL.

7. an unfunded dues financed pension benefit that meets the alternative method of compliance provided by DOL regulations.

8. an individual retirement account or annuity not considered a pension plan under DOL regulations.

9. a government plan.

B. Welfare Benefit Plans

1. All welfare benefit plans covered by ERISA are required to file a Form 5500, except as otherwise provided. Welfare benefit plans provide benefits such as medical, dental, life insurance, apprenticeship and training, scholarship funds, severance pay, disability and other benefits.

    a. DOL regulations require an employer that sponsors certain health and welfare benefit plans covering 100 or more employees (the 80/120 Rule does not apply) to file a Form 5500 for each plan. When a plan is funded trough a trust, regardless of the number of participants, the Form 5500 must be filed.

b. Section 125 Cafeteria plans - the IRS no longer requires Form 5500 for a Section 125 Cafeteria plan. However, if the plan has a medical reimbursement feature associated with it, and more than 100 employees participate in the reimbursement feature, a Form 5500 will be required for purposes of ERISA and DOL requirements.

2. Examples

a. 401(K) Profit sharing plan with 10 participants

Form 5500 is required

b. Profit sharing plan covering just the owner and the owner's spouse (assets of $250,000 or less)

i. No Form 5500-EZ or 5500-SF is required

ii. No EFAST2 electronic filing is required

c. Profit sharing plan covering just the owner and the spouse (assets of more than $250,000)

i. Form 5500-EZ or Form 5500-SF is required

ii. No EFAST2 electronic filing is required

d. Premium Only Section 125 Plan

i. 20 participants – no 5500 is required

ii. 200 participants – no 5500 is required

Note: The DOL takes the position that a premium only plan is a payroll practice and not an ERISA welfare plan.

e. Section 125 Plan with a medical reimbursement feature

i. 20 participants – since it were less than 100 participants – no Form 5500 is required

ii. 200 participants – a Form 5500 is required

f. Company provides Blue Cross health insurance to its employees and pays 100% of the insurance premiums.

i. 20 participants – no Form 5500 is required

ii. 200 participants – a Form 5500 is required

C. Delinquent Filer Voluntary Compliance ("DFVC") Program.

The Delinquent Filer Voluntary Compliance (DFVC) Program is designed to encourage voluntary compliance with the annual reporting requirements under the Employee Retirement Income Security Act (ERISA). The DFVC Program gives delinquent plan administrators a way to avoid potentially higher civil penalty assessments by satisfying the program's requirements and voluntarily paying a reduced penalty amount.

1. Program Eligibility

Eligibility for the DFVC Program is limited to plan administrators with filing obligations under Title I of ERISA who comply with the provisions of the program and who have not been notified in writing by the U.S. Department of Labor of a failure to file a timely annual report under Title I of ERISA. For example, Form 5500-EZ filers are not eligible to participate in the DFVC Program because such plans are not subject to Title I of ERISA.

2. Program Criteria

Participation in the DFVC Program is a two-part process. First, file with the Employee Benefit Security Administration ("EBSA") a complete Form 5500 Series Annual Return/Report, including all schedules and attachments, for each year relief is requested. To ensure proper processing, box "D" on the 5500 must be marked and a statement labeled "DFVC Program" must be attached. Special simplified rules apply to "top hat" plans and apprenticeship and training plans. Second, submit to the DFVC Program a copy of the 5500, without the schedules and attachments, and the applicable penalty amount. The plan administrator is personally liable for the applicable penalty amount, and, therefore, amounts paid under the DFVC Program cannot not be paid from the assets of an employee benefit plan.

3. Penalty Structure

Per day penalty. The basic penalty under the program is $10 per day for delinquent filings.

"Per filing" cap. The maximum penalty for a single late annual report is $750 for a small plan (generally a plan with fewer than 100 participants at the beginning of the plan year) and $2,000 for a large plan.

"Per plan" cap. The DFVC Program also includes a "per plan" cap. This cap is designed to encourage reporting compliance by plan administrators who have failed to file an annual report for a plan for multiple years. The "per plan" cap limits the penalty to $1,500 for a small plan and $4,000 for a large plan regardless of the number of late annual reports filed for the plan

at the same time. There is no "per administrator" or "per sponsor" cap. If the same person is the administrator or sponsor of several plans required to file annual reports under Title I of ERISA, the maximum applicable penalty amounts would apply for each plan.

Small plans sponsored by certain tax-exempt organizations. A special "per plan" cap of $750 applies to a small plan sponsored by an organization that is tax-exempt under Internal Revenue Code §501(c)(3). The $750 limitation applies regardless of the number of late annual reports filed for the plan at the same time. It is not available, however, if as of the date the plan files under the DFVC Program, there is a delinquent annual report for a plan year during which the plan was a large plan.

"Top-hat" plans and apprenticeship and training plans. The penalty amount for "top-hat" plans and apprenticeship and training plans is $750.

