ENACTED BY THE STATE OF HAWAII

Digest of Tax Measures

TWENTY-FIFTH LEGISLATURE – REGULAR AND
FIRST SPECIAL SESSIONS OF 2009

Prepared by the State of Hawaii
Department of Taxation
Issued: July 31, 2009

NOTE: This Digest is issued solely as a guide and is not intended to be complete

Introduction

The following is a digest of bills passed by the 2009 Legislature and enacted into law. The Governor vetoed eight substantive tax measures, all but three were overridden by the Legislature. The digest includes only those measures that affect Hawaii's tax laws and is provided for your information. It is issued solely as a guide and is not intended to be either authoritative or complete. Copies of the bills passed by the Legislature may be obtained from the Senate and House print shops. Bills and Acts are also accessible via the Internet on the State Capitol website at http://www.capitol.hawaii.gov, or on the Department of Taxation's website at http://hawaii.gov/tax.

KEY TO ABBREVIATIONS

S.B.	=	Senate Bill
S.D.	=	Senate Draft
H.B.	=	House Bill
H.D.	=	House Draft
C.D.	=	Conference Draft
SCR	=	Senate Concurrent Resolution
HCR	=	House Concurrent Resolution
SSCR	=	Senate Standing Committee Report
HSCR	=	House Standing Committee Report
CCR	=	Conference Committee Report
SECT AFF	=	Section(s) of the Hawaii Revised Statutes Affected by the Bill's Provisions
HRS	=	Hawaii Revised Statutes
HAR	=	Hawaii Administrative Rules
L Sp	=	Legislative Special Session
SLH	=	Session Laws of Hawaii

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ADMINISTRATIVE TAX MEASURES

ACT 5

S.B. 1130, S.D. 2

Relating to the Bureau of Conveyances

SSCR 266; SSCR 765; HSCR 1102; HSCR 1423
SECT AFF: 501-151

Allows the redaction of social security numbers on judgements, decrees, and court orders so that the documents may be recorded at the Bureau of Conveyances.

EFFECTIVE: Upon approval, April 16, 2009.

ACT 11

S.B. 92

Relating to Statutory Revision: Amending or Repealing Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the Purpose of Correcting Errors and References, Clarifying Language, and Deleting Obsolete or Unnecessary Provisions

SSCR 49; HSCR 1419
SECT AFF: 235-1, 237-24.3, 237-27.1, 237-31, 246-31, Repeal Chapter 235D

Amended the definition for "person totally disabled" in chapters 235 and 246 by adding that the disability may be certified by an osteopathic physician. Also amended the definition that the physician or osteopathic physician be licensed under chapter 453, since chapter 460 was repealed by Act 5, SLH 2008.

Act 28, SLH 2008 is amended by amending section 43 to read: "SECTION 43. Upon its approval, this Act shall take effect retroactive to July 1, 2006; provided that (1) Section 3(2) shall be repealed on June 30, 2008; (2) Sections 3(3) and [(23)]23 shall take effect on July 1, 2008; and (3) the amendments to section 237-24.3, HRS, by section 26 shall not be repealed when that section is reenacted on December 31, 2009 by section 4 of Act 239, SLH 2007."

Repealed the exemption for the sale of alcohol fuels under section 237-27.1. Amended section 237-31(3) by deleting obsolete language in this subsection.

EFFECTIVE: Upon approval, April 21, 2009

ACT 40

S.B. 1327, S.D. 1, H.D. 1

Relating to the Rate of Interest Applicable to Overpayments of Tax

SSCR 559; HSCR 1605
SECT AFF: 231-23(d)

Amends the current interest rate payable on overpayments of tax to the rate of one-third of one percent for each month or fraction thereof

EFFECTIVE: Upon approval, May 5,2009, on claims for refunds made on or after January 1, 2009.

ACT 134

S.B. 972, S.D. 2, H.D. 1, C.D. 1

Relating to Tax Administration

SSCR 413; SSCR 697; HSCR 1609; CCR 143
SECT AFF: 16 new sections added to Chapter 231, 231-1, 235-20.5, 237-____, 237-9, 237-12

Known as the "*Cash Economy Enforcement Act of 2009*", created a new section under chapter 231 entitled the "Civil Compliance, Special Enforcement Section". Under this section, a task force is created which will civilly investigate reported or suspected violations of tax laws, with a special emphasis on cash-based businesses. These cash-based (both for-profit and not-for-profit) businesses are those where goods, services, and other transactions are paid for substantially in cash and where the business is found to have met one or more of a number of factors, including substantially underreporting or misreporting the proper amount of tax liability on any tax return, failing to have a license to do business as required by law, having no fixed and permanent principal place of business, or not accepting checks or electronic payment devices for business transactions.

Several new civil tax-related fines went into effect on July 1, 2009 are applicable to both cash-based and noncash-based businesses. Provides that in each fiscal year, the total revenues collected by the special enforcement section less than $500,001 shall be deposited into the tax administration special fund.

Amends the definition of "person" under chapter 231 by adding "one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity and also includes" into the current definition.

Creates a new filing requirement under the general excise tax law for contractors on federal construction projects who do not have a general excise tax license at the time the contract is awarded. A report must be filed with the department of taxation with an estimate of the gross receipts or any other information requested by the department within 30 days of the contract award date. Failure to comply will result in a penalty of $1,000 per month, or fraction of a month, with a maximum penalty of $6,000.

Amends the general excise tax law by adding a nonwaivable penalty for operating a business without a general excise tax license. The fine shall be not more than $500, however, a cash-based business may be fined a minimum $500 fine but not more than $2,000.

EFFECTIVE: Upon approval, June 18, 2009, except citable offense provisions, which are effective July 1, 2009. Sunset date of June 30, 2014.

ACT 166

H.B. 1739, H.D. 1, S.D. 1, C.D. 1

Relating to Taxation

HSCR 754; SSCR 1212; CCR 5

SECT AFF: 12 new sections in Chapter 231, 231-7, 231-40, 231-41, 232-7, 232-16, 232-18, 235-11, 237-40, 237D-9, 238-7, 243-14, 247-6.5, 251-8,

Establishes provisions relating to understatement of taxpayer's liability by tax return preparer, including penalties and injunctive relief (tax administration enforcement). Establishes provisions relating to promoting abusive income tax shelters, including penalties and injunctive relief. Establishes provisions relating to erroneous claim for refund or credit; substantial understatements or misstatements of amounts; an extended statute of limitations for substantial omissions; a 15 year collection statute of limitation; authority to establish expedited appeals and dispute resolution programs; rules or administrative guidance; disclosure of letter rulings; closing audit letters; signature presumed authentic (tax fraud proceedings); temporary rulemaking authority for regulation of tax matters; and willful failure to collect and pay over tax (criminal tax enforcement).

EFFECTIVE: July 1, 2009; does not affect returns prepared and transactions promoted, rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date; provided that section 1 (relating to penalties for preparing returns with unreasonable positions), section 3 (relating to erroneous refund or credit claims), section 4 (relating to substantial understatements), section 5 (relating to the statute of limitations on substantial omissions), section 6 (relating to fraud assessments), section 7 (relating to fraud assessments), section 8 (relating to fraud assessments), section 10 (relating to fraud assessments), and section 11 (relating to fraud assessments) shall apply to any return prepared, refund claim, understatement, omission, or fraud contained in any return where the statute of limitations on assessment has not expired; provided that this Act shall not apply to any return prepared, refund claim, understatement, omission, or fraud in any return where an amended return is filed by October 1, 2009, to the extent the amended return cures, corrects, or eliminates any item constituting an unreasonable position, erroneous refund claim, substantial understatement, substantial omission, or fraud as provided in this Act.

INCOME TAX MEASURES

ACT 60

H.B. 1747, H.D. 1, S.D. 1, C.D. 1

Relating to Taxation

HSCR 765; SSCR 1200; CCR 2
SECT AFF: 235-2.4, 235-51, 235-54

Increases the standard deduction effective for tax years 2011 through 2015 as follows:

$4,400 in the case of a joint return, or a surviving spouse;
$3,212 in the case of a head of household; and
$2,200 in the case of an individual return.

For tax years 2011 through 2015, the personal exemption amount will increase from $1,040 to $1,144.

Increases the income tax for high income brackets as follows:

For tax years 2009 through 2015, taxpayers who file a joint return will pay:
- 9.00% on taxable income over $300,000, but not over $350,000;
- 10.00% on taxable income over $350,000, but not over $400,000; and
- 11.00% on taxable income over $400,000.

For tax years 2009 through 2015, heads of a household will pay:
- 9.00% on taxable income over $225,000, but not over $262,500;
- 10.00% on taxable income over $262,500, but not over $300,000; and
- 11.00% on taxable income over $300,000.

For tax years 2009 through 2015, unmarried individuals and married individuals who file separately will pay:
- 9.00% on taxable income over $150,000, but not over $175,000;
- 10.00% on taxable income over $175,000, but not over $200,000; and
- 11.00% on taxable income over $200,000.

EFFECTIVE: Upon approval. Veto override May 8, 2009.

ACT 84

H.B. 35, H.D. 1, S.D. 1, C.D. 1

Relating to Income Tax Credit

HSCR 725; SSCR 1194; CCR 157
SECT AFF: Chapter 235

Provides a one-time, refundable constitutionally mandated income tax credit of $1.

Computes the credit on a per-exemption basis. The tax credit of $1 is multiplied by the number of qualified exemptions claimed on the taxpayer's income tax return; however, multiple exemptions for age or physical disabilities shall not be recognized. The credit is deductible from the taxpayer's 2009 individual income tax liability. Any excess credit after calculating the income tax owed will be refunded to the taxpayer. All claims for the credit must be made within twelve months following the close of the 2009 taxable year.

Declares the following persons are ineligible for the credit:

Persons that have not been residents of the state for at least nine months;
Persons convicted of a felony and incarcerated for the full taxable year;
Persons eligible to be claimed as a dependent and committed to a youth correctional facility for the full taxable year;
Misdemeanants committed to jail for the full taxable year; and
Persons claimed as a dependent or who otherwise would qualify to be claimed as dependent.

EFFECTIVE: Upon approval, June 2, 2009

ACT 91

H.B. 1057, H.D. 1, S.D.2, C.D. 1

Relating to the State of Hawaii College Savings Program

HSCR 87; HSCR 797; SSCR 1005; SSCR 1296; CCR 7
SECT AFF: 256-4

Allows third parties, such as grandparents and other relatives or friends, to contribute directly to a college savings account for a designated beneficiary.

EFFECTIVE: July 1, 2009 for taxable years beginning after December 31, 2008.

ACT 133

S.B. 971, S.D. 2, H.D. 1, C.D. 1

Relating to Conformity of the Hawaii Income Tax Law to the Internal Revenue Code

SSCR 441; SSCR 835; HSCR 1612; CCR 58
SECT AFF: 235-2.3, 235-2.4, 235-2.45

Section 235-2.5(c), HRS, mandates that the Department of Taxation submit a bill to the Legislature, during each regular session, to conform to the changes in the Internal Revenue Code (IRC). The adoption of the amendments to the IRC assures continued State conformity with the federal income tax law and minimizes taxpayers' burdens in complying with Hawaii's income tax law.

Reviewed were the federal income tax law changes resulting from the following federal acts:

1) The Economic Stimulus Act of 2008 (P.L. No. 110-185; Feb. 13, 2008);
2) The Heroes Earnings Assistance and Relief Tax Act of 2008 (P.L. No. 110-245; June 18, 2008);
3) The Heartland, Habitat, and Horticulture Act of 2008 (P.L. No. 110-246; June 18, 2008);
4) The Housing Assistance Tax Act of 2008 (P.L. No. 110-289; July 30, 2008);
5) The Hubbard Act (P.L. 110-317; Aug. 29, 2008);
6) The Emergency Economic Stabilization Act of 2008 (P.L. 110-343; Oct. 3, 2008);
7) The Energy Improvement and Extension Act of 2008 (P.L. 110-343; Oct. 3, 2008);
8) The Tax Extenders and AMT Relief Act (P.L. 110-343; Oct. 3, 2008);
9) The Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351; Oct. 7, 2008)
10) The Worker, Retiree, and Employer Recovery Act of 2008 (P.L. No. 110-458; Dec. 23, 2008)

For more information on the federal laws to which the State conforms, please see the Digest of Federal Laws contained in this publication.

EFFECTIVE: July 1, 2009 and applies to taxable years beginning after December 31, 2008; provided that retroactive and prospective effective dates contained in the congressional acts relating to the Internal Revenue Code and enacted during 2008 shall be operative.

ACT 154

S.B. 464, S.D. 2, H.D. 2, C.D. 2

Relating to Taxation

SSCR 254; SSCR 850; HSCR 1286; HSCR 1723; CCR 98
SECT AFF: 235-12.5

Section 235-12.5(a) is amended to simplify the identification of systems eligible for this credit. Instead of basing the definitions of the eligible systems on how they use the renewable resource, this Act defines the systems based simply upon what renewable resource is being converted to usable energy.

Separates the cap determination from the system eligibility determination and bases the cap amount upon the use of the system, rather than the type of system. New subsection (b) retains the cap amounts from the previous version of the credit, but applies the lower solar system cap to systems if the primary purpose of the system is to use energy from the sun to heat water for household use, which is a defined term. The wind-powered system caps are unchanged.

A taxpayer may make an election to receive a refund of any credit amount remaining after being applied to any tax liability under the following circumstances:

1) For solar energy systems, a taxpayer may make an election under new subsection (g) by calculating its credit as normal and reduce the amount calculated by 30%. The remaining 70% is eligible to be claimed as the credit and any balance remaining after offsetting any tax liability is refundable. OR
2) For any type of renewable energy technology system, where all of a taxpayer's income is exempt under a public retirement system, or received in the form of a pension for past services, or where the taxpayer's adjusted gross income is $20,000 or less ($40,000 or less if filing jointly), the taxpayer may elect to claim the credit as a refundable credit, without any reduction.

Removes former subsection (g) which prohibited residential home developers from claiming the credit.

Prohibits the credit from being claimed for the portion of the renewable energy technology required on any newly constructed single-family residential property authorized by a building permit issued on or after January 1, 2010 and preserves the credit for systems installed and placed in service on single-family residential property constructed prior to January 1, 2010.

EFFECTIVE: For systems that are installed and placed in service on or after July 1, 2009 and shall apply to taxable years beginning after December 31, 2008.

ACT 155

H.B. 1464, H.D. 3, S.D. 2, C.D. 1
Relating to Energy Resources
HSCR 171; HSCR 311; HSCR 961; SSCR 1053; SSCR 1327; CCR 176
SECT AFF: 235-12.5

Amends the requirement under section 196-6.5 that a building permit will not be issued for NEW single-family dwellings that do not include a solar energy heater system on or after January 1, 2010 and preserves the credit for systems installed and placed in service on single-family residential property constructed prior to January 1, 2010.

EFFECTIVE: July 1, 2009.

ACT 165

H.B. 1495, H.D. 1, S.D. 1, C.D. 1

Relating to State Income Tax

HSCR 749; SSCR 1196; CCR 158
SECT AFF: 235-2.4

Makes section 165 (d) (with respect to wagering losses) of the Internal Revenue Code inoperative for purposes of Hawaii income tax. Losses incurred as a result of wagering cannot be deducted from wagering winnings before calculating taxable income. The gross winnings, without netting out any losses, will be subject to Hawaii net income taxation.

EFFECTIVE: Upon approval, July 1, 2009 for taxable years beginning after December 31, 2008.

ACT 178

S.B. 199, S.D. 1, H.D. 1, C.D. 2

Relating to Taxation

SSCR 595; HSCR 1608; CCR 51; CCR 132
SECT AFF: 235-___, 235-2.45, 235-110.7, 235-110.9, 241-4.5, 241-4.8, 431:7-209

For investment made, or renovations costs incurred, on or after May 1, 2009, provides that beginning after January 1, 2009, and ending before January 1, 2011, no claim for qualified high technology business investment tax credits or technology infrastructure renovation tax credits under income tax, taxation of banks and other financial corporations, and insurance shall exceed 80 per cent of a taxpayer's tax liability, and no credit carryover is allowed.

Makes IRC section 704(b)(2) operative with respect to allocation of the high technology business investment tax credit. Investors may no longer make an investment of $1 and receive more than $1 in credits through special allocations from entities taxed as a partnership.

For eligible depreciable tangible property placed in service on or after May 1, 2009, reduces the rate to 0 per cent. The rate returns to 4 per cent for 2010 and subsequent calendar years.

EFFECTIVE: Upon approval, July 15, 2009, without Governor's signature. Only applies to investments made, renovation costs incurred, or eligible depreciable tangible property placed in service on or after May 1, 2009.

ACT 181

H.B. 1550, H.D. 2, S.D. 1, C.D. 1

Relating to Taxation

HSCR 359; HSCR 921; SSCR 1198; CCR 114
SECT AFF: 235-2.4

Imposes the state income tax on rollovers made by employees of state and county agencies and tax-exempt organizations from qualifying annuity plans and qualifying deferred compensation plans, to eligible retirement plans or individual retirement accounts.

EFFECTIVE: July 1, 2009, without Governor's signature, and shall apply to taxable years beginning after December 31, 2008.

ACT 14, L Sp

H.B. 1544, H.D. 1, S.D. 1, C.D. 1

Relating To Tax Exemptions

HSCR 750; SSCR 1197; CCR 159
SECT AFF: 235-54

Adds a new subsection (c) to section 235-54, which would phase-out the amount of that may be claimed for personal exemptions by taxpayers with Hawaii adjusted gross income exceeding a threshold amount. The state's threshold amount would be 75% of the federal threshold amounts on July 1, 2008 as follows:

	Federal Threshold on 07/01/08		**25% of Federal Threshold**		**State Threshold**
Married Filing a Joint Return	239,950.00	-	59,987.00	=	$179,963.00
Head of Household	199,950.00	-	49,987.00	=	$149,963.00
Single	159,950.00	-	39,987.00	=	$119,963.00
Married Filing a Separate Return	119,975.00	-	29,994.00	=	$89,981.00

EFFECTIVE: Upon approval, Veto override July 15, 2009, for taxable years beginning after December 31, 2008. Sunset date of June 30, 2015.

GENERAL EXCISE/USE/TRANSIENT ACCOMMODATIONS/WITHHOLDING TAX MEASURES

ACT 61

S.B. 1111, S.D. 1, H.D. 1, C.D. 1

Relating to Taxation

SSCR 598; HSCR 1603; CCR 52
SECT AFF: 237D-2, 237D-6.5

Increases the transient accommodations tax rate from 7.25% to 8.25% effective July 1, 2009. Increases the transient accommodations tax rate from 8.25% to 9.25% effective July 1, 2010. Provides that the revenues collected from these increases shall be deposited to the state general fund.

EFFECTIVE: July 1, 2009. (Veto override May 8, 2009) Sunset date of June 30, 2015.

ACT 70

S.B. 427, H.D. 1, C.D. 1

Relating to General Excise Taxation

SSCR 307;SSCR 759; HSCR 1035;HSCR 1279; HSCR 1659; CCR 137
SECT AFF: 237-24

Excludes from the general excise tax, amounts received by a managed care support contractor of the TRICARE program for the actual cost or advancement to third party health care providers pursuant to a contract with the United States.

EFFECTIVE: July 1, 2009. Sunset date of December 31, 2013.

ACT 196

S.B. 1461, S.D. 2, H.D. 1, C.D. 2

Relating to Taxation

SSCR 443; SSCR 847; HSCR 1607; CCR 110
SECT AFF: 231-9.9, 235-62, 237-30, 237-24.3, 237-24.7

Amends provisions relating to payment of taxes by electronic funds transfer by adding filing. Authorizes the director of taxation to require any person required to electronically file a federal return or electronically remit any federal taxes to the federal government, to do the same with the State. Authorizes the director to require any employer required to remit any withheld taxes to the federal government on a semi weekly schedule to remit the complete amount to the department of taxation on a semi weekly schedule.

Amends provisions relating to general excise taxes by changing the day of payment from the last day of the calendar month to the 20th day of the calendar month.

Extends to December 31, 2010, the general excise tax exemption that includes amounts received by a submanager of an association of apartment owners of a condominium property regime or a nonprofit homeowners or community association in reimbursement for sums paid for common expenses. Also extends, the exemption of gross income or gross proceeds received by a hotel suboperator or the hotel operator or suboperator from a timeshare association in amounts equal to and which are disbursed for employee wages, salaries, payroll taxes, insurance premiums, and benefits from the general excise tax. Provides an aggregate cap of $400,000 for an exemption claimed for tax years ending between January 1, 2010 and January 1, 2011.

EFFECTIVE: Upon approval, July 15, 2009, without Governor's signature, shall apply to returns and payments due after May 31, 2009; provided that the extension of the provisions under sections 237-24.3 and 237-24.7 shall take effect upon approval.

TOBACCO TAX MEASURES

ACT 30

S.B. 528, S.D. 1

Relating to Tobacco

SSCR 225; SSCR 760; HSCR 1143; HSCR 1635
SECT AFF: 245-1, 245-2, 245-2.5, 245-2.6, and 245-2.7

Makes permanent the retail tobacco permit law.

EFFECTIVE: June 30, 2009.

ACT 56

H.B. 1175, H.D. 3, S.D. 2, C.D. 1

Relating to Taxation

HSCR 644; HSCR 747; SSCR 1036; SSCR 1248; CCR3
SECT AFF: 245-3, 245-15

Increases the per-cigarette tax to 13 cents beginning July 1, 2009, 14 cents beginning July 1, 2010, and 15 cents beginning July 1, 2011. Amends the dates when the earmarked funds be deposited to the various special funds to coincide with the dates of the tax increases.

EFFECTIVE: June 30, 2009. (Veto override May 8, 2009)

ACT 58

H.B. 895, H.D. 2, S.D. 2, C.D. 1

Relating to Tax on Tobacco Products Other Than Cigarettes

HSCR 468; HSCR 807; SSCR 1035; SSCR 1254
SECT AFF: 245-1, 245-3, and 245-15

Adds a new definition for little cigars. Amends the definition of tobacco products to exclude little cigars. Taxes little cigars at 11 cents per little cigar on or after October 1, 2009, and at the same rate for cigarettes for periods on or after October 1, 2010.

Increases the tax from 40% to 70% of the wholesale price on tobacco products, other than cigars, on or after September 30, 2009. Taxes the sale, use or possession of cigars at the rate of 50% of the wholesale price on or after September 30, 2009.

Earmarks the additional revenues to be deposited to the special funds.

EFFECTIVE: Upon approval, veto override May 8, 2009, provided that the amendments made to section 245-1 shall not be repealed when 245-1 is reenacted on July 1, 2009 pursuant to section 9 of Act 131, SLH 2005.

CONVEYANCE TAX MEASURES

ACT 57

S.B. 52, S.D. 2, H.D. 1

Relating to Real Property

SSCR 268; SSCR 707; HSCR 1263; HSCR 1683
SECT AFF: 502-26

The purpose of the Act is to enable the counties to promptly track ownership, encumbrances, restrictions, uses, and sales prices of real property to enable more accurate real property tax assessments by requiring the registrar of the bureau of conveyances to provide, within ten days after each week and free of charge, an image and index of all instruments and documents that have been recorded in the registrar's office that week relating to regular system land in all the counties, to the county designated in a memorandum of understanding agreed upon by the counties to act as a central clearinghouse to deliver the images and index to the other counties without charge.

EFFECTIVE: Upon approval, May 7, 2009 without Governor's signature. (Veto override May 8, 2009)

ACT 59

H.B. 1741, H.D. 1, S.D. 1, C.D 1

Relating to the Conveyance Tax

HSCR 741; SSCR 1213; CCR 1
SECT AFF: 247-2, 247-7

Temporarily reduces the distribution of portions of the conveyance tax transferred to the Rental Housing Trust Fund and the Natural Area Reserve Fund. Increases the conveyance tax rate for certain sales as follows:

1) Except as provided in paragraph (2):
    a) Ten cents ($.10) per $100 of the actual and full consideration for properties with a value of less than $600,000
    b) Twenty cents ($.20) per $100 of the actual and full consideration for properties with a value of at least $600,000, but less than $1,000,000
    c) Thirty cents ($.30) per $100 of the actual and full consideration for properties with a value of at least $1,000,000, but less than $2,000,000
    d) Fifty cents ($.50) per $100 of the actual and full consideration for properties with a value of at least $2,000,000, but less than $4,000,000
    e) Seventy cents ($.70) per $100 of the actual and full consideration for properties with a value of at least $4,000,000, but less than $6,000,000
    f) Ninety cents ($.90) per $100 of the actual and full consideration for properties with a value of at least $6,000,000 but less than $10,000,000

   g) One dollar ($1.00) per $100 of the actual and full consideration for properties with a value of $10,000,000 or greater

2) For the sale of a condominium or single family residence for which the purchaser is ineligible for a county homeowner's exemption on property tax:
   a) Fifteen cents ($.15) per $100 of the actual and full consideration for properties with a value of less than $600,000
   b) Twenty-five cents ($.25) per $100 of the actual and full consideration for properties with a value of at least $600,000, but less than $1,000,000
   c) Forty cents ($.40) per $100 of the actual and full consideration for properties with a value of at least $1,000,000, but less than $2,000,000
   d) Sixty cents ($.60) per $100 of the actual and full consideration for properties with a value of at least $2,000,000, but less than $4,000,000
   e) Eighty-five cents ($.85) per $100 of the actual and full consideration for properties with a value of at least $4,000,000, but less than $6,000,000
   f) One dollar and ten cents ($1.10) per $100 of the actual and full consideration for properties with a value of at least $6,000,000 but less than $10,000,000
   g) One dollar and twenty-five cents ($1.25) per $100 of the actual and full consideration for properties with a value of $10,000,000 or greater

EFFECTIVE: July 1, 2009. (Veto override May 8, 2009)

ACT 102

H.B. 271, S.D.2, C.D. 1

Relating to Real Property

HSCR 212; HSCR 563; HSCR 952; SSCR 912; SSCR 1243; CCR 35
SECT AFF: New part in Chapter 502

Created the Uniform Real Property Electronic Recording Act which permits the registrar of the bureau of conveyances to accept electronic documents with electronic signatures for recording.

EFFECTIVE: July 1, 2009.

MISCELLANEOUS TAX MEASURES

ACT 174

S.B. 1248, S.D. 1, H.D. 1, C.D. 1

Relating to State Enterprise Zones

SSCR 383; SSCR 680; HSCR 1071; HSCR 1284; HSCR 1730; CCR 147
SECT AFF: 209E-2, 209E-4, 209E-9, 209E-10, 209E-11

Amends provisions relating to state enterprise zone. Defines eligible business activity as the manufacture of tangible personal property, the wholesale sale of tangible personal property; the production of agricultural products or the processing of agricultural products; research, development, sale or production of all types of genetically engineered medical, agricultural, or maritime biotechnology products; and production of electric power from wind energy for sale primarily to a public utility company for resale to the public.

Amends the definitions of qualified business and service business to include limited liability companies.

Amends provisions relating to enterprise zone designation. Repeals sections that relate only to Kauai and the Waialua district of Oahu.

Amends provisions relating to the eligibility; qualified business; sale of property. Allows a business firm to be designated a qualified business if it is an eligible business activity. Allows for the receipts, sales, and employees of a business establishments in all enterprise zones located within the same county to count towards qualification in the enterprise program.

Amends provisions relating to State business tax credit. Allows agricultural producers, manufacturers and wholesalers to renew their eligibility into the enterprise zone program for an additional 3 years.

EFFECTIVE: July 1, 2009

ACT 184

S.B. 470, H.D. 1, C.D. 1

Relating to Liquor

SSCR 75; SSCR 755;HSCR 1233; HSCR 1652; CCR 63
SECT AFF: 231-28, 281-1, 281-3, 281-17, 281-22, 281-31, 281-41, 281-45, 281-57, 281-59, 281-85

Allows a tax clearance to be issued for purposes of applying for a liquor license if the applicant has "entered into and is complying with an installment plan agreement with the department of taxation for the payment of delinquent taxes in installments."

EFFECTIVE: Upon approval, July 15, 2009, without Governor's signature

ACT 198

H.B. 371, H.D. 2, S.D. 2, C.D. 1

Relating to Taxation

HSCR 66; HSCR 280; HSCR 848; SSCR 947; SSCR 1272; CCR 127
SECT AFF: 243-4

Extends by three years the sunset provision relating to the tax on naphtha fuel sold for use in a power-generating facility. Increases the tax from 1 cent per gallon to 2 cents per gallon.

EFFECTIVE: July 1, 2009, without Governor's signature.

VETOED MEASURES

H.B. 1405, H.D. 2, S.D. 2, C.D. 1 (VETO JULY 1, 2009)

Relating to the General Excise Tax

HSCR 412; HSCR 779; SSCR 1040; SSCR 1278; CCR 164
SECT AFF: 231-___, 237-2

Amends provisions relating to business, engaging in business, defined under general excise tax laws. Redefines engaging to include the sale of tangible personal property by a person soliciting business through an independent contractor if the person enters into an agreement with a resident for a commission or other consideration, directly or indirectly refers potential customers, and sales are in excess of 10,000 dollars.

Establishes provisions relating to business domiciled out of state; nexus presumptions. Provides that a business is this State that has its commercial domicile in another state in doing business in the State will be taxable under State tax laws.

H.B. 1271 H.D. 3, S.D. 2, C.D. 1 (VETO July 15, 2009)

Relating to Government

HSCR 812; SSCR 3402; CCR 178-08
SECT AFF: 128D-2, 141-___, 196-___, 201-___, 201-12.8, 243-3.5,

Makes various amendments, establishes various initiatives, and appropriates funds to promote economic development for local food and energy businesses, ensure Hawaii is energy and food self-sufficient and sustainable to the maximum extent feasible, and help Hawaii's natural resources and humankind adapt and be resilient to the inevitable challenges brought on by climate change. Renames and increases the environmental response tax from $.05 per barrel to $1.05 per barrel on July 1, 2009.

S.B. 1678 S.D. 3, H.D. 1, C.D. 1 (VETO July 15, 2009)

Relating to Taxation

SSCR 210; SSCR 667; HSCR 1610; CCR 169
SECT AFF: 3 new tax chapters; 46-___, 6 new sections to Chapter 237, 237-1, 237-3, 237-8.6, 237-9, 237-13, 237-21, 237-24, 237-24.3, 237-31, 237-34, 238-2, 238-2.3, 238-2.6, 239-___, 9 new sections to Chapter 255D; Repeals 237-4, 237-5, 237-13.3, 237-13.5, 237-15, 237-17, 237-29.55, 238-4

Removes from chapter 237 and establishes a separate tax on wholesalers, service businesses, and contractors, tax on import of goods and services and contracting for resale, and insurance producer's tax.

Makes amendments to bring chapter 237 into conformity with the Streamlined Sales and Use Tax Agreement.

Establishes a committee to work with and oversee the department of taxation's implementation, administration, and compliance of the Streamlined Sales and Use Tax Agreement.

TABLE SHOWING EFFECT OF ACTS
Twenty-Fifth Legislature - 2009 Regular and First Special Sessions

KEY: Am = Amended
N = New
R = Repealed
_____ = Chapter or section number to be assigned in HRS Supplement

SECTIONS OF HRS AFFECTED			
SECTION NO.	EFFECT	ACT NO.	BILL NO.
209E-11	Am	ACT 174	S.B. 1248, S.D. 1, H.D. 1, C.D. 1
209E-10	Am	ACT 174	S.B. 1248, S.D. 1, H.D. 1, C.D. 1
209E-9	Am	ACT 174	S.B. 1248, S.D. 1, H.D. 1, C.D. 1
209E-4	Am	ACT 174	S.B. 1248, S.D. 1, H.D. 1, C.D. 1
209E-2	Am	ACT 174	S.B. 1248, S.D. 1, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-___	N	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
231-___	N	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
231-___	N	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
231-___	N	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
231-___	N	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
231-___	N	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
231-___	N	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
231-___	N	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
231-___	N	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
231-___	N	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1

SECTIONS OF HRS AFFECTED			
SECTION NO.	EFFECT	ACT NO.	BILL NO.
231-___	N	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
231-___	N	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
231-1	Am	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
231-23(d) Am		ACT 40	S.B. 1327, S.D. 1, H.D. 1
231-28 Am		ACT 184	S.B. 470, H.D. 1, C.D. 1
231-40	Am	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
231-41	Am	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
231-7	Am	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
231-9.9	Am	ACT 196	S.B. 1461, S.D. 2, H.D. 1, C.D. 2
232-16	Am	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
232-18	Am	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
232-7	Am	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
235-___	N	ACT 178	S.B. 199, S.D. 1, H.D. 1, C.D. 2
235-1	Am	ACT 11	S.B. 92
235-11	Am	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
235-110.7	Am	ACT 178	S.B. 199, S.D. 1, H.D. 1, C.D. 2
235-110.9	Am	ACT 178	S.B. 199, S.D. 1, H.D. 1, C.D. 2
235-12.5	Am	ACT 154	S.B. 464, S.D. 2, H.D. 2, C.D. 2
235-12.5	Am	ACT 155	H.B. 1464, H.D. 3, S.D. 2, C.D. 1
235-2.3	Am	ACT 133	S.B. 133, S.D. 2, H.D. 1, C.D. 1
235-2.4	Am	ACT 133	S.B. 133, S.D. 2, H.D. 1, C.D. 1
235-2.4	Am	ACT 165	H.B. 1495, H.D. 1, S.D. 1, C.D. 1
235-2.4	Am	ACT 181	H.B. 1550, H.D. 2, S.D. 1, C.D. 1
235-2.4	Am	ACT 60	H.B. 1747, H.D. 1, S.D. 1, C.D. 1
235-2.45 Am		ACT 133	S.B. 133, S.D. 2, H.D. 1, C.D. 1
235-2.45 Am		ACT 178	S.B. 199, S.D. 1, H.D. 1, C.D. 2
235-20.5	Am	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
235-51	Am	ACT 60	H.B. 1747, H.D. 1, S.D. 1, C.D. 1
235-54	Am	ACT 14, L Sp	H.B. 1544, H.D. 1, S.D. 1, C.D. 1
235-54	Am	ACT 60	H.B. 1747, H.D. 1, S.D. 1, C.D. 1
235-62	Am	ACT 196	S.B. 1461, S.D. 2, H.D. 1, C.D. 2
237-___	N	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
237-24 Am		ACT 70	S.B. 427, H.D. 1, C.D. 1
237-24.3	Am	ACT 11	S.B. 92
237-24.3	Am	ACT 196	S.B. 1461, S.D. 2, H.D. 1, C.D. 2
237-24.7	Am	ACT 196	S.B. 1461, S.D. 2, H.D. 1, C.D. 2
237-27.1	R	ACT 11	S.B. 92
237-30	Am	ACT 196	S.B. 1461, S.D. 2, H.D. 1, C.D. 2
237-31	Am	ACT 11	S.B. 92
237-40	Am	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
237-9	Am	ACT 134	S.B. 972, S.D. 2, H.D. 1, C.D. 1
237D-2	Am	ACT 61	S.B. 1111, S.D. 1, H.D. 1, C.D. 1