4. Program Participation Procedures

The procedures governing participation in the program are intended to make the program easy to use:

Plan administrators may use the Form 5500 for the year relief is sought or the most current form available at the time of participation. This option allows administrators to choose the form that is most efficient and least burdensome for their circumstances;

5. IRS and PBGC Participation

Although the DFVC Program does not cover late filing penalties under the Internal Revenue Code or Title IV of ERISA, the Internal Revenue Service and Pension Benefit Guaranty Corporation have agreed to provide certain penalty relief for delinquent Form 5500s filed for Title I plans where the conditions of the DFVC Program have been satisfied.

6. Examples

Example 1 - An administrator of a large plan with a calendar year plan year files the annual report for the 2004 plan year on August 6, 2005. The administrator failed to properly extend the filing due date of July 31, 2005. Under the DFVCP, the applicable penalty amount would be $60 (6 days x $10).

Example 2 - Assume the same facts as in Example 1, except that the filer filed the annual report on March 31, 2006. Under the DFVCP, the applicable penalty amount is $2,000 (though the penalty amount calculated at $10 per day would be $2,430 for 243 days, the per-filing cap of $2,000 applies).

Example 3 - Assume the same facts as in Example 2, except that the filer filed annual reports for the same plan for the 2001, 2002, and 2003 plan years on March 31, 2005. Under the DFVCP, the applicable penalty amount is $4,000, which is the per-plan filing cap for large plans.

Example 4 - Assume the same facts as in Example 3, except that the filer is also submitting an additional plan year 2004 filing under the DFVCP for another plan. Under the DFVCP, the penalty amount is $6,000 ($4,000 applicable to the three filings

discussed in Example 3, plus $2,000 for the Form 5500 filed for the other plan).

MADDIN, HAUSER, WARTELL, ROTH & HELLER, P.C.

ATTORNEY BIOGRAPHIES

Michael W. Maddin is the President and one of the Managing Directors of the firm. Mr. Maddin has been practicing law for over 44 years, primarily in the areas of real estate, corporate and business law, estate planning and probate. He is a member of the Southfield, Oakland, Michigan and American Bar Associations and the American Judicature Society. He is also a member of the Real Property Law Section Council of the State Bar of Michigan and for many years served as Chairman of the Commercial Leasing and Management Committee of the Real Property Law Section of the State Bar of Michigan. Mr. Maddin has been a speaker at numerous ICSC, ICLE, National Business Institute and State Bar of Michigan Real Property Law Section Seminars, and has authored numerous real estate related articles in professional journals. He has been repeatedly selected by his peers for inclusion in "The Best Lawyers in America," named among the top 100 Michigan Super Lawyers, and has been awarded special recognition by Chambers USA: America's Leading Lawyers for Business 2008. He has been President or Chairman of numerous civic, charitable or fraternal organizations and major group.

Mark R. Hauser is a founder and Managing Director of the firm who specializes in the areas of real estate, partnerships, finance, corporate and business law, taxation and estate planning. A 1964 graduate of the University of Michigan, he obtained his Juris Doctor *magna cum laude* from Wayne State University in 1967 where he served as an Editor of the Wayne Law Review. A member of the Real Estate, Business Law & Taxation Sections of the State Bar of Michigan, Mr. Hauser has lectured at numerous professional seminars for attorneys and accountants on real estate and tax-related issues. He has been continuously selected by his peers to be listed in the "Best Lawyers in America," and is likewise listed in "Super Lawyers" and the "Chambers USA". He is a past President of the United Jewish Foundation of Metropolitan Detroit, and has served as a National Vice Chairman, Trustee and Member of the Executive Committee of United Jewish Communities.

Richard J. Maddin is a firm shareholder who has practiced law for over 36 years. He is a graduate of Michigan State University and University of Detroit-Mercy Law School. His areas of practice include general business, commercial and residential real estate construction, corporate, land use planning, zoning and probate law. Mr. Maddin is an active litigator, representing both plaintiffs and defendants in the above-described areas of practice, including also the areas of real estate construction, zoning, real property tax appeals alternative dispute resolution (ADR) practice, and is a certified mediator. He is a member of the real estate, litigation, and ADR sections of the State Bar of Michigan, the Southfield and Oakland Bar Associations, and the American Judicature Society.

Richard F. Roth is a shareholder in the firm. He attended the Wharton School at the University of Pennsylvania where he received a Bachelor of Science in Economics. He graduated from the University of Michigan Law School, *cum laude*, in 1972. Mr. Roth has a business practice, with a concentration on corporate law, real estate, estate planning, and taxation, and he currently heads the firm's Alternative Dispute Resolution Department. With regard to the real estate side of his practice, Mr. Roth has handled legal work for the development, construction, and management of numerous shopping centers, including construction loans and end mortgages, as well as all of the leasing work. He has also handled the acquisition and sale of apartment complexes, shopping centers, industrial buildings, office buildings and unimproved real estate. He has also handled workouts for distressed properties. On the corporate side, he has facilitated mergers, acquisitions and financing for his corporate clients. He has handled many corporate and individual tax matters and Michigan sales, use and single business tax issues. He co-authored the statute which exempts from Michigan sales tax the purchase of hi-tech computers used in computer integrated manufacturing and CAD-CAM. Mr. Roth has lectured at numerous professional seminars. He is currently a member of the Board of Trustees of The Jewish Fund, which manages and distributes over $60 million for charitable purposes. He is also a member of the Board of Trustees of the Karmanos Cancer Institute. Mr. Roth previously served as President of the Michigan Jewish Sports Foundation and the Sinai Health Care Foundation. He was previously a member of the Board of Trustees of Sinai Hospital, Huron Valley-Sinai Hospital, the Anti-Defamation League, Temple Beth Jacob, and Knollwood Country Club.