SECTIONS OF HRS AFFECTED			
SECTION NO.	EFFECT	ACT NO.	BILL NO.
237D-6.5	Am	ACT 61	S.B. 1111, S.D. 1, H.D. 1, C.D. 1
237D-9	Am	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
238-7	Am	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
241-4.5	Am	ACT 178	S.B. 199, S.D. 1, H.D. 1, C.D. 2
241-4.8	Am	ACT 178	S.B. 199, S.D. 1, H.D. 1, C.D. 2
243-14	Am	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
243-4	Am	ACT 198	H.B. 371, H.D. 2, S.D. 2, C.D. 1
245-1	Am	ACT 30	S.B. 528, S.D. 1
245-1	Am	ACT 58	H.B. 895, H.D. 2, S.D. 2, C.D. 1
245-15	Am	ACT 56	H.B. 1175, H.D. 3, S.D. 2, CD 1
245-15	Am	ACT 58	H.B. 895, H.D. 2, S.D. 2, C.D. 1
245-2	Am	ACT 30	S.B. 528, S.D. 1
245-2.5 Am		ACT 30	S.B. 528, S.D. 1
245-2.6 Am		ACT 30	S.B. 528, S.D. 1
245-2.7 Am		ACT 30	S.B. 528, S.D. 1
245-3	Am	ACT 56	H.B. 1175, H.D. 3, S.D. 2, CD 1
245-3	Am	ACT 58	H.B. 895, H.D. 2, S.D. 2, C.D. 1
246-31	Am	ACT 11	S.B. 92
247-2	Am	ACT 59	H.B. 1741, H.D. 1, S.D. 1, C.D 1
247-6.5	Am	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
247-7	Am	ACT 59	H.B. 1741, H.D. 1, S.D. 1, C.D 1
251-8	Am	ACT 166	H.B. 1739, H.D. 1, S.D. 1, C.D. 1
256-4	Am	ACT 91	H.B. 1057, H.D. 1, S.D.2, C.D. 1
281-1 Am		ACT 184	S.B. 470, H.D. 1, C.D. 1
281-17 Am		ACT 184	S.B. 470, H.D. 1, C.D. 1
281-22 Am		ACT 184	S.B. 470, H.D. 1, C.D. 1
281-3 Am		ACT 184	S.B. 470, H.D. 1, C.D. 1
281-31 Am		ACT 184	S.B. 470, H.D. 1, C.D. 1
281-41 Am		ACT 184	S.B. 470, H.D. 1, C.D. 1
281-45 Am		ACT 184	S.B. 470, H.D. 1, C.D. 1
281-57 Am		ACT 184	S.B. 470, H.D. 1, C.D. 1
281-59 Am		ACT 184	S.B. 470, H.D. 1, C.D. 1
281-85 Am		ACT 184	S.B. 470, H.D. 1, C.D. 1
431:7-209 Am		ACT 178	S.B. 199, S.D. 1, H.D. 1, C.D. 2
501-151	Am	ACT 5	S.B. 1130, S.D. 2
502-26 Am		ACT 57	S.B. 51, S.D. 2, H.D. 1
Chap 235D	R	ACT 11	S.B. 92
CHAPTERS AFFECTED			
CHAPTER NO.	**EFFECT**	**ACT NO.**	**BILL NO.**
235	N	ACT 84	H.B. 35, H.D. 1, S.D. 1, C.D. 1
502 (New Part)	N	ACT 102	H.B. 271, S.D.2, C.D. 1

Digest of the Economic Stimulus Act of 2008

(P.L. No. 110-185; Feb. 13, 2008)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter 1, and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest.

The following provisions are NOT operative for Hawaii income tax purposes.

CODE SECTION	DESCRIPTION OF PROVISION
§1(i)(1)(D)	**10% rate bracket to apply despite reinstatement of §6428** §1(i)(1) establishes an initial 10% rate bracket for all individual filing statuses (e.g., unmarried, married filing jointly, etc.) in taxable years beginning after Dec. 31, 2000. Under pre-Act law, as provided in §1(i)(1)(D), the 10% tax rate bracket did not apply to any tax year to which §6428 (i.e., the 10% rate bracket credit) applied. The Act amends §6428 to replace the 10% rate bracket credit with a recovery rebate for individuals and strikes §1(i)(1)(D) from the Code, thus allowing the 10% rate bracket to apply. Effective Date: For tax years beginning after Dec. 31, 2007.
§§168(k), (k)(1)(A), (k)(2)(B)(i)(I), (k)(2)(B)(i)(IV), (k)(2)(C)(i), (k)(2)(D)(iii), (k)(4), and 1400N(d)	**50% bonus depreciation and AMT depreciation relief are revived for most new tangible personal property and software and certain leasehold improvements acquired during 2008** Under pre-Act law, "pre-2008 30% bonus depreciation property" and "pre-2008 50% bonus depreciation property" qualified for bonus depreciation (equal to 30% or 50% of adjusted basis) in the year the property was placed in service. These bonus depreciation provisions expired at various dates prior to January 1, 2008. The Act provides a 50% bonus depreciation deduction for qualified property acquired after Dec. 31, 2007 and placed in service before Jan. 1, 2009 (Jan. 1, 2010 if certain conditions are met). The adjusted basis of the qualified property is reduced by the bonus depreciation allowance before computing the regular depreciation deduction for the tax year in which the property is placed in service and future tax years. Other restrictions apply to qualified property for which the bonus depreciation election is made. The Act also provides that the §1400N(d) 50% bonus depreciation provisions applicable to qualified Gulf Opportunity Zone property does not apply to property to which §168(k) applies. Effective Date: For p*roperty acquired and placed in service during the tax year ending on Dec. 31, 2008, but only if the property is also 1) acquired by the taxpayer either during calendar year 2008 (but only if no written binding contract*

for the acquisition was in effect before Jan. 1, 2008) or under a written binding contract entered into during calendar year 2008, and 2) placed in service before Jan. 1, 2009.

§168(k)(2)(F)(i) **First-year depreciation limit for passenger automobiles is increased by $8,000 if the passenger automobile is "qualified property"**

Under pre-Act law, any passenger automobile that was eligible for bonus depreciation pursuant to §168(k), had to comply with §280F(a), which imposes dollar limits on the depreciation deductions (including deductions under the §179 expensing election) claimable for "passenger automobiles," with the exception that the first-year depreciation limit imposed by §280F was increased by a certain sum for passenger automobiles that qualified for the 50% bonus depreciation deduction.

The Act provides that for passenger automobiles that are "qualified property" for purposes of §168(k), the first-year limit on depreciation otherwise applicable under §280F is increased by $8,000.

Effective Date: For p*roperty acquired and placed in service during calendar year 2008.*

The following provision is operative for Hawaii income tax purposes.

168(l)(4)(A) **Denial of special allowance for cellulosic biomass ethanol plant property for which §168(k) election is made**

Pre-Act law provides an additional depreciation allowance for qualified cellulosic biomass ethanol plant property.

The Act excludes property that is depreciated under §168(k) from being qualified cellulosic biomass ethanol plant property.

168(l)(4), (l)(5) **Redesignation of provisions for cellulosic biomass ethanol plant property**

In conjunction with the addition of an exception for cellulosic biomass ethanol plant property to which §168(k) applies, the Act redesignates former subparagraphs (A), (B), and (C) of §168(l)(4) as subparagraphs (B), (C), and (D), respectively.

The Act also updates the date references to subsection (k) of §168 delineated in subparagraph (5) of §168(l).

The following provision is NOT operative for Hawaii income tax purposes.

§179(b)(7) **Regular Code §179 expense deduction limit is increased to $250,000 and beginning of deduction phaseout is raised to $800,000 for tax years beginning in 2008**

§179 allows taxpayers to elect to treat the cost of §179 property as an expense deduction for the tax year in which the §179 property was placed in service, instead of having to capitalize the expense and recover the cost over several years. Under pre-Act law, for tax years beginning in 2008, as adjusted for inflation, the maximum regular §179 expense deduction was $128,000, and the allowable §179 expense deduction was reduced (but not below zero) by the amount by which the cost of section 179 property placed in service during the tax year exceeded $510,000.

The Act adds subparagraph (7) to §179(b), which, for tax years beginning in 2008, increases the maximum regular §179 expense deduction to $250,000, and increases, from $510,000 to $800,000, the cost threshold by which the allowable §179 deduction is reduced.

Effective Date: For tax years beginning after Dec. 31, 2007.

The following provision is operative for Hawaii income tax purposes.

1400L(b)(2)(D) **Update references to §168(k) in the definition of Qualified New York Liberty Zone Property**

The Act updates the date references to subsection (k) of §168 contained in the special rules for defining "qualified New York Liberty Zone property."

Digest of the Heroes Earnings Assistance and Relief Tax Act of 2008

(P.L. No. 110-245; June 18, 2008)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter 1, and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest.

CODE SECTION	DESCRIPTION OF PROVISION
	The following provisions are NOT operative for Hawaii income tax purposes.
§32(c)(2)(B)(vi)	**Election to include combat pay as earned income for earned income tax credit (EITC) purposes is made permanent** A taxpayer may elect to treat combat pay excluded from gross income under §112 as earned income in determining both eligibility for the EITC and the amount of that credit. However, under pre-Act law, this election expired and was unavailable for tax years ending after Dec. 31, 2007. The Act makes this election available permanently. Effective Date: For tax years beginning after Dec. 31, 2007.
§§38(b)(33), 45P and 280C(a)	**Employers are allowed a differential wage payment credit for certain amounts paid before Jan 1, 2010 to military personnel on active duty** The Act adds §45P, which provides to an “eligible small business employer” a “differential wage payment” credit for any tax year equal to 20% of the sum of the “eligible differential wage payments” for each of the “qualified employees” of the taxpayer during the tax year. This credit is a §38 general business credit and is thus subject to the rules for such credit. An "eligible small business employer" is one who employs, on average, less than 50 employees during the tax year and who provides eligible differential wage payments to every qualified employee of the employer pursuant to a written plan. A "qualified employee" is a person who has been an employee of the taxpayer for the 91-day period immediately before the period for which any differential wage payment is made. "Eligible differential wage payments" are, for each qualified employee, so much of the differential wage payments paid to the employee for the tax year that do not exceed $20,000. A "differential wage payment," as defined under §3401(h)(2), is a payment made by an employer to an employee who is on activity duty in the uniformed services for more than 30 days, and which represents all or a portion of the wages that the individual would have otherwise received from the employer if not on active duty. The differential wage payment credit terminates after Dec. 31, 2009. Under §280C(a), any deduction for differential wages paid is reduced by the amount of the differential wage payment credit. Effective Date: For amounts paid after June 17, 2008, and before Jan. 1, 2010.

CODE SECTION	DESCRIPTION OF PROVISION
§72(t)(2)(G)(iv)	**Temporary exception to 10% tax on early withdrawals made by reservists ordered or called to active duty made permanent** The Pension Protection Act of 2006 (PL 109-280, Aug. 17, 2006) added an exception to the 10% early withdrawal penalty imposed on early withdrawals from qualified retirement plans (including IRAs) for "qualified reservist distributions" from IRA and 401(k) and 403(b) plans, with respect to individuals ordered or called to active duty after Sep. 11, 2001, and before Dec. 31, 2007. A "qualified reservist distribution" must satisfy the following requirements: (1) the distribution is from an individual retirement plan, or from amounts attributable to employer contributions made as elective deferrals (as defined by the Code); (2) the individual was, by reason of his being a member of a "reserve component," ordered or called to active duty for either a period in excess of 179 days, or an indefinite period; and (3) the distribution is made during the period beginning on the date of the order or call to active duty, and ending at the close of the active duty period. The Act permanently extends the rules that apply to qualified reservist distributions to individuals ordered or called to active duty after Sept. 11, 2001. Effective Date: For individuals ordered or called to active duty on or after Dec. 31, 2007.

The following provisions are operative for Hawaii income tax purposes.

§121(d)(9)(C)(vi)	**Intelligence community employee's duty station can be inside the U.S. for the up-to-ten year testing period suspension for the Code Sec. 121 exclusion for sales or exchanges after June 17, 2008** In determining whether a sale or exchange of an individual's principal residence qualifies for the §121 gain exclusion, members of the uniformed services, members of the Foreign Service of the U.S., and employees of the intelligence community can elect to suspend for up to ten years the five-year test period for ownership and use of a principal residence during absences due to qualified official extended duty. With respect to members of the uniformed services and U.S. Foreign Service, "qualified official extended duty" is any extended duty while serving at a duty station which is at least 50 miles away from the taxpayer's principal residence or while residing under government orders in government quarters. However, an employee of the intelligence community was not treated as serving on qualified extended duty unless the duty was at a duty station located outside the U.S. The Act strikes the "qualified official extended duty" exception for employees of the intelligence community, such that those persons may qualify for the up-to-ten-year suspension rule even if they are serving at a duty station within the U.S. Effective Date: For sales or exchanges made after June 17, 2008.
§121(d)(9)(E)	**Election for intelligence community employees to suspend, for up to ten years, the five-year testing period for the §121 exclusion is made permanent** In determining whether a sale or exchange of an individual's principal residence qualifies for the gain exclusion available under §121, eligible individuals can elect to suspend for up to ten years the five-year test period for ownership and use of a

CODE SECTION	DESCRIPTION OF PROVISION

principal residence during certain absences due to service in the uniformed services, the U.S. Foreign Service, or the intelligence community. If the election is made, the five-year period ending on the date of the sale or exchange of a principal residence does not include any period up to ten years during which the taxpayer the taxpayer's spouse is on qualified official extended duty as a member of the uniformed services, the U.S. Foreign Service, or as an employee of the intelligence community. With respect to intelligence community employees, the suspension provision did not apply to any sale or exchange of a principal residence after Dec. 31, 2010.

The Act makes permanent the up-to-ten year suspension rule for employees of the intelligence community.

Effective Date: For sales or exchanges after June 17, 2008.

§121(d)(12) **Election to suspend five-year period for determining whether principal residence gain exclusion applies to sales or exchanges by certain Peace Corps employees or volunteers after Dec. 31, 2007**

In determining whether a sale or exchange of an individual's principal residence qualifies for the §121 gain exclusion, members of the uniformed services and the U.S. Foreign Service, and employees of the intelligence community can elect to suspend for up to ten years the five-year test period for ownership and use of a principal residence for periods of absence resulting from qualified official extended duty.

The Act creates a new suspension provision for Peace Corps volunteers similar to the suspension rules discussed above, such that an individual may elect to suspend the running of the 5-year ownership and use period during any period that the individual or the individual's spouse is serving outside the U.S. on qualified official extended duty as an employee of the Peace Corps, or as an enrolled volunteer or volunteer leader under §§5 or 6 of the Peace Corps Act, as further provided by the Act.

Effective Date: For tax years beginning after Dec. 31, 2007.

§125(h) **Unused health flexible spending arrangement (FSA) balances may be distributed to reservists called to active duty**

Amounts in an employee's flexible spending account (through which an employee is reimbursed for medical expenses or other nontaxable employer benefits are provided) that are subject to the cafeteria plan rules must be used for medical expenses incurred before the end of a plan year; any unused balance is forfeited (subject to a grace period).

The Act provides a special rule for "qualified reservist distributions" that allows a health FSA to distribute all or a portion of an employee's health FSA balance if: (1) because of the individual's membership in a reserve component, the individual was ordered or called to active duty for a period either exceeding 179 days or for an indefinite period; and (2) the distribution is made during the period beginning on the date of the call to active duty, and ending on the last date that reimbursements could otherwise be made under the health FSA for the plan year that includes the date of the call to active duty. However, it is not mandatory that a plan provide for qualified reservist distributions.

CODE SECTION	DESCRIPTION OF PROVISION
	Effective Date: For distributions made after June 17, 2008.
§134(b)(6)	**State bonus payments to service members are "qualified military benefits"**
	"Qualified military benefits" may be excluded from gross income. A "qualified military benefit" is any allowance or in-kind benefit, other than personal use of a vehicle, received by a member or former member of the "uniformed services" of the U.S., or his dependent. Under pre-Act law, there was no income exclusion for a bonus payment made to a uniformed service member who served in a combat zone (as designated by the President after June 25, 1950).
	The Act provides that any bonus payment made by a state or political subdivision to any member or former member of the U.S. uniformed services (or to his dependent) is a qualified military benefit, but only by reason of the member's service in a combat zone (without regard to the June 24, 1950 date).
	Effective Date: For payments made before, on, or after June 17, 2008.

The following provisions are NOT operative for Hawaii income tax purposes.

§143(d)(2)(D)	**Veterans' exception from qualified mortgage bond first-time homebuyer requirement is made permanent**
	As provided by §143(d)(2), subject to other provisions, qualified mortgage bonds (a type of tax-exempt qualified private activity bond), issued to finance mortgages for veterans who served in the active military did not have to satisfy the first-time homebuyer requirement that would otherwise apply to qualified mortgage bond issues. However, this exception only applied to financing provided from bonds issued before Jan. 1, 2008.
	The Act strikes the termination date, thus making the veterans' exception permanent.
	Effective Date: For bonds issued after Dec. 31, 2007.
§143(l)(3)(B)(ii)	**Changes made to eligibility rules for qualified veterans' mortgage bonds issued in Alaska, Oregon and Wisconsin; and California and Texas**
	Authorized states may finance mortgages for "qualified veterans" through qualified veterans' mortgage bonds, subject to volume limits on bond issues. Alaska, Oregon, and Wisconsin were subject to a $25 million volume limit, phased in incrementally over 3 years. The volume limits were $15 million (60% of $25 million) for 2008, $20 million for 2009 (80% of $25 million) and $25 million beginning in 2010.
	The Act raises the annual limit on qualified veterans' mortgage bonds that can be issued in Alaska, Oregon and Wisconsin to $100 million in each state. For 2008 and 2009, the new annual limit will be phased in (60% and 80%, respectively). The full $100 million volume limit applies to years beginning in 2010.
	Effective Date: For bonds issued after Dec. 31, 2007.

CODE SECTION	DESCRIPTION OF PROVISION
§143(l)(4)	**Recent veterans are made eligible for qualified veterans' mortgage bond financing in California and Texas** Authorized states may finance mortgages for "qualified veterans" through qualified veterans' mortgage bonds. Under pre-Act law, California and Texas defined a "qualified veteran" as a veteran who had served on active duty at some time before Jan. 1, 1977, and who applied for the financing before the later of 30 years after the veteran left active service, or Jan. 31, 1985. The Act redefines the term "qualified veteran" for all authorized states to mean any veteran who served on active duty and who applied for the financing before the date 25 years after the last date on which the veteran left active service. Effective Date: For bonds issued after Dec. 31, 2007.

The following provisions are operative for Hawaii income tax purposes.

CODE SECTION	DESCRIPTION OF PROVISION
§219(f)(1)	**"Compensation" for purposes of the IRA contribution limit is amended to include any differential wage payment** The Act amends the term "compensation" to include differential wage payments, as defined by §3401(h)(2), for purposes of determining a uniformed service member's annual limit on contributions to a traditional or Roth IRA. Effective Date: For years beginning after Dec. 31, 2008.
§§401(a)(37), 403(b)(14), 404(a)(2), 414(u)(9) and 457(g)(4)	**Plans required to provide survivor payments for veterans, and may provide additional benefit accruals for veterans who die or become disabled** The Act adds a new requirement for qualified retirement plans in §401(a)(37), such that a retirement plan trust will not be a qualified plan trust unless it provides that, for a participant who dies while performing qualified military service, the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan as if the participant had resumed and then terminated employment on account of his death. Both §403(b) and §457(b) plans must adopt this new requirement in order to maintain their tax-favored status. Similarly, §404(a)(2) now requires that in order for an employer to deduct the cost of the purchase of a retirement annuity, the purchased annuity must incorporate the new requirement. In addition, §414(u)(9)(A), as amended by the Act, permits a plan to treat an individual who leaves service with the plan's sponsoring employer for qualified military service, and who cannot be reemployed on account of death or disability as a result of performing qualified military service, as if the individual had been rehired as of the day before his death or disability (a “deemed rehired employee”), and then terminated employment on the date of his death or disability. Additional provisions apply. Congress has given employers who operate their retirement plans in compliance with these new requirements until the last day of the first plan year beginning on or after Jan. 1, 2010 (Jan. 1, 2012 for governmental plans) to amend their plans. Effective Date: For deaths and disabilities occurring on or after Jan. 1, 2007.

CODE SECTION	DESCRIPTION OF PROVISION
§408A(e)(1) and (e)(2)	**Military death gratuities and Servicemembers' Group Life Insurance (SGLI) payments may be contributed, within one year, to Roth IRAs regardless of contribution limits; applies for deaths occurring between Oct. 7, 2001 and June 17, 2008**

The Act amends the provisions of the Pension Protection Act to provide that if an individual receives a military death gratuity (MDG) or SGLI proceeds on or after June 17, 2008, a "qualified rollover contribution" to a Roth IRA includes a contribution to a Roth IRA maintained for the benefit of that individual but only: (1) if the contribution was made before the end of the one-year period beginning on the date on which the individual received an amount as a military death gratuity or an SGLI payment, and (2) to the extent that the amount of the contributions does not exceed (a) the sum of the amounts received during the one-year period by the individual as a military death gratuity or an SGLI payment with respect to a person, reduced by (b) the amounts received by the individual which were contributed to a Coverdell education savings account under §530(d)(9). In effect, the annual contribution limitations that otherwise apply to Roth IRA contribution, do not apply to "qualified rollover contributions," as defined above. In addition, any MDG or SGLI payment received due to death from injuries occurring on or after Oct. 7 2001, and before Jun. 17, 2008, may be contributed to a Roth IRA and treated as a qualified rollover contribution under §408A(e)(2) if the contribution is made no later than one year after June 17, 2008.

The Act also amends the "qualified rollover contribution" rules applicable to Roth IRAs as in effect prior to the effective date of the 2006 Pension Protection Act to provide for qualified rollover contributions with respect to MDG and SGLI payments.

Other provisions apply.

Effective Date: For deaths from injuries occurring on or after Jun. 17, 2008; however, §408A(e)(1) as amended by the Act, shall apply to taxable years beginning after Dec. 31, 2007. Amendments by the Act are also effective for contributions made pursuant to §408A(e)(2) with respect to MDG or SGLI payments received for deaths from injuries occurring on or after on or after Oct. 7, 2001 and before Jun. 17, 2008, if such contribution is made not later than 1 year after Jun. 17, 2008.

§414(u)(12)	**Active military service members receiving differential pay will be treated as employees with compensation for retirement plan purposes after 2008**

Some employers voluntarily agree to continue paying the level of compensation that an active duty service member would otherwise have received from the employer if the member was not on active duty (i.e., a "differential wage payment," as defined by the Act). For retirement plan purposes, the service member was considered to have terminated the employment relationship with the employer that paid the differential pay, and the service member was not treated as an employee.

The Act amends §414(u) by providing that: (1) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment, with a special rule for "in-service distributions"; (2) the differential wage payment shall be treated as compensation; and (3) the plan will not be treated as failing to meet the nondiscrimination requirements listed in §414(u)(1)(C) by reason of any contribution or benefit that is based on the differential wage payment. However, §414(u)(12)(C) special nondiscrimination requirements must be met.

The special rule for "in-service distributions" provides that an individual will be

CODE SECTION	DESCRIPTION OF PROVISION
	treated as having been severed from employment during any period the individual is performing service in the uniformed services for purposes of the limitation on in-service distributions for elective deferrals under a 401(k) plan; amounts attributable to a salary reduction agreement under a §403(b) tax-sheltered annuity; amounts contributed to a §403(b)(7) custodial account; and amounts deferred under a §457(b) eligible deferred compensation plan. These are the same certain contributions under certain plans that are subject to restrictions that generally limit distributions to a participant before the participant terminates employment (see "'Compensation' for purposes of the IRA contribution limit is amended…" above). Thus, if an individual elects to receive a distribution from a plan, then the plan will have to provide that he is not allowed to make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution. The special nondiscrimination requirements as described in item 3 will apply only if all of the employer's employees performing service in the uniformed services are entitled to receive differential wage payments on reasonably equivalent terms, and make contributions based on the differential wage payments on reasonably equivalent terms if eligible to participate in a retirement plan maintained by the employer. The minimum coverage requirements relating to union employees (§410(b)(3)), age and service rules (§410(b)(4)), and the line of business exception (§410(b)(3)(5)) must be applied. The Act also requires that a plan or annuity contract be amended to comply with the new §414(u)(12) rules above no later than the last day of the first plan year beginning on or after Jan. 1, 2010 (2012 for a §414(d) governmental plan). If the amendment is timely made, then the plan or contract will be treated as being operated in accordance with the terms of the plan or contract during the period beginning on the date the amendment takes effect, and ending on or before the last day of the first plan year beginning on or after Jan. 1, 2010 (2012 for a governmental plan), or, if earlier, the date the plan or contract amendment is adopted. This is only if the plan or contract will in fact be operated as if the amendment were in effect. The amendment must apply retroactively for that period. Effective Date: For years beginning after Dec. 31, 2008.
§530(d)(9)	**Military death gratuities and Servicemembers' Group Life Insurance (SGLI) payments can be rolled over to Coverdell education savings accounts (ESAs) regardless of contribution limits** The Act allows an individual who has received a military death gratuity and/or SGLI proceeds to contribute such amounts to one or more Coverdell ESAs, without regard to the annual contribution limit and phase-out provisions by providing that such contribution qualifies as a "rollover contribution." To be eligible for treatment as a rollover contribution, the contribution must be made before the end of the one-year period beginning on the date on which the contributor received the military death gratuity or SGLI payment. Other provisions apply Effective Date: For payments made on account of deaths from injuries occurring on or after June 17, 2008. Also applies to contributions with respect to payments received for death from injuries occurring on or after Oct. 7, 2001, and before Jun. 17, 2008 if such contribution is made not later than one year after Jun. 17, 2008.

The following provisions are NOT operative for Hawaii income tax purposes.

CODE SECTION	DESCRIPTION OF PROVISION
§§877A, 877(e)(1) and (h)	**Expatriates recognize mark-to-market gain upon expatriation** Under pre-Act law, a deemed sale of assets could occur when an expatriate exchanged property that produced U.S. source income for property that produced foreign source income in a transaction that would otherwise have been entitled to nonrecognition treatment within the 15-year period beginning 5 years before the expatriation and ending 10 years after the expatriation. Individuals subject to the expatriate rules are required to file annual income tax returns with the IRS. Through the addition of new §877A, the Act adds a new "mark-to-market deemed sale" rule under which all property of a "covered expatriate" (as defined by the Act) is treated as sold on the day before the expatriation date for its fair market value. Any gain on the deemed sale is recognized despite any other nonrecognition rules and is included in income for the tax year of the deemed sale; likewise, any loss is taken into account for the tax year of the sale to the extent otherwise provided in the Code, provided that §1091 wash sale rules are not applicable. Any subsequent realized gains or losses are adjusted for gains and losses taken into account under the deemed sale rules. The Act makes conforming amendments to §§877(e)(1) and (h). Effective Date: For expatriates whose expatriation date occurs on or after June 17, 2008.
§877A	**Election to defer the tax upon expatriation** If certain conditions are met, expatriates whose expatriation occurs on or after June 17, 2008 may elect to defer the payment of additional tax attributable to any property that is deemed sold under the mark-to-market until the due date of the return for the tax year in which the property is disposed of. If the property is disposed of in a transaction in which gain is not recognized in whole or in part, the tax is postponed until a date determined by the IRS. To make the election the taxpayer must provide adequate security (bond or other form of security for payment, as determined by the IRS) to the IRS, and waive any right under any U.S. treaty that would prevent assessment or collection of any tax imposed by the expatriate rules. Effective Date: For expatriates whose expatriation date occurs on or after June 17, 2008.
§877A	**Special provisions to the mark-to-market rule for deferred compensation items, specified tax deferred accounts, and nongrantor trusts** The Act provides special provisions to the mark-to-market rule for deferred compensation, specified tax deferred accounts and nongrantor trusts, with respect to expatriates whose expatriation date occurs on or after June 17, 2008. If an individual who is a covered expatriate becomes subject to tax as a U.S. citizen or resident for any period beginning after the expatriation date, such person is not treated as a covered expatriate during that period for purposes of the deferred compensation withholding rules and the nongrantor trust rules applied under §877A. If the individual subsequently relinquishes citizenship or terminates long-term residency, the mark-to-market tax and other provisions apply with a new expatriation date.

CODE SECTION DESCRIPTION OF PROVISION

A payor must deduct and withhold a 30% tax from any taxable payment of eligible deferred compensation item to a covered expatriate, as further provided by the Act. A deferred compensation item is:

(1) Any interest in a plan or arrangement described in §219(g)(5);
(2) Any interest in a foreign pension plan or similar retirement arrangement or program;
(3) Any item of deferred compensation; and
(4) Any property, or right to property, which the individual is entitled to receive in connection with the performance of services to the extent not previously taken into account under, or in accordance with, §83.

If not treated as an eligible deferred compensation item, unless such item is taken into account under §83, an amount equal to the present value of the covered expatriate's accrued benefit is treated as having been received by that individual on the date before the expatriation date as a distribution under the plan; and the rights of the covered expatriate to those items is treated as becoming transferable and not subject to a substantial risk of forfeiture on the day before the expatriation date. The deferred compensation item rules do not apply to those items that are attributable to services performed outside the U.S. while the covered expatriate was not a U.S. citizen or resident.

If a covered expatriate held an interest in a specified tax deferred account on the day before the expatriation date, then: (1) the covered expatriate is treated as receiving a distribution of his entire interest in the account on the day before the expatriation date; (2) these deemed distributions are not subject to the early distribution tax; and (3) appropriate adjustments are made to later distributions from the account to reflect this treatment. A "specified tax deferred account" is an individual retirement plan defined at §7701(a)(37), but other than a §408(k) simplified employee pension; a §408(p) simplified retirement account; a §529 qualified tuition program; a §530 Coverdell education savings account; a §223 health savings account; and a §220 Archer MSA. §408(k) simplified employee pensions and §408(p) simplified retirement accounts are treated as deferred compensation subject to the deferred compensation rules.

In the case of a distribution (directly or indirectly) of any property from a nongrantor trust to a covered expatriate, the trustee must deduct and withhold an amount equal to 30% of the taxable portion of the distribution (as defined by the Act), and if the fair market value of the property exceeds its adjusted basis in the hands of the trust, gain is recognized by the trust as if such property were sold to the expatriate at its fair market value. These rules apply only if the covered expatriate was a beneficiary of the nongrantor trust on the day before the expatriation date. Assets of a grantor trust treated as owned by a covered expatriate immediately before the expatriation date are subject to the mark-to-market tax upon expatriation..

Effective Date: For expatriates whose expatriation occurs on or after June 17, 2008.

Digest of the Heartland, Habitat, and Horticulture Act of 2008

(P.L. No. 110-246; June 18, 2008)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter 1, and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest.

CODE SECTION	DESCRIPTION OF PROVISION
	The following provisions are operative for Hawaii income tax purposes.
Non-Code section	**Tax relief for "qualified Recovery Assistance distributions" made under an eligible retirement plan for individuals living in the "Kansas disaster area" on May 4, 2007** §1400Q provides various exceptions to generally applicable rules on distributions from tax-qualified retirement plans for eligible taxpayers affected by hurricane-related disasters due to Hurricanes Katrina, Rita and Wilma, including (1) a provision that a "qualified hurricane distribution" is includible in income ratably over three years (instead of in the year of distribution); (2) the inapplicability of distribution restrictions on amounts in an individual's 401(k) plans, 403(b) annuities, and governmental section 457 plans; (3) the inapplicability of the 10% additional tax on early distributions; (4) the inapplicability of the direct rollover requirement, the §402(f) notice rules, and 20% mandatory withholding; and (5) the continued deferral of the income realized from a qualified hurricane distribution, for amounts that were recontributed to an eligible retirement plan. Without amending §1400Q, the Act provides that the tax relief provided by §1400Q applies to individuals living in the "Kansas disaster area" on May 4, 2007 who received qualified Recovery Assistance distributions from an eligible retirement plans. A "qualified Recovery Assistance distribution" is any distribution made from an eligible retirement plan; on or after May 4, 2007, and before Jan. 1, 2009; and to an individual whose principal place of abode on May 4, 2007 was located in the Kansas disaster area, and who sustained economic loss attributable to May 4, 2007 storms and tornados. Effective Date: May 22, 2008, for distributions made on or after May 4, 2007, and before Jan. 1, 2009.
Non-Code section	**Recontributions of retirement plan withdrawals taken for home purchases that were cancelled because of May 4, 2007 storms and tornados in Kansas make the withdrawals tax-free** §1400Q allows for the tax-free "recontribution" of qualified distributions earmarked for home purchases that were prevented by Hurricane Katrina, Rita, or Wilma taxpayers. Without amending §1400Q, the Act provides the same tax-favored treatment available under §1400Q to Kansas disaster area taxpayers. Effective Date: May 22, 2008, for recontributions made during the period beginning on May 4, 2007, and ending on Oct. 22, 2008.