Harvey R. Heller is the shareholder in charge of our Insurance Coverage and Defense Practice Group. He is an honors graduate of Michigan State University, as well as a *cum laude* graduate of Detroit College of Law. In addition to being an active litigator, Mr. Heller is a member of the Michigan State Bar Foundation Fellows and the Michigan Defense Trial Council. On a national level, Mr. Heller is a member of the American Bar Association Standing Committee on Lawyers' Professional Liability, the Defense Research Institute, as well as the International Association of Defense Counsel. He has authored articles on the subject of professional liability and has been a featured speaker at professional liability seminars. Mr. Heller has continually been selected by his peers to be listed in the "Best Lawyers in America."

Michael S. Leib is a shareholder in the firm. He is a trial lawyer practicing in the areas of business disputes, real estate litigation, creditor's rights law, including bankruptcy law and employment law. He is a graduate of Kalamazoo College, the University of Montana and Wayne State University Law School. He is a member of the State Bar of Michigan and is admitted to practice before several courts, including the United States District Court, Eastern District of Michigan and Western District of Michigan, 6th Circuit Court of Appeals and United States Supreme Court. Mr. Leib is also a member of the Board of Directors of the Federal Bar Association of the Eastern District of Michigan and a member of the Oakland County Inns of Court. Most recently, he served as a member of the State Bar of Michigan Judicial

Qualifications Committee. He was also the chairperson of the State Bar of Michigan Character and Fitness Committee..

Robert D. Kaplow is a shareholder in the firm. His practice is concentrated in estate planning and personal and corporate income tax planning. He is a graduate of Cornell University, receiving his law degree from the University of Michigan. He received a Masters in Tax Law from Wayne State University. He is a member of the State Bar of Michigan (Taxation and Probate and Estate Planning Sections), Oakland County Bar Association (Taxation Committee) and American Bar Association (Taxation, Real Property, Probate and Trust Law Sections). Mr. Kaplow is a frequent lecturer before professional groups pertaining to tax and corporate matters. He is listed in Who's Who in American Law and Who's Who of Emerging Leaders in America. Mr. Kaplow is a member of the Financial and Estate Planning Council of Metropolitan Detroit, and is also active in various charitable and Bar related activities.

William E. Sigler is a shareholder of the firm. His practice involves business planning, structuring and formation of business entities, mergers and acquisitions, real property acquisitions and dispositions, contract drafting and review, employee benefit plans, executive compensation, and estate and business succession planning. He graduated from Michigan State University and the University of Detroit School of Law where he was an editor of the Law Review. Mr. Sigler is a member of the Financial and Estate Planning Council of Metropolitan Detroit and is active in charitable and bar related activities. He served as chairperson of the Oakland County Bar Association Employee Benefits Committee and is a member of the Board of the Association for Corporate Growth.

Stewart C. W. Weiner is a shareholder of the firm who has concentrated his practice over the past 24 years in business, construction, securities, family and computer related matters with a particular focus on acquisitions and resolution of business, construction, partnership, shareholder and family disputes. He frequently counsels clients on construction contracts, acquisitions and sales of businesses, securities and computer related matters. He serves as an arbitrator for FINRA (Financial Industry Regulatory Authority), as a private arbitrator and is a member of the American Bar Association (Construction Forum, Real Property and Computer Law Sections), State Bar of Michigan, Real Property Section, and Oakland County Bar Association. He has been actively involved in a number of charitable organizations, is a former President of Jewish Family Service and the Franklin Baseball League and currently serves on the Board of Governors of the Jewish Federation of Metropolitan Detroit. Education: University of Detroit, Detroit, Michigan, Juris Doctor, 1983, University of Michigan, Ann Arbor, Michigan, M.S.W., 1976, Harpur College, State University of N.Y. at Binghamton, Binghamton, New York, B.A. 1974. Professional Memberships: American Bar Association, State Bar of Michigan, Oakland County Bar Association, and Construction Finance Management Association.

Charles M. Lax is a shareholder of the firm who has practiced primarily in the areas of employee benefits, taxation, corporate law and mergers and acquisitions. He has authored numerous articles appearing in legal and public accounting journals. Mr. Lax has lectured extensively on qualified retirement plans and other tax topics before the Michigan Institute of Continuing Legal Education, Michigan Association of Certified Public Accountants and other professional groups. He presently serves as Co-Chair of the 2010 and 2011 ASPPA Annual Conference and as a member of the IRS Great Lakes TE/GE Council. Mr. Lax has previously served as a member of the Advisory Committee on Tax Exempt and Government Entities Division of the IRS (ACT), the IRS Employee Plans, Ad Hoc Advisory Group for the Assistant Commissioner of Internal Revenue Service, EP, the IRS Regional Council Bar Advisory Group, Central Region, the Advisory Group to IRS Northeast Region's Chief of EP/EO Division, the Chairman of the State Bar of Michigan – Section of Taxation, Chairman of the State Bar of Michigan Employee Benefits Committee and Co-Chair of the IRS-ASPPA Great Lakes Benefits Conference for 2007 and 2008. He is a Fellow of the American College of Employee Benefits Counsel and recognized by his peers by inclusion in the Best Lawyers in America, Chambers USA and as one of the Top 100 Lawyers in the State of Michigan for 2008 by Super Lawyers. Mr. Lax has extensive experience in representing clients in tax controversy matters before the Internal Revenue Service and Tax Court of the United States.