CODE SECTION	DESCRIPTION OF PROVISION
Non-Code section	**Plan loan limits increased and repayment deadlines postponed for individuals who sustained loss due to May 4, 2007 Kansas storms and tornados** §1400Q, which provides relief for individuals who lived in a designated hurricane disaster area and sustained an economic loss due to Hurricanes Katrina, Rita, or Wilma, increased the amount that could be withdrawn as a loan from qualified employer plans by providing that any loan from a "qualified employer plan" to a "qualified individual" that was made during the "applicable period" was limited to the lesser of: (1) $100,000, or (2) the greater of (a) $10,000 or (b) the present value of the employee's nonforfeitable accrued benefit under the plan. Further, it postponed payments of existing plan loans for one year. The Act provides the same relaxation of the plan loan rules that applied to "qualified individuals" who sustained loss due to Hurricanes Katrina, Rita, and Wilma to “qualified storm individuals” who sustained loss from the May 4, 2007 Kansas storms and tornados, for loans and loan repayments made during specified periods. Effective Date: May 22, 2008, for loans made during the period beginning on May 22, 2008, and ending before 2009; and for loan repayments with due dates beginning after May 3, 2007, and before 2009.
Non-Code section	**Relief for qualified retirement plans due to May 4, 2007 Kansas storms and tornados can take effect before plan amendments are adopted—for retroactive amendments made before 2010 plan year** In response to the 2005 hurricane-related disasters, the 2005 Gulf Opportunity Act modified the generally-effective deadline for amending a plan retroactively to conform to the plan's operation, and provided an extended period for qualified retirement plans and IRAs to adopt amendments to retroactively reflect the hurricane relief, thus allowing the plans and IRAs to implement the hurricane relief before the plan was amended without jeopardizing plan qualification. The Act applies the same deadline modifications and extended periods to plans or annuity contracts that are operated taking into account the relief for May 4, 2007 Kansa storms and tornados, as long as the plans or contracts are amended retroactively before a specified deadline and are operated in accordance with the amendment for a specified period. Other provisions apply. Effective Date: May 22, 2008, to the last day of the 2009 plan year.
The following provisions are NOT operative for Hawaii income tax purposes.	
§38(b)(32)	**Agricultural chemicals security (ACS) credit is available for qualified expenditures paid or incurred after May 22, 2008 and before Jan. 1, 2013** The Act creates a new §38 general business credit (GBC) category under which an "eligible agricultural business" can take a 30% credit for “qualified chemical security expenditures” for the tax year, as further provided by the Act. This ACS credit, provided in new §45O, is subject to both a facility limitation of $100,000 per facility, reduced by the aggregate amount of the credits allowed for the facility in the preceding five tax years; and an annual limitation of $2 million per taxpayer per tax year. The ACS credit will terminate on Dec. 31, 2012. Effective Date: For amounts paid or incurred after May 22, 2008, and before Jan. 1, 2013.

CODE SECTION	DESCRIPTION OF PROVISION
§§40(a)(4), (b)(4)(C), (b)(6), (d)(3)(D), (d)(3)(E), (d)(6), (e)(2) and (e)(3); and §§40A(d)(1) and(f)(3)	**Credit of $1.01 per gallon is allowed for qualified cellulosic biofuel produced after Dec. 31, 2008, and before Jan. 1, 2013** Under pre-Act law, the alcohol fuels credit (§40, a §38 general business credit (GBC)) was the sum of only three credits: The alcohol mixture credit, the alcohol credit, and, in the case of an eligible small ethanol producer, the small ethanol producer credit. For the small ethanol producer credit, qualified ethanol fuel production could not exceed 15 million gallons. All of these credits are scheduled to terminate after Dec. 31, 2010, or for any period before Jan. 1, 2011 during which the rates of tax was 4.3 cents per gallon. The Act adds the cellulosic biofuel producer credit as a new component to the §40 alcohol fuels credit. The cellulosic biofuel producer credit is a nonrefundable income tax credit for each gallon of qualified cellulosic fuel production of the producer for the tax year. The credit is equal to the "applicable amount" ($1.01) for each gallon of "qualified cellulosic biofuel production," as further provided by the Act. The cellulosic biofuel producer credit terminates on Dec. 31, 2012. Effective Date: The rules applicable to the cellulosic biofuel producers credit apply with respect to qualified cellulosic biofuel production after Dec. 31, 2008, and before Jan. 1, 2013.
§40(d)(4)	**Percentage of allowable denaturants will be lowered from 5% to 2% of volume of alcohol for the alcohol fuels credit for fuel sold or used after Dec. 31, 2008** For purposes of determining the number of gallons of alcohol for which the alcohol fuels credit is allowable, the volume of alcohol includes any denaturant, including gasoline, added under an IRS-approved formula. A "denaturant" is defined as an additive that makes the alcohol unfit for human consumption, and must be added under a formula approved by the IRS. Under pre-Act law, the denaturant could not exceed 5% of the volume of the alcohol (including denaturants). For purposes of determining the number of gallons of alcohol for which the alcohol fuels credit is allowable, the Act reduces the percentage of denaturants allowed from 5% to 2% of the volume of the alcohol (including denaturants). Effective Date: For fuel sold or used after Dec. 31, 2008.
§§40(h)(2) and (3)	**Alcohol mixture credit rates and alcohol credit rates will be lowered for 2009 and 2010 if 7.5 billion-gallon-per-year ethanol production/importation quota is met** The alcohol fuels credit is the sum of the alcohol mixture credit, the alcohol credit, and the small ethanol producer credit. The credit is calculated based upon a certain sum per gallon of alcohol fuel produced. The Act provides that, for 2009 and 2010, the blender amount of $.51-per-gallon alcohol mixture credit and $.51-per-gallon alcohol credit will each decrease to $.45-per-gallon, and the low-proof blender amount of $.3778-per-gallon alcohol mixture credit and $.3778-per-gallon alcohol credit will each decrease to $.3333 per gallon. However, if the IRS determines in consultation with the Environmental Protection Agency (EPA) Administrator that less than 7.5 billion gallons of ethanol were produced in or imported into the U.S., the $.51 rate remains in effect. Effective Date: May 22, 2008.
45O	**Agricultural chemicals security (ACS) credit is available for qualified**

CODE SECTION	DESCRIPTION OF PROVISION
	expenditures paid or incurred after May 22, 2008 and before Jan. 1, 2013
	The Act creates a new §38 general business credit (GBC) category under which an "eligible agricultural business" can take a 30% credit for "qualified chemical security expenditures" for the tax year, as further provided by the Act. This ACS credit, provided in new §45O, is subject to both a facility limitation of $100,000 per facility, reduced by the aggregate amount of the credits allowed for the facility in the preceding five tax years; and an annual limitation of $2 million per taxpayer per tax year. The ACS credit will terminate on Dec. 31, 2012.
	Effective Date: For amounts paid or incurred after May 22, 2008, and before Jan. 1, 2013.
§§48A(h) and 48B	**The IRS must modify the certification terms for projects that have qualified for advanced coal project and gasification project credits if certain requirements are met**
	The §48A "qualifying advanced coal project credit" is a component of the investment credit. The §48B "qualifying gasification project credit" is also a component of the investment credit. Both credit programs are administered by the IRS, in consultation with the Secretary of Energy, and subject to certification requirements.
	The Act directs the IRS to modify the terms of any competitive certification award and any associated closing agreement for purposes of implementing the qualifying advanced coal project program and the qualifying gasification project program. The modification must be consistent with the objectives of those programs; be requested by the recipient of the competitive certification award; and involve moving the project site to improve the potential to capture and sequester carbon dioxide emissions, reduce costs of transporting feedstock, and serve a broader customer base, unless the IRS determines that the amount of the tax credits available under §§48A or 48B would increase as a result of the modification or the modification would result in the project not being originally certified. The IRS must consult with other relevant federal agencies in considering whether to grant any modifications.
	Effective Date: May 22, 2008, and applicable to all competitive certification awards entered into under §48A or §48B, regardless of whether the awards were issued before, on, or after May 22, 2008.
§§54A, 54B, 54(c)(2)	**Nonrefundable tax credit will be allowed to holders of qualified forestry conservation bonds**
	The Act creates a new category of tax credit bonds (bonds which provide credits that a taxpayer may use to offset its regular income tax and alternative minimum tax liability) for "qualified forestry conservation bonds," as further provided in new §54B.
	Effective Date: For obligations issued after May 22, 2008.

CODE SECTION	DESCRIPTION OF PROVISION
§§55(b)(4)	**A temporary 15% tax rate is applied to a corporation's qualified timber gain for both regular tax and AMT purposes** Under pre-Act law, the tentative alternative minimum tax (AMT) on corporations (before reduction by the AMT foreign tax credit) was, in all instances, 20% of alternative minimum taxable income (AMTI) in excess of a $40,000 exemption amount. The Act amends the alternative minimum tax provisions to apply a 15% AMT rate to qualified timber gain. Effective Date: For tax years ending after May 22, 2008, but only for tax years that begin no later than May 22, 2009.
§§147(c)(2)(A), (c)(2)(C)(i)(II), (c)(2)(H) and (c)(2)(E)	**Maximum amount of Aggie bonds available to first-time farmers is increased to $450,000 (up from $250,000) and indexed for inflation; fair market value test is removed from the definition of "substantial farmland"** For purposes of the tax-exempt bond rules regarding first-time farmers, an individual did not qualify as a first-time farmer if that individual had received more than $250,000 in qualified small issue bond financing (not indexed for inflation). In addition, to qualify for the tax-exempt bond, a first-time farmer could not have owned a direct ownership interest in substantial farmland, the operation of which the individual materially participated. As defined by the Code, the fair market value (FMV) of "substantial farm land" could not exceed $125,000 at any time while held by the individual. The Act strikes the $125,000 limit on the FMV of a parcel of land that can be considered "substantial farmland". The Act also increases the maximum amount of qualified small issue bond proceeds available to first-time farmers to $450,000, and further increases to $450,000 the amount of qualified small issue bond financing that an individual can receive and still qualify as a first-time farmer. Effective Date: For bonds issued after May 22, 2008.
The following provisions are operative for Hawaii income tax purposes.	
§168(e)(3)(A)(i)	**Three-year modified accelerated cost recovery system (MACRS) depreciation will apply to all race horses placed in service after Dec. 31, 2008, and before Jan. 1, 2014** For purposes of computing depreciation, a race horse was assigned to a three-year recovery period if, at the time it was placed in service, it was more than two years old. Otherwise, a race horse was assigned a 7-year recovery period. The Act provides that a race horse is assigned to a 3-year recovery period if: (1) it is placed in service before Jan. 1, 2014, or (2) it is placed in service after Dec. 31, 2013, and is more than two years old at the time that it is placed in service by the purchaser. Effective Date: For race horses placed in service after Dec. 31, 2008.

CODE SECTION	DESCRIPTION OF PROVISION
§170(b)(1)(E)(vi)	**Rules permitting individuals to deduct qualified conservation contributions up to 50% of contribution base (100% for farmers) with 15-year carryover are retroactively extended for two years through 2009** Qualified conservation contributions made by individuals in tax years beginning after Dec. 31, 2005, and before Jan. 1, 2008, were deductible to the extent the aggregate of those contributions did not exceed the excess of 50% of the taxpayer's contribution base over the amount of all other allowable charitable contributions. A “qualified conservation contribution” is a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes, and that also prohibits the donee from making certain transfers. The excess of an individual's qualified conservation contribution over the 50% limitation could be carried over for up to 15 years as a contribution subject to the 50% limitation. For taxpayers who made a qualified conservation contribution and received more than 50% of their gross income from the trade or business of farming (a "qualified farmer or rancher"), a 100% limitation (rather than 50%) applied. The Act extends for two years (through Dec. 31, 2009) the provisions relating to qualified conservation contributions by individuals. Effective Date: For contributions made in tax years beginning after Dec. 31, 2007, and before Jan. 1, 2010.
§170(b)(2)(B)(iii)	**Rule permitting corporate farmers and ranchers to deduct qualified conservation contributions up to 100% of taxable income is retroactively extended for two years through 2009** A corporation's charitable deduction for a tax year generally can't exceed 10% of its taxable income for the year, computed without the deductions for charitable contributions, dividends received, and U.S. production activities, and without net operating loss (NOL) or capital loss carrybacks to the year. Contributions in excess of this limitation can be carried over and deducted for five years, to the extent the sum of carryovers and contributions for each of those years doesn't exceed the 10% limitation. Under pre-Act law, deductions for qualified conservation contributions made by a corporate farmer or rancher in tax years beginning after Dec. 31, 2005, and before Jan. 1, 2008, are allowed up to 100% of the taxpayer's taxable income, after taking into account other allowable charitable contributions. To qualify, more than 50% of the corporation's gross income for the tax year must have been from the trade or business of farming, and the corporation's stock must not have been readily tradable on an established securities market at any time during the year. If the aggregate amount of such a contribution exceeds the 100% limitation, the excess is carried over for 15 years as a qualified conservation contribution to which the 100% limitation applies. The Act extends these rules by two years to apply to qualified conservation contributions made by a corporation in tax years beginning before Jan. 1, 2010. Effective Date: For contributions made in tax years beginning after Dec. 31, 2007, and before Jan. 1, 2010.

CODE SECTION	DESCRIPTION OF PROVISION
§§175(a), (c)(1) and (c)(3)(A)(i)	**Deduction will be allowed to farmers for endangered species recovery expenditures paid or incurred after Dec. 31, 2008** Under §175, a taxpayer engaged in the business of farming can elect to treat certain expenditures paid or incurred during the tax year for the purpose of soil or water conservation in respect of land used in farming (soil and water conservation expenditures) or the prevention of erosion of land used in farming (anti-erosion expenditures) as expenditures not chargeable to capital account, subject to other provisions. The Act adds an endangered species provision such that expenditures paid or incurred by a taxpayer engaged in the business of farming for endangered species recovery, as further defined by the Act, will be treated as expenditures not chargeable to capital account which are deductible subject to the 25% limit. Effective Date: For expenditures paid or incurred after Dec. 31, 2008.

The following provisions are NOT operative for Hawaii income tax purposes.

280C(f)	**Agricultural chemicals security (ACS) credit is available for qualified expenditures paid or incurred after May 22, 2008 and before Jan. 1, 2013** The Act creates a new §38 general business credit (GBC) category under which an "eligible agricultural business" can take a 30% credit for “qualified chemical security expenditures” for the tax year, as further provided by the Act. This ACS credit, provided in new §45O, is subject to both a facility limitation of $100,000 per facility, reduced by the aggregate amount of the credits allowed for the facility in the preceding five tax years; and an annual limitation of $2 million per taxpayer per tax year. No deduction is allowed for that portion of the expenses otherwise allowable as a deduction taken into account in determining the credit under §45O for the tax year. The ACS credit will terminate on Dec. 31, 2012. Effective Date: For amounts paid or incurred after May 22, 2008, and before Jan. 1, 2013.

The following provisions are operative for Hawaii income tax purposes.

§461(j)	**Excess farm losses of certain taxpayers receiving applicable farm subsidies will be disallowed in tax years beginning after Dec. 31, 2009** The Act limits the amount of “excess farm losses," as defined by the Act, that can be claimed by any taxpayer other than a C corporation to specified threshold amounts where the taxpayer has received an “applicable subsidy.” An "applicable subsidy" is any direct or counter-cyclical payment under Title I of this Act, or any payment elected to be received in lieu of such a payment; or any Commodity Credit Corporation (CCC) loan. An "excess farm loss" is the excess of: (1) a taxpayer's aggregate deductions for the tax year which are attributable to the taxpayer's farming businesses (determined without regard to whether or not the deductions are disallowed for the tax year under §461(j)(1)), over (2) the sum of the taxpayer's aggregate gross income or gain for the tax year which is attributable to the taxpayer's farming businesses and the threshold amount for the tax year. The "threshold amount" is generally defined as the greater of $300,000 ($150,000 for married filing separately) or total net farm income for the past five tax years. Other provisions apply. Effective Date: For tax years beginning after Dec. 31, 2009.

CODE SECTION	DESCRIPTION OF PROVISION
§§856(c)(2)(H), (c)(4)(B)(ii), (c)(5)(H), (c)(5)(I) and (c)(8)	**Temporary liberalization of real estate investment trust (REIT) provisions for timber REITs** To qualify as a REIT, a corporation must satisfy a number of requirements, including a two-part income test, an assets test, and a distribution requirement. The two-part income test first requires that at least 95% of the REIT's income consist of certain items, and then that at least 75% must consist of other certain items. The assets test requires that at least 75% of the REIT's assets consist of qualifying assets. Under these limits, up to 20% of the REIT's assets may consist of the securities of one or more taxable REIT subsidiaries. The Act amends the REIT provisions so that timber income will be treated as qualifying income for purposes of the REIT 95% and 75% income tests. In addition, gains recognized by a REIT on its timber under a §631(a) election to treat the cutting of standing timber by the REIT's taxable REIT subsidiary as resulting in a capital gain and gains that would be treated as such, but for the failure to meet the one-year holding period requirement, are treated as sold to the taxable subsidiary on the first day of the tax year for tax purposes, and are not treated as prohibited transactions income. The Act also provides that mineral royalty income earned in the first tax year beginning after May 22, 2008 from real property owned by a timber REIT and held, or once held, in connection with the trade or business of producing timber by the REIT is qualifying income for purposes of the 95% test. The assets test is also amended so that, in the case of a quarter which closes on or before the termination date, the 20% assets limit is increased to 25% for timber REITs. Effective Date: For dispositions in tax years beginning after May 22, 2008. The mineral royalty provision and the taxable REIT subsidiary asset test provision are also effective for tax years beginning after May 22, 2008.
§857(b)(3)(A)(ii)	**A temporary 15% tax rate is applied to a corporation's qualified timber gain for both regular tax and AMT purposes** The Act makes a conforming change to the definition of the alternative tax for real estate investment trusts with net capital gains provided in §857(b)(3)(A)(ii), such that the reference to "a tax determined at the rate provided in section 1201(a)" is changed to "a tax determined at the rates provided in section 1201(a)." The Act also re-designates pre-Act §1201(b) as §1201(c). Effective Date: For tax years ending after May 22, 2008, but only for tax years that begin no later than May 22, 2009.
§§857(b)(6)(D)(v), (b)(6)(G), (b)(6)(H) and (b)(6)(I)	**Temporary liberalization of real estate investment trust (REIT) prohibited transactions safe harbor for REIT timber properties** REITs are subject to a 100% tax on the net income of a REIT from prohibited transactions, but a safe harbor applies to timber property. If there are more than seven property sales during the tax year, the safe harbor provisions require, among others, that the REIT have held the property for at least four years in connection with the trade or business of producing timber; that the REIT satisfy expenditure

CODE SECTION	DESCRIPTION OF PROVISION
	limitations during the four-year period that are includible in the adjusted basis of the property sold; and that any marketing be done by an independent contractor. The Act amends the REIT safe harbor provisions so that a two-year holding period (rather than the normally applicable four-year period) applies for sales of real estate assets to qualified tax-exempt organizations exclusively for conservation purposes. The expenditure limitations are also applied over a two-year period. The requirement that any marketing must be done by an independent contractor is also amended to allow marketing for sales before the termination date to be done by taxable REIT subsidiaries. Effective Date: For dispositions in tax years beginning after May 22, 2008 and before the termination date (i.e., the last day of the REIT's first tax year beginning after May 22, 2008 and before the date that is one year after May 22, 2008).
§1031(i)	**Like-kind exchange of stock in mutual ditch, reservoir, or irrigation companies can qualify for nonrecognition of gain or loss** Under §1031, a taxpayer does not have to recognize gain or loss on an exchange of like-kind properties if both the relinquished property and the replacement property are held for productive use in a trade or business or for investment purposes. Under pre-Act law, exchanges of stocks, bonds or notes are generally excluded from nonrecognition of gain or loss treatment. The Act provides that §1031 treatment is available for shares in a mutual ditch, reservoir, or irrigation company if at the time of the exchange: (1) The mutual ditch, reservoir, or irrigation company is a §501(c)(12)(A) income tax-exempt organization (determined without regard to the percentage of its income that is collected from its members for the purpose of meeting losses and expenses); and (2) the shares in the company have been recognized by the highest court of the state in which the company was organized or by applicable state statute as constituting or representing real property or an interest in real property. Effective Date: For exchanges completed after May 22, 2008.
§1033(a)(2)(B)(i)	**Replacement period is extended to five years (from two years) for involuntarily converted property located in the Kansas disaster area** In order for the taxpayer to defer the recognition of gain from involuntarily converted property (i.e., property destroyed or damaged by fire, theft, or condemnation) pursuant to §1033, the taxpayer has to replace the converted property by buying property similar or related in service or use within the “replacement period” (generally, 2 years for property not held for productive use in a trade or business or for investment). The Katrina Relief Act of 2005 (KETRA) extended the replacement period from two years to five years for property in the Katrina disaster area which was compulsorily or involuntarily converted after Aug. 24, 2005 by reason of Hurricane Katrina. Special rules also extended the replacement period in certain other situations. The Act provides that the 5-year extended replacement period applies to property that is in the Kansas disaster area and that is/was compulsorily or involuntarily converted after May 3, 2007 by reason of the May 4, 2007 storms and tornados. Substantially all of the use of the replacement property has to be in the Kansas disaster area. Effective Date: May 22, 2008.

CODE SECTION	DESCRIPTION OF PROVISION

§1201(b) **A temporary 15% tax rate is applied to a corporation's qualified timber gain for both regular tax and AMT purposes**

Under §1201(a), for most corporations that are subject to a corporate level tax, there is an alternative tax for corporations with a “net capital gain” that is to apply if it results in a tax less than the tax that would be imposed under the regular tax rates. However, because the tax rate that applied under §1201(a)(2) was, in all instances, 35% and because there is no regular corporate tax rate in excess of 35%, the alternative tax, in fact, never applied.

The Act effectively provides a 15% alternative tax rate for the portion of a corporation's taxable income that consists of qualified timber gain (or, if less, the net capital gain) for a tax year. Specifically, if for any tax year ending after May 22, 2008 and beginning before May 23, 2009, a corporation has both a net capital gain and "qualified timber gain" (as defined by the Code):

1. §1201(a) applies to the corporation for the tax year without regard to whether the applicable tax rate exceeds 35%; and
2. The tax computed under §1201(a)(2) equals the sum of:
    a. 15% of the least of qualified timber gain, net capital gain, or taxable income; plus
    b. 35% of the excess (if any) of taxable income over the sum of the amounts for which a tax was determined under §§1201(a)(1) and (b)1)(B)(i).

The Act also re-designates pre-Act §1201(b) as §1201(c).

Effective Date: For tax years ending after May 22, 2008, but only for tax years that begin no later than May 22, 2009.

The following provisions are NOT operative for Hawaii income tax purposes.

1397E(c)(2), **Nonrefundable tax credit will be allowed to holders of qualified forestry conservation bonds**

The Act creates a new category of tax credit bonds (bonds which provide credits that a taxpayer may use to offset its regular income tax and alternative minimum tax liability) for "qualified forestry conservation bonds," as further provided in new §54B.

Effective Date: For obligations issued after May 22, 2008.

§1400N(d) **50% bonus depreciation and AMT relief are allowed for most tangible property and computer software bought after May 4, 2007 and placed in service in the Kansas Disaster Area before Jan. 1, 2009 (before Jan. 1, 2010 for buildings)**

§1400N(d) of the pre-Act Code provided bonus depreciation and alternative minimum tax depreciation relief, as well as provisions to elect out of the relief provided therein, for qualified Gulf Opportunity ("GO") Zone property (property bought and placed in service with respect to GO Zone (i.e., areas damaged by Hurricane Katrina).

The Act provides that the bonus depreciation and AMT relief provisions of §1400N(d) will also apply to the "qualified Recovery Assistance Property" with

CODE SECTION	DESCRIPTION OF PROVISION
	respect to the "Kansas Disaster Area," which are counties in Kansas most damaged by the tornados and severe storms of May 2007.
	Effective Date: May 22, 2008, for property acquired by the taxpayer by purchase after May 4, 2007, but only if no written binding contract for the acquisition was in effect before May 5, 2007; and placed in service before Jan. 1, 2009 (before Jan. 1, 2010 if the property is nonresidential real property or residential rental property).
§1400N(e)	**Expensing in lieu of depreciation is increased by up to $100,000 for certain property purchased after May 4, 2007 and placed in service in the Kansas Disaster Area before Jan. 1, 2009**
	§1400N(e) of the pre-Act Code provided increased limits for claiming the §179 deduction for qualified Gulf Opportunity ("GO") Zone property (property bought and placed in service with respect to GO Zone (i.e., areas damaged by Hurricane Katrina).
	The Act provides that the higher §179 limits of §1400N(e) applies to the Kansas Disaster Area, such that "qualified §179 Recovery Assistance property" is substituted for "qualified §179 Gulf Opportunity Zone property" throughout the section.
	Effective Date: May 22, 2008.
The following provisions are operative for Hawaii income tax purposes.	
§1400N(f)	**Taxpayers may elect to expense 50% of demolition and debris-removal costs paid or incurred in the Kansas Disaster Area after May 3, 2007 and before Jan. 1, 2010**
	§1400N(f) allows taxpayers to elect to deduct 50% of any "qualified Gulf Opportunity Zone clean-up cost" as an expense that is not chargeable to capital account.
	The Act provides that §1400N(f) applies to the Kansas Disaster Area, with the appropriate changes in dates and locations. "Qualified Recovery Assistance clean-up cost" is substituted for "qualified Gulf Opportunity Zone clean-up cost" throughout the section.
	Effective Date: May 22, 2008, for amounts paid or incurred after May 3, 2007, and before Jan. 1, 2010.
§1400N(k)	**Net operating loss (NOL) carryback period for losses paid or incurred in the Kansas disaster area after May 3, 2007 and before 2010 is extended from two to five years**
	§1400N(k) provides a special five-year carryback period for NOLs to the extent of certain amounts related to Hurricane Katrina or the Gulf Opportunity Zone (the "GO Zone").
	The Act provides that §1400N(k) applies to the Kansas Disaster Area, such that any "Qualified Recovery Assistance loss" resulting from the Kansas storms and tornados is subject to the special five-year carryback period. Other provisions

CODE SECTION	DESCRIPTION OF PROVISION
	apply.
	Effective Date: For amounts paid or incurred after May 3, 2007, and before Jan. 1, 2010. However, the election not to apply the five-year carryback may be made for any tax year.
§1400N(k)(1)(B)	**100% (instead of 90%) ATNOLD is allowed for Kansas disaster area loss amounts paid or incurred after May 3, 2007 and before 2010**
	§1400N(k) provides that the alternative tax net operating loss deduction ("ATNOLD") limitation (which limits the ATNOLD to 90% of alternative minimum taxable income) does not apply to ATNOLDs attributable to “qualified GO Zone losses” (i.e., a taxpayer may apply ATNOLD carrybacks to offset up to 100% of AMTI).
	The Act provides that the ATNOLD provisions of §1400N(k) applies to the "Kansas disaster area," such that the general rule limiting a taxpayer's ATNOLD to 90% of AMTI does not apply to any ATNOLD attributable to Qualified Recovery Assistance losses.
	Effective Date: For amounts paid or incurred after May 3, 2007, and before Jan. 1, 2010.

The following provisions are NOT operative for Hawaii income tax purposes.

1400N(l)(3)(B)	**Nonrefundable tax credit will be allowed to holders of qualified forestry conservation bonds**
	The Act creates a new category of tax credit bonds (bonds which provide credits that a taxpayer may use to offset its regular income tax and alternative minimum tax liability) for "qualified forestry conservation bonds," as further provided in new §54B.
	Effective Date: For obligations issued after May 22, 2008.
§1400N(n)	**Reliance on representations of tenants displaced in the Kansas Disaster Area is allowed in determining compliance with income limits, etc. for qualified residential rental project bonds**
	§142 provides a tax-exemption for qualified residential rental project bonds. For a project to be a qualified residential rental project, the bond issuer must annually certify that project residents satisfy certain applicable income limits. §1400N(n) provides that, for purposes of meeting the applicable income limits and the annual certification requirements under §142, a project operator is allowed to rely on the representation that an individual's income will not exceed the applicable income limits at the beginning of an individual's tenancy, as such a representation is made by an individual applying for tenancy in the project, whose tenancy begins during the six-month period beginning on and after the date that the individual was displaced by reason of Hurricane Katrina.
	The Act provides that §1400N(n) applies to the "Kansas disaster area.
	Effective Date: May 22, 2008.

CODE SECTION	DESCRIPTION OF PROVISION

The following provision is operative for Hawaii income tax purposes.

§1400N(o) **Taxpayers may elect to deduct public utility property losses attributable to May 4, 2007 Kansas storms and tornadoes in fifth tax year before year of loss**

Under §165, a taxpayer may elect to deduct certain losses attributable to a disaster occurring in a presidentially declared disaster area in the tax year immediately preceding the tax year in which the disaster occurred. §1400N(o) allows taxpayers who incurred casualty losses attributable to Hurricane Katrina with respect to public utility property located in the Gulf Opportunity Zone (the “GO Zone") to elect to take these eligible public utility property (PUP) losses into account for the fifth tax year (rather than the first tax year) immediately preceding the tax year in which the loss occurred. If the application of this election results in the creation or increase of a net operating loss (NOL) for the year in which the casualty loss is taken into account, such NOL may be carried back or carried forward under the regular NOL rules for that year.

The Act provides that §1400N(o) applies to the "Kansas disaster area," such that taxpayers who incurred casualty losses attributable to the Kansas storms and tornados with respect to public utility property located in the Kansas disaster area may elect to claim the losses in the fifth tax year (rather than the first tax year) immediately preceding the tax year in which the loss occurred. If the application of the §1400N(o) election results in the creation or increase of an NOL for the year in which the casualty loss is taken into account, the NOL may be carried back or carried over as under the regular rules applicable to NOLs for the year.

Effective Date: May 22, 2008.

The following provision is NOT operative for Hawaii income tax purposes.

§1400R(a) **Employee retention credit is allowed in the “Kansas Disaster Area” for 40% of up to $6,000 of qualified wages for each eligible employee**

§1400R(a) provides an employee retention credit against income for eligible employers that sustained damage as a result of Hurricane Katrina. The credit is an amount equal to 40% of the qualified wages for each eligible employee. The amount of qualified wages that can be taken into account for this purpose for any individual employee is limited to $6,000.

The Act provides that §1400R(a) applies to the "Kansas disaster area" with respect to eligible employers who employed an average of no more than 200 employees on business days during the tax year before May 4, 2007.

Effective Date: May 22, 2008.

The following provisions are operative for Hawaii income tax purposes.

§§1400S(b) and (b)(1) **Storm and tornado losses arising in Kansas disaster area after May 3, 2007 are excepted from $100 floor/10%-of-AGI personal casualty loss limits**

§1400S(b) provides that an individual's “Katrina casualty losses” are not subject to the $100-per-casualty floor and 10%-of-AGI threshold limits on casualty loss deductions. “Katrina casualty losses” are losses that arose in the “Hurricane Katrina disaster area” after Aug. 24, 2005, and were attributable to Hurricane Katrina.

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	The Act provides that §1400S(b) applies to the "Kansas disaster area," to the extent the losses arose from those events in the Kansas disaster area after May 3, 2007, and are attributable to the disaster occurring at that time, as further provided by the Act. As a result, these "Kansas storm casualty losses" are deductible without regard to either the $100-per-casualty floor or the 10%-of-AGI limitation.
	Effective Date: For losses arising after May 3, 2007.

Digest of the Housing Assistance Tax Act of 2008

(P.L. No. 110-289; July 30, 2008)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter 1, and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest.

CODE SECTION	DESCRIPTION OF PROVISION
	The following provisions are NOT operative for Hawaii income tax purposes.
Non-Code Section	**Certain auto manufacturer partnerships can elect to receive a deemed payment of tax in lieu of claiming research credits, bonus depreciation and accelerated depreciation** Applicable partnerships (i.e., certain automobile partnerships) may elect to have the provisions of §3081(b) of the Act apply such that: 1) The partnership is deemed to have made a payment against income tax for any "applicable tax year" of the partnership in an amount equal to the lesser of (a) the amount that would be determined under §168(k)(4)(C)(i) if an election under §168k(4) were in effect with respect to the partnership; (b) the amount of the §41 research credit for the tax year with respect to the partnership; or (c) $30 million, reduced by the amount of any deemed payment (as defined by the Act) for any earlier tax year; 2) In the case of any "eligible qualified property" (placed in service by the partnership during any applicable tax year, §168(k) (bonus depreciation provisions) does not apply in determining the amount of the §168 depreciation deduction allowable for such property, and the applicable depreciation used for that property is the straight line method; and 3) The amount of the research credit (§41) for any applicable tax year of the partnership is reduced by the amount of the "deemed payment" for the tax year. The IRS must refund the deemed payment to the applicable partnership (i.e., the deemed payment cannot be used to offset or credit against any tax liability of the applicable partnership or any partner). Effective Date: For tax years ending after Mar. 31, 2008.
§§26(b)(2)(W) and 36	**"First-time homebuyers" get refundable credit for 10% of purchase price up to $7,500 ($3,750 on separate return); credit must be recaptured over 15 years** The Act adds §36 to the Code, providing a new refundable tax credit for "first-time homebuyers." The credit is equal to the lesser of $7,500 or 10% of the home's purchase price, and is phased out for taxpayers with modified adjusted gross income (AGI) between $75,000 and $95,000 (or $150,000 and $170,000 for a joint reutrn). The credit is recaptured over 15 years in equal installments. The recapture period is the 15 tax years beginning with the second tax year following the tax year

CODE SECTION	DESCRIPTION OF PROVISION
	in which the principal residence was purchased. Other recapture provisions apply. Taxpayers who purchase a residence after Dec. 31, 2008, and before Jul. 1, 2009, may elect to treat the purchase as made on Dec. 31, 2008.
	"First-time homebuyer" means an individual who had no present ownership interest in a principal residence in the U.S. during the three-year period ending on the date of the purchase of the principal residence to which the credit applies. If the individual is married, neither the individual nor the spouse may have had such a present ownership interest.
	Recapture of the first-time homebuyer credit is not included in the taxpayer's regular tax liability for purposes of the tax liability limitation on refundable personal tax credits.
	Effective Date: For principal residences purchased by the taxpayer after April 8, 2008, in tax years ending after that date, regardless of whether there was a binding contract to purchase before April 9, 2008, and before June 30, 2009.
§38(c)(4)(B)(ii)	**Low-income housing credit (LIHC) can offset alternative minimum tax (AMT) liability for buildings placed in service after 2007**
	A taxpayer may apply "specified credits" against the taxpayer's alternative minimum tax (AMT) liability. Under pre-Act law, the §42 LIHC was not one of the specified credits that could be applied against AMT.
	The Act adds the LIHC to the list of credits that may be used to offset the AMT liability to the extent the credit is attributable to buildings placed in service after Dec. 31, 2007. Subparagraphs (ii), (iii), and (iv) of §38(c)(4)(B) are re-numbered as provided by the Act.
	Effective Date: For §42 LIHCs attributable to buildings placed in service after Dec. 31, 2007.
§38(c)(4)(B)(v)	**Rehabilitation credit can offset AMT liability for expenditures taken into account for periods after 2007**
	Under pre-Act law, the rehabilitation credit could not be offset against a taxpayer's alternative minimum tax liability.
	The Act adds the rehabilitation credit to the list of specified credits that may be offset against a taxpayer's alternative minimum tax liability, but only to the extent attributable to qualified rehabilitation expenditures property taken into account for periods after Dec. 31, 2007. The Act also redesignates pre-Act §38(c)(4)(B)(iv) as §38(c)(4)(B)(v).
	Effective Date: For rehabilitation credits attributable to qualified rehabilitation expenditures properly taken into account for periods after Dec. 31, 2007.