Stuart M. Bordman is a shareholder of the firm who is an attorney and a certified public accountant. He has extensive experience in general corporate matters including business purchases and sales, franchise matters, health care law and representation before the Internal Revenue Service. Mr. Bordman was the 1997-98 Chairman of the Oakland County Bar Association Tax Committee. Mr. Bordman is a frequent lecturer before the Michigan Association of Certified Public Accountants and a regular contributor to LACHES, the Oakland County Bar Association publication. He has written on use tax, corporate finance under the Michigan Business Corporation Act and single business tax. He is also a Council member of the antitrust, franchising and trade regulation section of the State Bar of Michigan. Mr. Bordman is a graduate of the Northwestern University School of Law.

Steven D. Sallen is a shareholder and member of the firm's Executive Management Committee. Mr. Sallen received his undergraduate degree from the University of Michigan and his law degree, *cum laude,* from the University of Detroit-Mercy School of Law where he served as Case and Comment Editor of the University of Detroit Law Review. Mr. Sallen concentrates his practice in the areas of real estate law, environmental law and corporate law, and his clients include real estate developers, general contractors, commercial real estate brokers and environmental consulting firms. Mr. Sallen publishes Real e-State, a Quarterly Electronic Newsletter for Real Estate Professionals. He resides in Orchard Lake, Michigan with is wife and three children.

John E. Jacobs is a shareholder of the firm who specializes in commercial transactions, real estate, litigation, and consumer law, including residential mortgage lending. He also engages in lobbying activities in state government on behalf of the Mortgage Bankers Association of America and the Michigan Mortgage Lenders Association. Mr. Jacobs has lectured at professional seminars on real estate, consumer law and residential mortgage lending. He also taught Consumer Credit Regulation at Wayne State University Law School. He has been the President of the Anti-Defamation League, Jewish Family Service and Temple Emanu-El. Mr. Jacobs is a member of the Executive Committee and Board of Governors of the Jewish Federation of Metropolitan Detroit. He has been selected by his peers to be listed in the Best Lawyers in America.

Julie Chenot Mayer is a shareholder of the firm who received her undergraduate degree from the University of Michigan. She obtained her Juris Doctor, *cum laude*, from the Detroit College of Law in 1986 where she was a member of the Law Review. Ms. Mayer concentrates her practice in the area of litigation with an emphasis on insurance coverage and professional liability defense. Ms. Mayer is a member of the State Bar of Michigan and the American Bar Association.

Ronald A. Sollish is a shareholder in the firm who specializes in the areas of employment, real estate, partnership, finance, corporate and business law. Ron is a frequent speaker on legal topics and has spoken to such groups as the Michigan Chamber of Commerce, Michigan Association of Certified Public Accountants, and American Society for Industrial Security. He is licensed to practice law in both Michigan and Illinois. He graduated from the University of Detroit-Mercy School of Law where he was the managing editor of the Law Review. Ron received his undergraduate degree from the University of Michigan. Ron is a member of the State Bar of Michigan, Illinois Bar Association, American Bar Association and Oakland County Bar Association.

Lowell D. Salesin is a shareholder in the firm and a member of the firm's Executive Committee. He has been practicing with the firm since graduation from the George Washington University National Law Center in 1993, where he graduated with high honors and served as an Associate Editor of the George Washington Law Review. He received his undergraduate degree from Indiana University in 1990. Mr. Salesin is a member of the Real Property and Business Law Sections of the State Bar of Michigan and is a member of the American and Oakland County Bar Associations. He concentrates his practice in the areas of real estate development and finance, business planning, lending, commercial leasing, partnership and corporate law. Mr. Salesin's experience includes the acquisition, financing, construction, development, and leasing of all types of commercial real estate. He represents both owners and lenders in a wide variety of real estate transactions.

Mark H. Fink is a shareholder in the firm who graduated from Wayne State University, College of Business Administration and the Detroit College of Law with highest honors and is admitted to the practice of law in the states of Michigan and Arizona. Mr. Fink's practice areas include civil appeals and litigation, with

concentration on real estate, commercial, and insurance coverage matters. Mr. Fink is the author of several articles, which have appeared in publications such as the Michigan Bar Journal and the Detroit College of Law Review. He is a professional affiliate with the Oakland County Bar Association and Defense Research Institute, and a member of the Appellate Section of the State Bar of Michigan.