CODE SECTION	DESCRIPTION OF PROVISION
	The following provisions are operative for Hawaii income tax purposes.
§42	**Congress orders study on effect of 2008 Housing Act changes to the low-income housing tax credit** The Act requires that, by Dec. 31, 2012, the U.S. Comptroller General submit a report to Congress which analyzes the implementation of the modifications made by the Act on low-income housing credits. The report must include an analysis of the distribution of credit allocations before and after the effective date of these modifications. Effective Date: July 30, 2008.
§§42(b)(1) and (2)	**Minimum low-income housing credit (LIHC) rate of 9% applies to new non-federally subsidized buildings placed in service before Dec. 31, 2013** A taxpayer claims the LIHC over a ten-year credit period after each low-income building is placed-in-service. The amount of the credit for any tax year in the credit period is the applicable percentage of the qualified basis of each qualified low-income building. Under pre-Act law, the calculation of the applicable percentage was designed to produce a credit equal to either: (1) 70% of the present value of the building's qualified basis in the case of newly constructed or substantially rehabilitated housing that was not federally subsidized (the “70% credit”); or (2) 30% of the present value of the building's qualified basis in the case of newly constructed or substantially rehabilitated housing that was federally subsidized, and existing housing that was substantially rehabilitated (the “30% credit”). The Act provides a minimum applicable percentage of 9% for newly constructed, non-federally subsidized buildings placed in service after July 30, 2008 and before Dec. 31, 2013 (i.e., buildings to which the 70% credit would have applied). The Act removes pre-Act §42(b)(1) (providing the applicable percentage for buildings placed in service during 1987) and redesignates pre-Act §42(b)(2) (providing the applicable percentage for buildings placed in service after 1987) as §42(b)(1). Effective Date: For buildings placed in service after Jul. 30, 2008 and before Dec. 31, 2013.
§42(c)(2)	**Prohibition against providing low-income housing credit (LIHC) to buildings receiving certain moderate rehabilitation assistance is eliminated** Generally, no low-income housing tax credit was allowed under pre-Act law to any building for which moderate rehabilitation assistance under §8(e)(2) of the U.S. Housing Act of 1937 was provided at any time during the 15-year compliance period. The Act eliminates the prohibition against providing the low-income housing credit to buildings receiving moderate rehabilitation assistance under §8(e)(2) of the U.S. Housing Act of 1937. Effective Date: For buildings placed in service after July 30, 2008.
§§42(d)(2)(D)(ii)	**"Related party" for purposes of eligible basis under low-income housing**

CODE SECTION	DESCRIPTION OF PROVISION
and (iii)	**credit (LIHC) rules requires 50% attributed ownership rather than 10%**

The eligible basis of an existing building is zero for LIHC purposes unless:
(1) The building was acquired by purchase; and, under pre-Act law,
(2) There has been a period of at least 10 years between the acquisition by purchase and the later of (a) the date the building was last placed in service or (b) the date of the most recent nonqualified substantial improvement (the "ten-year rule"), and
(3) The building was not previously placed in service by the taxpayer or a related person. Two partnerships or corporations are considered related if the same persons have an ownership of greater than 10%

Under pre-Act law, the eligible basis of any building did not include any part of its adjusted basis that was attributable to amounts for which a §167(k) (as in effect before Nov. 5, 1990) election was made.

The Act replaces "10%" for "50%" in the determination of related party relationships for partnerships and corporations (as specified in §267(b) and §707(b)(1)). Also, the Act strikes the second requirement of the ten-year rule. Further, the Act repeals the rule which provides that eligible basis does not include expenditures where an election was made under former §167(k). Finally, pre-Act §42(d)(5)(C) is redesignated as §42(d)(5)(B); §§42(d)(2)(D)(ii) and (iii) are redesignated as §§42(d)(2)(D)(i) and (ii), respectively; and §42(d)(2)(D)(iii)(II) is redesignated as §42(d)(2)(D)(iii).

Effective Date: For buildings placed in service after July 30, 2008.

§42(d)(4)(C)(ii) **Allowable community service facility space for low-income housing projects is increased**

In determining the low-income housing credit (LIHC), the qualified basis of a low-income building generally is limited to that portion of the building dedicated to qualified low-income use (either living space or certain common areas) and certain “community service facilities” used by non-tenants of the low-income building if certain requirements are satisfied. That portion of qualified basis with respect to a community service facility could not exceed 10% of the eligible basis of the qualified low-income housing project of which it was a part.

The Act increases the above percentage limitation with respect to a community service facility such that any increase in qualified basis may not exceed the sum of: (1) 25% of so much of the eligible basis of the qualified low-income housing project of which it is a part does not exceed $15,000,000; plus (2) 10% of so much of the eligible basis of that project that is not taken into account under (1).

Effective Date: For buildings placed in service after July 30, 2008.

§42(d)(5)(A) **Federal grants are not taken into account in determining the eligible basis of a building for purposes of the low-income housing credit (LIHC)**

Under pre-Act law, if a grant is made with respect to any building or the operation thereof and any portion of the grant is funded with federal funds, the eligible basis of the building must be reduced by the federally funded portion of the grant for

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	purposes of the low income housing tax credit. This basis reduction must be made for the tax year in which the grant is made and all following tax years. The Act clarifies that the eligible basis does not include any costs financed with the proceeds of a federally funded grant. The Act also clarifies that the basis reduction rule applies to federally funded grants received before the compliance period. However, no basis reduction is required for federally funded grants to enable the property to be rented to low-income tenants received during the compliance period if those grants do not otherwise increase the taxpayer's eligible basis in the building. Effective Date: For buildings placed in service after July 30, 2008.
§§42(d)(5)(B) and (C)	**A third type of high-cost area is made eligible for the enhanced low-income housing credit (LIHC) for buildings in high-cost areas** Buildings located in qualified census tracts and difficult development areas are eligible for an enhanced low-income housing credit equal to 130% of the otherwise applicable eligible basis of a new building or the rehabilitation expenditures of an existing building. The Act amends §42 to provide that any building which is designated by a state housing credit agency as requiring the enhanced LIHC for that building to be financially feasible as part of a qualified low-income housing project will now be treated as located in a designated difficult development area. Other provisions apply. The Act also repeals the rule that excludes pre-1987 rehabilitation expenditures amortized under previous repealed §167(k) from the basis eligible for the LIHC. Effective Date: For buildings placed in service after July 30, 2008.
§42(d)(6)	**Exception to ten-year nonacquisition period for existing buildings for purposes of the low-income housing credit (LIHC) applies to federally or state-assisted buildings** Under pre-Act law, subject to certain exceptions, the LIHC could be claimed for an existing building only if there was at least a 10-year period between the date of the building's acquistion by the taxpayer and the later of the date the building was placed in service or the date of the most recent nonqualified substantial improvement of the building (the "10-year rule"). . The Act provides that the ten-year rule does not apply to any federally or state-assisted building, as defined by the Act. Effective Date: For buildings placed in service after July 30, 2008.
§§42(e)(3)(A)(ii)(I), (e)(3)(A)(ii)(II), (e)(3)(D) and (f)(5)(B)(ii)(II)	**Substantial rehabilitation requirement for low-income housing credit (LIHC) is modified** Rehabilitation expenditures paid or incurred by a taxpayer with respect to a low-income building are treated as a separate building and may be eligible for a 70-percent LIHC (the "70% rehabilitation credit") if they satisfy the otherwise applicable

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	credit rules. A 30% credit is allowed with respect to acquisitions of certain federally-assisted buildings (the "30% acquisition credit") if certain requirements are satisfied, including a "federal assistance exception" that requires that a certain dollar amount be spent per unit. The Act increases the minimum expenditure requirements applicable to the 70% rehabilitation credit, such that the rehabilitation expenditures must equal the greater of 20% of the adjusted basis of the building being rehabilitated, or $6,000 (adjusted for inflation) per low-income unit in the building being rehabilitated (the minimum expenditure requirement). In addition, the dollar threshold for the 30% acquisition credit's federal assistance exception is amended to equal 2/3 of the minimum expenditure requirement. Effective Date: For buildings with respect to which housing credit dollar amounts are allocated after July 30, 2008.
§42(g)(4)	**Service member's "basic allowance for housing" is not counted in determining if certain military housing qualifies for the low-income housing credit (LIHC)** In order to qualify for low-income housing credits, residential rental projects must satisfy certain income requirements (i.e., project residents must meet certain income thresholds). For purposes of determining whether income requirements are satisfied, the Act provides that basic allowance for housing (BAH) payments to members of the U.S. Armed Forces are disregarded for any qualified building, as defined by the Act. Effective Date: Income determinations made after July 30, 2008, and before Jan. 1, 2012.
§42(g)(4)	**Residential project's eligibility for low-income housing credit (LIHC) will be "held harmless" from reductions in area median gross income (AMGI)** In order to qualify for low-income housing credits, residential rental projects must satisfy certain adjusted modified gross income (AMGI) requirements (i.e., project residents' AMGI cannot exceed certain thresholds). The Department of Housing and Urban Development (HUD) modified its method in determining AMGI which resulted in significantly lower AMGI thresholds. With respect to satisfying the criteria applicable to low-income housing credits, the Act provides a "hold harmless" provision to account for reductions in AMGI, as resulting from the HUD modifications. Under the hold harmless provision, any determination of AMGI for a project may not be less than the determination of AMGI for the project for the preceding calendar year. Other special rules apply to projects affected by HUD's change in its method of calculating AMGI. Effective Date: For determinations of AMGI for calendar years after 2008.

CODE SECTION	DESCRIPTION OF PROVISION
§§42(g)(4)	**Annual current income determination requirement for low-income housing credit doesn't apply for new low-income tenants**

Residential rental projects can qualify for the low-income housing credit (LIHC) if the residents of the projects satisfy certain income requirements. Under pre-Act law, the operators of the residential rental projects were required to submit an annual certification that the income thresholds were satisfied.

The Act waives the annual income re-certification requirements for LIHCs for any project as long as no residential unit in the project is occupied by tenants who fail to satisfy the otherwise applicable income limits. However, the Act does not modify the Department of Housing and Urban Development (HUD) certification rules. Thus, some projects must continue to submit annual HUD certifications, notwithstanding the new tax provisions.

Effective Date: For years ending after July 30, 2008.

§42(g)(9) **A low-income housing project won't fail the general public requirement because of occupancy restrictions or preferences that favor certain types of tenants**

To be eligible for the low-income housing tax credit, the residential units in a qualified low-income housing project must be available for use by the general public, as determined by applying certain criteria.

The Act clarifies the general public use requirement by providing that a project does not fail to meet such requirement solely because of occupancy restrictions or preferences that favor tenants with special needs; who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group; or who are involved in artistic or literary activities.

Effective Date: For buildings placed in service before, on, or after July 30, 2008.

§42(h)(1)(E)(ii) **Low-income housing tax credit (LIHC) carryover allocation rule's time limit for incurring more than 10% of a project's cost is eased**

Under pre-Act law, a "qualified building" eligible to receive a carryover allocation of LIHCs, was any building which was part of a project if the taxpayer's basis in the project (as of the later of the date which was 6 months after the date that the allocation was made or the close of the calendar year in which the allocation was made) was more than 10% of the taxpayer's reasonably expected basis in the project at the close of the second calendar year after the calendar year of the allocation.

The Act amends the definition of "qualified building" such that the taxpayer must now attain the 10% basis "as of the date which is 1 year after the date that the allocation was made".

Effective Date: For buildings placed in service after July 30, 2008.

CODE SECTION	DESCRIPTION OF PROVISION
§42(h)(3)(I)	**Amount of a state's allocation authority for low income housing tax credits is increased for 2008 and 2009**

A low income housing tax credit is allowable only if the owner of a qualified building receives a housing credit allocation from the state or local housing credit agency. Generally, under pre-Act law, the aggregate credit authority provided annually to each state for calendar year 2008 was $2.00 per resident, with a minimum annual cap of $2,325,000 for certain small population states. These amounts are indexed for inflation.

The Act increases the allocation authority provided annually to each state from $2.00 per resident to $2.20 per resident for calendar years 2008 and 2009. The Act also increases the minimum annual cap for small population states for calendar years 2008 and 2009 to $2,550,000.

The state allocation limits will return to pre-Act levels in calendar year 2010.

Effective Date: For low-income credit allocations made for calendar years 2008 and 2009.

§42(h)(4)(A)(ii) **Certain residential rental project bonds are treated as refunding bonds regardless of obligor**

Qualified bonds that are tax-exempt are subject to volume caps unless it is a refund bond (a bond issued to pay the principal or interest on another bond), to the extent the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

The Act amends §146 by providing that if, during the six-month period beginning on the date of a repayment of a loan financed by an issue 95% or more of the net proceeds of which are used to provide qualified residential rental projects, the repayment is used to provide a new loan for a qualified residential rental project, any bond that is issued to refinance that issue is treated as a refunding bond. Certain limitations apply.

To coordinate the refunding provision with the low-income housing credit, the Act also adds a reference to the refunding provision in §42(h)(4)(A)(ii) (regarding LIHC limitations and housing credit allocation requirements under the state housing credit ceilings).

Effective Date: For repayments of loans received after July 30, 2008.

§§42(i)(2)(A), (B), (C), (D) and (E) **"Federally subsidized buildings" don't include buildings financed with below market federal loans for the low income housing tax credit**

The low-income housing credit (LIHC) is a business tax credit equal to a percentage of the qualified basis of qualified low-income buildings. The credit percentages are set so that over a ten-year period, the credits will equal a present value of 70% of the basis of a new building which is not federally subsidized (the "70% credit"), and 30% of the basis of an existing building or federally subsidized new building.

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	Under pre-Act law, a new building was federally subsidized for any tax year if, at any time during the year, or earlier tax year, there was outstanding any tax-exempt obligation (§103), or if there was outstanding any below-market federal loan, the proceeds of which were used directly or indirectly for the building or its operation. The Act strikes the phrase “or any below market federal loan” from the rules for determining whether a building is federally subsidized (§42(i)(2)(A)). To conform to the change to the definition of a federally subsidized building, the Act deletes the definition of a below market federal loan, and removes other references to below market federal loans within §42. Effective Date: For buildings placed in service after July 30, 2008.
§42(i)(3)(D)(i)	**Housing unit occupied by student who previously received certain foster care assistance can qualify for the low-income housing tax credit (LIHC)** Subject to certain exceptions, student housing does not qualify for LIHCs. The Act provides that a unit may qualify as a low-income unit if it is occupied by a student who was previously under the care and placement responsibility of a foster care program. The Act also redesignates pre-Act §42(i)(3)(D)(i)(II) as §42(i)(3)(D)(i)(III). Effective Date: For determinations made after July 30, 2008.
§42(i)(8)	**Low-income housing tax credit (LIHC) income-targeting rules will be applied to projects in certain rural areas by using the greater of "area median gross income" or "national non-metropolitan median income"** To be eligible for the LIHC, a qualified low-income building must be part of a qualified low-income housing project. In general, a “qualified low-income housing project” is defined as a project which satisfies one of the following two income-targeting rules, at the taxpayer's election: 1) At least 20% of the residential units in the project are both rent-restricted and occupied by individuals whose income is 50% or less of area median gross income (the “20-50 test”); or 2) At least 40% of the residential units in the project are both rent-restricted and occupied by individuals whose income is 60% or less of area median gross income (the “40-60 test”). The Act adds a special rule for low-income housing projects in certain rural areas. Under the Act, for those properties located in the specified rural areas, the income-targeting rules of the LIHC are applied by using the greater of the area median gross income or the national nonmetropolitan median gross income. Certain other special provisions apply. Effective Date: For determinations made after July 30, 2008.

CODE SECTION	DESCRIPTION OF PROVISION
§42(j)(6)	**Low-income housing tax credit (LIHC) bond-posting requirement is replaced by an extended statute of limitations of three years after the taxpayer notifies the IRS of noncompliance with low-income housing credit rules** Under pre-Act law, LIHCs were subject to recapture if certain conditions were met, unless (1) the taxpayer furnished a bond in an amount and for a period determined by the IRS (the "bond-posting requirement"), and (2) it was reasonably expected that the building would continue to be operated as a qualified low-income building for the remaining compliance period for that building. The Act eliminates the bond-posting requirement and provides that no recapture occurs solely due to the disposition of a building (or interest therein), if it is reasonably expected that the building will continue to be operated as a qualified low-income building for the remaining compliance period. Further, if there is a reduction in qualified basis that causes recapture of LIHCs, the applicable statute of limitations for assessing a recapture tax is extended until three years after the IRS is notified of noncompliance with the LIHC rules. Effective Date: For interests in buildings disposed of after July 30, 2008.
§42(m)(1)(C)	**State housing credit agency low-income housing tax credit (LIHC) allocation plan criteria are expanded for post-Dec. 31, 2008 allocations to include the energy efficiency and historic nature of the project** In order to receive a low-income housing credit allocation, each state's housing credit agency must develop a plan for allocating LIHCs. The allocation plan must include certain allocation criteria, such as project location; housing needs characteristics; project characteristics; sponsor characteristics; tenant populations with special housing needs; public housing waiting lists; tenant population of individuals with children; and projects intended for eventual tenant ownership. The Act adds two additional criteria which states must use in an allocation of credits among potential low-income housing projects: (1) The energy efficiency of the project, and (2) the historic nature of the project (for example, encouraging the rehabilitation of certified historic structures). Effective Date: For allocations made after Dec. 31, 2008.