Steven M. Wolock is a shareholder in the firm who received his law degree from the University of Michigan Law School in 1985 and obtained a Bachelor's of Science in Economics from the University of California at Santa Cruz in 1977. Mr. Wolock specializes in general commercial litigation and professional liability litigation and has extensive experience in labor and employment law. Mr. Wolock is a member of the Labor and Employment and Negligence Sections of the State Bar of Michigan, American Bar Association and Oakland County Bar Association. He also serves as a panelist on the State Bar of Michigan Attorney Discipline Board. Mr. Wolock has been selected by his peer for inclusion in the "Best Lawyer in America" and in "Michigan Super Lawyers."

David E. Hart is a shareholder of the firm and a member of the firm's Executive Committee. He earned his Bachelor degree in Philosophy and Political Science from the University of Michigan in 1988 and received his Juris Doctor Degree, *cum laude*, from the Detroit College of Law in 1991. While at the Detroit College of Law, Mr. Hart was a senior member of the *Detroit College of Law Review* and he participated in several national Moot Court competitions. He concentrates his practice in the areas of title insurance, business disputes, real estate litigation, creditor's rights law, including bankruptcy, and general civil litigation. He lectures frequently on real estate and title insurance. Mr. Hart is licensed to practice in Michigan and Ohio. He is a member of the State Bar of Michigan, the Oakland County and Federal Bar Associations, and The Michigan Land Title Association.

George A. Contis is a shareholder of the firm. He earned his Bachelor of Arts degree in Economics from the University of Pittsburgh in 1982 and received his Juris Doctor degree from the University of Detroit School of Law in 1985. While at the University of Detroit, Mr. Contis participated in several local and national Moot Court competitions and was selected for membership to the Order of Barristers. He concentrates his practice in the areas of real estate development and finance, lending, transactional law, commercial leasing and business planning. His publications include: *Tax Aspects of Divorce in Michigan,* Michigan Tax Law Journal, 1984; *Bring a Weapon to School, Get Expelled* 370 LACHES 8, November 1996; and *Year End Planning Considerations for 1031 Exchanges*, Bar Briefs, December 2000.

Martin S. Frenkel is a shareholder of the firm. He graduated from the University of Michigan in 1991 and Wayne State University Law School in 1994. He is admitted to practice in Michigan and in the Federal District Courts for both the Eastern and Western Districts of Michigan. Mr. Frenkel was formerly employed by the Michigan Department of Attorney General and has been with Maddin Hauser since 1997

where he specializes in the areas of commercial and real estate litigation including construction, mortgage and title-related disputes. He is a member of the Real Property Section of the State Bar of Michigan and is also an affiliate member of the Associated General Contractors of America. Mr. Frenkel authored the article *"Navigating the Waters of Real Estate Arbitration"* published in Commercial, Inc. Magazine, discussing the dynamics of the real estate arbitration process. He is one of the firm's representatives to the National Mortgage Bankers Association and has authored the article *"Seven Common Mistakes in Selecting/Managing Outside Counsel in the Mortgage Industry"* which was published as a three part series in the MBA News Link. He has also authored the article "Five Common Mistakes in Managing Attorneys in the Construction Industry," which was published in *Michigan Contractor and Builder.* Mr. Frenkel was also selected by his peers as one of the Michigan's Rising Stars and was identified as such in the *Michigan Super Lawyers and Rising Star Magazine.* Fewer than 5 percent of Michigan's attorneys attain the "Super Lawyer" or "Rising Star" status.

Gary M. Remer is a shareholder of the firm. He received his law degree from the Detroit College of Law at Michigan State University where he graduated *summa cum laude* in May 1997 and obtained a Bachelor of Arts in Accounting from Michigan State University in 1990. Mr. Remer was a Revenue Agent with the Internal Revenue Service, Employee Plans Division, from 1992 through 1996. He concentrates his practice in the areas of employee benefits, corporate law, taxation and estate planning. Mr. Remer has lectured extensively on qualified retirement plans and other tax topics. He is an adjunct professor at Walsh College. Mr. Remer co-authored the The Insider's Guide to IRS Plan Audits. He is a Certified Public Accountant and Chair of the MACPA Employee Benefits Committee.

George V. Cassar, Jr. is a shareholder in the firm who concentrates his practice in the areas of estate and business succession planning, taxation and probate. Mr. Cassar graduated from the University of Michigan with honors and received his law degree with honors from Drake University Law School. He also received his Masters in Tax Law from Wayne State University Law School. He is a member of the State Bar of Michigan, the State Bar of Iowa, the American Bar Association and the Federal Bar Association. Mr. Cassar frequently speaks before professional organizations, as well as to their clients regarding estate planning, tax and probate matters. He is a member of the Oakland Bar Association, the Taxation Committee and the Probate Committee, a member of the Financial and Estate Planning Council of Metropolitan Detroit, a member of the Taxation Section and Business Law Section of the State Bar of Michigan, Committee Chair of the Estates and Trusts Committee of the Tax Section of the State Bar of Michigan, a member of the Real Property, Probate, and Trust Law Section of the American Bar Association, a member of the National Academy of Elder Law Attorneys (NAELA), a member of the Financial Committee of Inforum (f/k/a The Women's Economic Club of Detroit) and a member of the Detroit Metropolitan Bar Association. Mr. Cassar has also been accepted as a Life Member of the National Registry of *Who's Who in American Law* and is active in several charitable and other community organizations.

David M. Saperstein is a shareholder of the firm. He graduated from the University of Michigan Law School in 1993, and University of California, Berkeley with High Honors in 1989. He clerked for the late Michigan Court of Appeals Chief Judge Pro Tem Myron H. Wahls. Mr. Saperstein's publications include: "Why There are No Common-Law Exceptions to a Municipality's Governmental Immunity: A Municipal Perspective," Public Corporation Law Quarterly, Spring 2001, No. 9, p.1, and "The Abominable Snowman, the Easter Bunny, and The Intentional Tort Exception to Governmental Immunity: Why Sudul v Hamtramck was Wrongly Decided," 16 Michigan Defense Quarterly, No. 2, p. 7 (2000). Mr. Saperstein is admitted to practice law in Michigan, Ohio and California (inactive). He concentrates his practice in the areas of professional liability defense, primarily defending lawyers, accountants, stockbrokers, real estate agents, and insurance agents. Mr. Saperstein serves on the Board of Trustees for Congregation Shaarey Zedek.

Richard M. Mitchell earned his Juris Doctor degree from Indiana University Law School, Bloomington, in 1991, where he served on the Indiana University Law Review. He earned his Bachelor of Arts degree from the University of Michigan in 1988. Mr. Mitchell focuses his practice on complex insurance coverage disputes and civil litigation. He has authored publications and spoken in these areas. He is also a member of the Society of Chartered Property Casualty Underwriters (CPCU), a designation granted by the American Institute for CPCU in Malvern, PA, upon the successful completion of a series of national examinations relating to insurance and business related topics. Mr. Mitchell is also on the Board of Directors of the Greater Detroit CPCU Chapter.

L. Jeffrey Zauberman is a shareholder in the firm. He has been a practicing attorney since 1984 in both the Province of Ontario and Michigan. He received his Bachelor of Laws from Osgoode Hall Law School in Toronto, Canada and his J.D. from the University of Detroit School of Law. Mr. Zauberman is a member of the Real Property Section of the State Bar of Michigan. He concentrates his practice in the areas of real estate development and finance, asset based secured financing and leasing of commercial real estate. Mr. Zauberman is also licensed in the Province of Ontario and able to advise upon matters of Ontario law.

John P. Gonway is a shareholder in the firm and specializes in secured financing, real estate, mergers and acquisitions and commercial transactions. He received his Juris Doctor, *cum laude*, from the Wayne State University School in 1996. Prior to attending law school, he received his undergraduate degree from James Madison College at Michigan State University. Mr. Gonway is a member of the Real Property, Business Law, and Taxation Sections of the State Bar of Michigan and is a member of the Oakland Bar Association. Mr. Gonway's expertise includes the acquisition, financing, construction, development and leasing of all types of commercial real estate, as well as the representation of clients in all aspects of corporate law, commercial law, mergers and acquisitions and commercial transactions.

Kathleen H. Klaus joined the firm's Defense Practice and Insurance Coverage Group in August 2004. Ms. Klaus graduated from the University of Michigan Law School in 1992 and received a Bachelor of Arts degree, with honors, from the University of Iowa in 1987. Prior to joining the firm, Ms. Klaus practiced commercial litigation and bankruptcy in Chicago, Illinois.

Kasturi Bagchi is a firm shareholder and received a Bachelor of Arts in Political Science with honors from UCLA in 1992 and subsequently was awarded her Juris Doctor degree with honors from Tulane University School of Law in 1995. While at law school, Ms. Bagchi was a managing editor of the Tulane University School of Law Environmental Journal where she published an article entitled "Application of the Rule of Lenity: The Specter of the Midnight Dumper Returns." 8 TUL.ENVTL. L.J. 265 (1995). Upon her graduation from Tulane, she clerked for the Honorable William Albrecht and the Honorable Harry K. Seybolt of the Superior Court of New Jersey, Warren County. She concentrates her practice in the firm's commercial lending and real estate groups. Ms. Bagchi is admitted to the Bars of New Jersey, Pennsylvania (inactive), California and Michigan.

Danielle M. Spehar is a firm shareholder. She attended Central Michigan University and earned a Bachelor of Science in Business Administration, *summa cum laude*. She also earned a Master's Degree in Business Administration from Wayne State University. She acquired her Juris Doctor, *magna cum laude*, from University of Detroit-Mercy School of Law in 1998. Ms. Spehar concentrates her practice in the areas of real estate transactions and corporate and business law. She is a member of the State Bar of Michigan and the American Bar Association.

Marc S. Wise is a shareholder of the firm who concentrates his practice in the areas of employee benefits, business planning and taxation. Mr. Wise has extensive experience in the design, financing, implementation and correction of pension and welfare benefit plans for large multi-state employers as well as smaller local employers. As part of his practice, he represents clients in Internal Revenue Service, U.S. Department of Labor and Pension Benefit Guarantee Corporation audits and investigations. He earned his Bachelor of Science degree from Western Michigan University with dual majors in Accounting and Economics. He was awarded his Juris Doctorate degree from Ohio Northern University and a Master of Laws degree in taxation from Wayne State University. Mr. Wise is admitted to practice before the state and federal courts in Michigan, the United States Court of Appeals for the Sixth Circuit and the United States Tax Court.

Brian A. Nettleingham is a shareholder in the Firm's Commercial Litigation Group, where he serves a range of clients on issues that include mortgage lending practices, employment disputes, and intellectual property claims. Brian also assists in advising clients impacted by the Emergency Economic Stabilization Act and related legislation. In addition, Brian regularly consults with clients on issues related to the development, sale, and use of software and computer, network, and internet technology, including retention practices for electronically stored information and methods for electronic contracting. Brian earned his Bachelor of Arts in Pre-Law

from Cedarville University in 1993, where he also earned minors in Religion and Philosophy. He spent two years studying philosophy at Miami University's Graduate School, before earning his Juris Doctorate from Notre Dame Law School, where he was a member of the Appellate Moot Court Team and worked with the law school's Legal Aid and Immigration Law Clinics. He also won the law school's Annual Client Counseling Competition. After graduating from Notre Dame, Brian clerked for the Honorable Joel P. Hoekstra of the Michigan Court of Appeals. He is admitted to the State Bar of Michigan and the Western and Eastern District Federal Courts for Michigan and the Sixth Circuit Court of Appeals.

Geoffrey N. Taylor graduated *magna cum laude* from the University of Pittsburgh Law School in 1997. He obtained a Bachelor of Business Administration with distinction from the University of Michigan in 1992. Mr. Taylor concentrates his practice in the areas of estate planning, probate, and tax law.

Jennifer M. Grieco is a member of the firm's Defense Practice and Insurance Coverage Group. Ms. Grieco received her Bachelor of the Arts degree from the University of Toledo in 1993 and her Juris Doctor cum laude from the University of Toledo College of Law in 1997. While in law school, Ms. Grieco was a Note and Comment Editor for the University of Toledo Law Review and a Member of The Order of the Coif. Ms. Grieco was elected in 2003 to the Board of Directors of the Oakland County Bar Association ("OCBA"). She is currently the President–Elect of the OCBA, having been re-elected to a three-year term on the OCBA Board in 2009. She is a Past President of the Women's Bar Association (Oakland Region of the Women's Lawyers Association of Oakland County), having previously served as the organization's Historian and President-Elect. Ms. Grieco has extensive trial experience in the areas of professional liability and commercial disputes. In 2004, Ms. Grieco was recognized by Michigan Lawyers Weekly when she was named one of Michigan's "Up and Coming Lawyers." In 2007, Ms. Grieco was recognized as a Michigan Super-Lawyer.

Lori E. Talsky joined the firm as an associate after graduating *summa cum laude* from the Detroit College of Law at Michigan State University in January, 1996. Ms. Talsky has an extensive working knowledge of the Canadian legal system. She is a member of the State Bar of Michigan and the American Bar Association.

Sheryl K. Silberstein joined the firm in September, 2000. She is a 1986 graduate of the Detroit College of Law and earned her Bachelor of Arts Degree from the University of Michigan. Her concentration of law is in the area of real estate and related matters. Ms. Silberstein has over twenty years experience in the real estate industry in the corporate sector. She is a member of the State Bar of Michigan.

Michelle C. Harrell is a member of the firm's Litigation Practice Group. She received her Bachelor of Science degree in accounting, *summa cum laude*, from the University of Detroit in 1990 and her Juris Doctor, *cum laude*, from Wayne State University Law School in 1993. While at Wayne State, Ms. Harrell participated in moot court competitions and received three American Jurisprudence Awards.

Michelle is a Barrister in the American Inn of Court, Oakland County Chapter, a Mentor in the Oakland County Bar Association Mentor Program and an Oakland County Circuit Court Case Evaluator (Complex Commercial Neutral). Ms. Harrell concentrates her practice in the areas of complex commercial, real estate and family law litigation.

Brandon Buck received his Bachelor of Science degree with honors from Wayne State University in 1998 and his Juris Doctor degree with honors from Wayne State University Law School in 2001. During law school Mr. Buck received a Board of Governors Scholarship for Academic Excellence and placed first in the law school's Moot Court brief writing competition. Mr. Buck is admitted to practice law in Michigan and California and concentrates his practice in the areas of business disputes, real estate, commercial and general litigation and creditor's rights law.

Rebecca M. Turner is an associate with the firm and concentrates her practice in the areas of franchise law, corporate and business law and real estate transactions. Ms. Turner earned her Bachelor of Business Administration in Accounting from Western Michigan University Haworth College of Business in 1998 and earned her Juris Doctor, *cum laude*, from Syracuse University College of Law in 2001. While at Syracuse, Ms. Turner participated in a National Tax Moot Court Competition in which her team placed first in Oral Arguments and second with their Brief. Ms. Turner was selected as one of five 2006 Up and Coming Lawyers by Michigan Lawyers Weekly, one of 10 women showcased in an article entitled Raising the Bar published in the Crain's Detroit Business issue Focus Law, and named to the 2008 and 2009 Michigan Rising Star list as published by Michigan Super Lawyers. Ms. Turner is a member of the American Bar Association, State Bar of Michigan, Oakland County Bar Association (serving on the Youth Law Conference Committee), International Franchise Association and Women's Franchise Network of Southeast Michigan (serving as Treasurer). Additionally, Ms. Turner is a Past President of the Women's Bar Association, Oakland Region of the Women Lawyers Association of Michigan.

Alexander Stotland earned his Bachelor's degree from Hofstra University in 1994, with a dual major of international business and marketing. Mr. Stotland worked in the banking sector, before earning his Juris Doctor degree from Hofstra University School of Law in 1998. While in law school, Mr. Stotland participated in the prestigious Philip C. Jessup International Law Moot Court Competition. Mr. Stotland practiced law in New York City for approximately seven years, prior to joining the firm. Mr. Stotland is admitted to practice before the federal and state courts of Michigan and New York, is fluent in the Russian language and concentrates his practice in the areas of business disputes, employment law, commercial and civil litigation.

Michael K. Hauser is a CPA and a summa cum laude graduate of Wayne State Law School. He received his B.A. magna cum laude from Dartmouth College. His practice focuses on partnership and corporate tax, federal taxation of real estate transactions, and general corporate and business matters. He is an Adjunct

Professor in the Cooley Law School LLM program, where he teaches Taxation of Real Estate. He authored the Section 1031 volume for the Merten's Tax Treatise (currently pending publication), is also the author of numerous other tax publications, including "Avoiding Dealer Status to Obtain Capital Gains" and "Dealer Status and the Condominium Conversion," (both published in the Journal of Real Estate Taxation). He formerly worked in a mid-sized CPA firm in suburban Detroit servicing small to mid-sized businesses. In law school, he served as a Note & Comment Editor for the Wayne Law Review, for which he authored "The Tax Treatment of Intangibles in Acquisitions of Residential Rental Real Estate." He also served as an intern with the IRS Chief Counsel's Large and Mid-Sized Business Division, where he researched international tax and tax shelter issues.

Lavinia S. Biasell received her Bachelor of Arts degree with High Honors from Michigan State University in 2000, and received her Juris Doctor degree, *magna cum laude*, from Michigan State University-Detroit College of Law in 2003. While in law school, Ms. Biasell was a member of American Inns of Court and earned the Carolyn Stell Award for outstanding achievements and public service from the Women Lawyers Association of Mid-Michigan. Ms. Biasell was admitted to practice by the State Bar of Michigan in 2003. She is also admitted to the Federal District Court for the Eastern and Western Districts of Michigan. Ms. Biasell concentrates her practice in the areas of commercial and real estate litigation. In addition, Ms. Biasell recently served as the Women's Bar Association's President-Elect, and has also served as WLAM Representative and Vice-President.

James M. Reid, IV is an Associate in the firm who concentrates his practice in the areas of employment, business disputes, real estate, and commercial and general litigation. He received a Bachelor of Arts in Political Science-Prelaw with honors from Michigan State University in 2002 and his Juris Doctor degree with honors from Wayne State University Law School in 2005. While at law school, Mr. Reid was an associate editor of the Wayne Law Review. Mr. Reid is admitted to practice before the federal and state courts of Michigan.

Mark E. Plaza received his Bachelor of Arts degree with High Distinction from the University of Michigan in 1999, and received his Juris Doctor degree, Cum Laude, from Wayne State University Law School in 2003. While in law school, Mr. Plaza was a Senior Articles Editor for the Wayne Law Review and a member of Phi Alpha Delta Law Fraternity. Mr. Plaza was admitted to practice by the State Bar of Michigan in 2003. He is also admitted to the Federal District Court for the Eastern and Western Districts of Michigan. Mr. Plaza concentrates his practice in the areas of commercial and real estate litigation.

Courtney D. Roschek received her bachelor of arts magna cum laude from Western Michigan University in 2004. She earned her juris doctorate magna cum laude from Michigan State University College of Law in 2007. While in law school, she was an active member of MSU Law's Moot Court Advocacy Board and Trial Practice Institute and received the Carolyn Stell Award from the Women Lawyers Association. Previously, Ms. Roschek worked with the United States District Court

for the Eastern District of Michigan in developing and conducting the certification program for trial attorneys wishing to use the shared advanced technology courtroom.

Suzanne S. Reynolds joined the firm in February, 2009. Ms. Reynolds concentrates her practice in real estate matters and has particular expertise in condominium law. After graduating summa cum laude from Detroit College of Law in 1987, Ms. Reynolds was in private practice for fifteen years and then served as general counsel for a commercial construction and development firm for six years. Ms. Reynolds is a member of the State Bar of Michigan

Brian R. Meyer is an associate in the firm's Defense Practice and Insurance Coverage Group. Brian received his Bachelors Degree from the University of Michigan in 1999 and his Juris Doctor from Emory University School of Law in 2003. While in law school, Brian served as President of the Emory Chapter of the Federalist Society. Prior to joining Maddin Hauser, Brian spent nearly five years in the United States Navy Judge Advocate General's Corps where he served at various times as a prosecutor, command advisor, and Special Assistant United States Attorney in San Diego, Kings Bay, Georgia, and Iraq. Brian is admitted to the State Bar of Michigan and the United States District Court for the Eastern District of Michigan. He is also a member of the American Bar Association, the Oakland and Washtenaw County Bar Associations, and the Veterans of Foreign Wars (VFW).

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