The following provisions are NOT operative for Hawaii income tax purposes.

CODE SECTION	DESCRIPTION OF PROVISION
§47(c)(2)(B)(v)(I)	**Rehabilitation credit tax-exempt use safe harbor for nonresidential real property is retroactively raised from 35% to 50% for expenditures properly taken into account after Dec. 31, 2007** Taxpayers are allowed a 10% rehabilitation credit (20% for a historic structure) for “qualified rehabilitation expenditures.” For nonresidential real property, “tax-exempt use property” means the portion of the property leased to a tax-exempt entity in a disqualified lease (as defined by §§ 47 and 168 of the Code), but only if the portion of the property so leased is more than 35% of the property. The Act redefines "tax-exempt use property" for purposes of the rehabilitation credit by increasing from 35% to 50% the percentage of the property that may be leased to a tax-exempt entity in a disqualified lease without requiring allocation of rehabilitation expenditures under the rehabilitation credit.

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Effective Date: For expenditures properly taken into account for periods after Dec. 31, 2007.

§§56(g)(4)(B)(iii) and 57(a)(5)(C)(iii)

Interest on tax-exempt housing bonds isn't subject to alternative minimum tax (AMT)

Private activity bonds are exempt from federal income tax if they belong to one of seven categories of "qualified bonds" and meet certain other requirements. However, tax-exempt interest on "specified private activity bonds" is a preference item that is included in alternative minimum taxable income (AMTI). "Specified private activity bonds" are qualified private activity bonds issued after Aug. 7, 1986, unless excepted from the definition. In addition, for purposes of computing adjusted current earnings (and, ultimately, AMTI) a corporate ACE adjustment was required for tax-exempt interest.

The Act provides that no AMT or ACE adjustment is required for the following types of bonds, which will not be treated as "specified private activity bonds": (1) exempt facility bonds that are part of an issue at least 95% of the net proceeds of which are to be used to provide qualified residential rental projects; (2) qualified mortgage bonds; and (3) qualified veterans' mortgage bonds. The AMT exemption will not apply if the bond is a refunding bond (a bond issued to pay the principal or interest on another bond).

Effective Date: For bonds issued after July 30, 2008.

§63(c)(1)(C) and (c)(7)

Non-itemizers can take additional standard deduction for real property taxes of up to $500 ($1,000 for joint filers)

For purposes of determining regular tax liability, taxpayers are allowed either the standard deduction or itemized deductions for specific expenditures, including state and local real property taxes. Under pre-Act law, the standard deduction was computed without regard to state and local real property taxes, and thus taxpayers had to itemize to claim a deduction for those taxes.

The Act adds a "real property tax deduction" as a component of the standard deduction for any tax year beginning in 2008 only. The real property tax deduction equals the lesser of (1) the amount allowable as a deduction for state and local real property taxes under §164(a)(1), or (2) $500 ($1,000 for joint returns). The computation, however, does not include any amount of taxes taken into account under §62(a) (taxes deducted as trade or business expenses in computing the taxpayer's adjusted gross income).

Effective Date: For tax years beginning after Dec. 31, 2007, but only for tax years beginning in 2008.

The following provisions are operative for Hawaii income tax purposes.

§121(b)(4)

Gain allocated to periods of nonqualified use will not be excluded from income for sales or exchanges of a principal residence after Dec. 31, 2008

A taxpayer generally can exclude up to $250,000 ($500,000 for certain married couples filing joint returns) of gain realized on the sale or exchange of a principal residence. To be eligible for the exclusion, the taxpayer has to have owned the

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	residence and used it as a principal residence for at least two years of the five-year period ending on the date of the sale or exchange. The exclusion does not apply to any gain to the extent the gain is attributable to depreciation allowable with respect to the rental or business use of a principal residence for periods after May 6, '97. The Act provides that, for sales and exchanges after Dec. 31, 2008, the exclusion that applies to gain from the sale or exchange of a principal residence under §121 will not apply to so much of the gain from the sale or exchange of property as is allocated to periods of nonqualified use. Gain will be allocated to periods of nonqualified use based on the ratio which the aggregate periods of nonqualified use during the period the property was owned by the taxpayer bears to the period the property was owned by the taxpayer. A "period of nonqualified use" is any period (other than any portion preceding Jan. 1, 2009) during which the property is not used as the principal residence of the taxpayer, or the taxpayer's spouse or former spouse, subject to certain exceptions provided by the Act. Other special provisions apply to gain attributable to post-May 6, 1997 depreciation. Effective Date: For sales and exchanges after Dec. 31, 2008.
The following provisions are NOT operative for Hawaii income tax purposes.	
§142(d)(2)(B)(ii)	**Service member's "basic allowance for housing" is not counted in determining if certain military housing qualifies for tax-exempt bond financing** In order to qualify for tax-exempt bond financing, residential rental projects must satisfy certain income requirements (i.e., project residents must meet certain income thresholds). For purposes of determining whether income requirements are satisfied, the Act provides that basic allowance for housing (BAH) payments to members of the U.S. Armed Forces are disregarded for any qualified building, as defined by the Act. Effective Date: Income determinations made after July 30, 2008, and before Jan. 1, 2012.
§§142(d)(2)(C), (D), and (3)(C)	**“Next available unit” rule and rules relating to students and single-room occupancy units under tax-exempt bond provisions are conformed with low-income housing credit rules** Under pre-Act law, residential rental projects had to satisfy certain requirements to qualify for tax-exempt bond financing. The Act conforms various rules for tax-exempt bonds to the low-income housing credit (LIHC) rules, such as the "next available unit" rule in which the next available unit must be occupied by a tenant who satisfies the income and rent-restriction requirements; and the rules providing that the occupation of a unit by certain full-time students and a single-room occupancy unit will not disqualify a unit from being a low-income unit. Effective Date: For determinations of status of residential rental projects for periods beginning after July 30, 2008, for bonds issued before, on, or after July 30, 2008.

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§142(d)(2)(E)	**Residential project's eligibility for tax-exempt bond financing will be "held harmless" from reductions in area median gross income (AMGI)** In order to qualify for tax-exempt bond financing, residential rental projects must satisfy certain adjusted modified gross income (AMGI) requirements (i.e., project residents' AMGI cannot exceed certain thresholds). The Department of Housing and Urban Development (HUD) modified its method in determining AMGI which resulted in significantly lower AMGI thresholds. With respect to satisfying the criteria applicable to tax-exempt bond financing, the Act provides a "hold harmless" provision to account for reductions in AMGI, as resulting from the HUD modifications. Under the hold harmless provision, any determination of AMGI for a project may not be less than the determination of AMGI for the project for the preceding calendar year. Other special rules apply to projects affected by HUD's change in its method of calculating AMGI. Effective Date: For determinations of AMGI for calendar years after 2008.
§142(d)(3)(A)	**Annual current income determination requirement for tax-exempt bonds doesn't apply for new low-income tenants** Residential rental projects can qualify for tax-exempt bond financing if the residents of the projects satisfy certain income requirements. Under pre-Act law, the operators of the residential rental projects were required to submit an annual certification that the income thresholds were satisfied. The Act waives the annual income re-certification requirements for both tax-exempt bonds and LIHCs for any project as long as no residential unit in the project is occupied by tenants who fail to satisfy the otherwise applicable income limits. However, the Act does not modify the Department of Housing and Urban Development (HUD) certification rules. Thus, some projects must continue to submit annual HUD certifications, notwithstanding the new tax provisions. Effective Date: For years ending after July 30, 2008.
§§143(k)(11) and (k)(12)	**Mortgage bond rules for residences located in disaster areas are extended to apply to bonds issued after May 1, 2008 and before 2010** Mortgage revenue bonds are tax-exempt bonds, and include qualified mortgage bonds, which are bonds issued as part of a qualified mortgage issue. Qualified mortgage bonds must satisfy certain tests, including a "first-time homebuyer requirement (the mortgage issue must be used to finance the residences of mortgagors who had no present ownership interest in their principal residences during the three-year period ending on the date the mortgage was executed); a "purchase price requirement" (the cost of each residence receiving financing cannot exceed 90% of the average area purchase price); and the "mortgagor's income requirement (all owner-financing provided under the issue must be provided to mortgagors whose family income is 115% or less of the applicable median family income). Under pre-Act law, the qualified mortgage bond requirements were relaxed with respect to mortgage issues after Dec. 31, 1996 and before Jan. 1, 1999, for residences located in a disaster area as determined under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on Aug. 5, 1997)..

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	The Act applies the relaxed disaster area qualified mortgage bond issue requirements noted above to disaster-area related mortgage bonds issued after May 1, 2008, and before Jan. 1, 2010. In addition, the Act provides that qualified mortgage bonds may be used to refinance mortgages on residences that were originally financed by the mortgagor through "qualified subprime loans," as further explained by the Act. Effective Date: For bonds issued after May 1, 2008, and before Jan. 1, 2010.
§§146(d)(5) and (f)(6)	**Additional $11 billion of tax-exempt housing bonds is authorized for 2008** Tax-exempt private revenue bonds are subject to a volume cap based, in part, on a state's population. The Act raises each state's volume cap for the calendar year 2008 by $11 billion, multiplied by a fraction whose numerator is that state's pre-Act ceiling, and whose denominator is the sum of the pre-Act state ceilings for all of the states. Use of the additional state bond allocation is subject to certain limitations. Effective Date: For bonds issued after July 30, 2008.
§146(i)(6)	**Certain residential rental project bonds are treated as refunding bonds regardless of obligor** Qualified bonds that are tax-exempt are subject to volume caps unless it is a refund bond (a bond issued to pay the principal or interest on another bond), to the extent the amount of the refunding bond does not exceed the outstanding amount of the refunded bond. The Act amends §146 by providing that if, during the six-month period beginning on the date of a repayment of a loan financed by an issue 95% or more of the net proceeds of which are used to provide qualified residential rental projects, the repayment is used to provide a new loan for a qualified residential rental project, any bond that is issued to refinance that issue is treated as a refunding bond. Certain limitations apply. Effective Date: For repayments of loans received after July 30, 2008.
§§149(b)(3)(A)(iv) and (b)(3)(E)	**Bonds guaranteed by federal home loan banks are eligible for treatment as tax-exempt bonds** Interest on state and local bonds is generally exempt from federal income tax, provided the bonds satisfy the technical requirements of §149. Under §149, a bond that is “federally guaranteed” is not tax-exempt. Pursuant to the Act, subject to certain safety and soundness collateral requirements, bonds issued by state and local governments are not treated as federally guaranteed by reason of any guarantee provided by any federal home loan bank of a bond issued after Jul. 30, 2008 and before Jan. 1, 2011, if the bank made a guarantee of the bond in connection with the issuance. Effective Date: For guarantees made after Jul. 30, 2008, with respect to bonds issued after Jul. 30, 2008, and before Jan. 1, 2011.

CODE SECTION	DESCRIPTION OF PROVISION
§168(k)(4)	**Corporations can elect to treat certain unused research and alternative minimum tax (AMT) credits as allowable and refundable in lieu of claiming bonus and accelerated depreciation for "eligible qualified property"** §168(k)(1) of the Code allows a taxpayer to deduct bonus depreciation equal to 50% of the adjusted basis for "qualified property" in the year that the property is placed in service, provided certain requirements are met. The Act permits corporations to elect, for the first tax year of the taxpayer ending after Mar. 31, 2008, not to apply the bonus depreciation provisions of §168(k)(1), and instead, to use the straight line method of §168(k)(4)(B) to depreciate the property for both regular tax and AMT purposes, and increase the business credit tax liability limit and the AMT credit tax liability limit by the bonus depreciation amount, subject to allocation as specified by the taxpayer and prescribed by the IRS. Other conditions apply. Any of these elections, once made, cannot be revoked without the IRS's consent. Effective Date: For tax years ending after Mar. 31, 2008.
The following provisions are operative for Hawaii income tax purposes.	
§§856(c)(4)(B)(ii), (c)(4)(B)(iii)(III) and (c)(5)(K)	**Amendments to real estate investment trust (REIT) assets test** To qualify as a REIT, a corporation must satisfy a number of requirements, including a two-part income test, an assets test, and a distribution requirement. The assets test requires that at least 75% of the value of the REIT's assets must be real estate assets, government securities and cash, as further delineated in §856. The Act amends §856 to allow REITs to make foreign investments without risking qualification under §856, redefines the definition of cash to include foreign currency under certain conditions, and broadens an exception to disqualification for failing to meet the assets test such that a discrepancy caused solely by the change in the foreign currency exchange rate used to value a foreign asset will not disqualify a REIT under the assets test, as further provided by §856(c)(4)(B)(iii)(III), as amended. Moreover, the Act amends the assets test so that 25% of the assets of a REIT may consist of securities of one or more taxable REIT subsidiaries. Effective Date: For tax years beginning after July 30, 2008.
§§856(c)(5)(G), (c)(5)(J) and (n)	**Treatment of foreign currency gains for real estate investment trusts (REIT) income test purposes** To qualify as a REIT, a corporation must satisfy a number of requirements, including a two-part income test, an assets test, and a distribution requirement. The income test requires that at least 95% of the REIT's income consist of certain types of income, such as dividends, interest, and other income related to real estate. The second part of the income test requires that at least 75% of the REIT's income consist of other certain types of income. The Act provides that passive foreign exchange gain and real estate foreign

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	exchange gain (both of which are defined by the Act) (as defined by the Act) are not included in gross income for purposes of satisfying the 95% income test and the 75% income test, respectively. The Act also expands the hedging exclusion, which previously excluded any gross income from a §1221(a)(7) hedging transaction for purposes of satisfying the 95% income test, to apply to both the 95% and 75% income tests. Furthermore, the Act authorizes the IRS to exclude any item of income or gain that would otherwise not qualify under either income test from gross income solely for purposes of the REIT rules. Effective Date: For gains or income items recognized after July 30, 2008.
§§856(d)(8)(B), (d)(9) and (l)(3)	**Taxable real estate investment trust (REIT) subsidiaries may hold health care facilities** To qualify as a REIT, a corporation must satisfy a number of requirements, including a 95% and 75% income test, an assets test, and a distribution requirement. Under pre-Act law, under the assets test, a taxable REIT subsidiary (TRS) could not directly or indirectly operate a lodging facility or a health care facility unless the facility was a lodging facility and other conditions were met (the "lodging facility exception"). The Act expands the lodging facility exception to include health care facilities. The Act also amends provides that a TRS will not be deemed to operate or manage a qualified health care property or lodging facility solely because it has a license, permit, or similar instrument allowing it to do so or solely because it employs individuals working at such facilities (subject to other requirements Effective Date: For tax years beginning after July 30, 2008.
§§857(b)(4)(B)(i), (b)(6)(B)(i), (b)(6)(C), (b)(6)(D) and (b)(6)(G)	**Amendments to real estate investment trust (REIT) prohibited transactions income rules** REITs are subject to a 100% prohibited transactions tax (PTT) on the net income from prohibited transactions involving the sale or other disposition of §1221(a)(1) inventory property or property held primarily for sale to customers in the ordinary course of the REIT's business, other than foreclosure property. The Act amends the prohibited transaction rules and the foreclosure property rules to comport with other provisions treating certain gains relating to foreign currency transactions as qualifying income under the REIT income tests. The Act also amends the prohibited transaction safe harbor provisions so that the required holding period for assets is lowered to 2 years, and to allow asset sales of up to 10% of the fair market value of the REIT. The Act expressly provides that safe harbor property is §1221(a)(1) (i.e., inventory that generates ordinary income rather than capital gain). Effective Date: For gains and deduction recognized after July 30, 2008.

The following provisions are NOT operative for Hawaii income tax purposes.

§§864(f)(5)(D),	**Election to allocate interest expense on a worldwide basis delayed until after**

CODE SECTION	DESCRIPTION OF PROVISION
(f)(6) and (f)(7)	**2010** The 2004 Jobs Act added a one-time, irrevocable election under which a worldwide affiliated group of corporations could elect for the taxable income of each member domestic corporation to be determined by allocating and apportioning the interest expense of each member as if all members of the group were a single corporation (the "worldwide interest allocation election"). Under pre-Act law, this election was to be made available for tax years beginning after Dec. 31, 2008. The Act delays the availability of the worldwide interest allocation election for two years, to apply only to tax years beginning after Dec. 31, 2010. The Act also provides a special transition rule for the first tax year to which the worldwide interest allocation rules apply. Effective Date: For tax years beginning after Dec. 31, 2008.
§1400N(a)(8)	**Additional Alabama counties are retroactively added to the Gulf Opportunity Zone ("GO Zone") area for which tax-exempt qualified bonds may be issued** The 2005 Gulf Opportunity Zone Act (PL 109-135, Dec. 21, 2005) authorized the issuance, after Dec. 21, 2005 and before Jan. 1, 2011, of tax-exempt qualified bonds (“Gulf Opportunity Zone Bonds”) to finance the construction and rehabilitation of residential and nonresidential property located in the Gulf Opportunity Zone (the “GO Zone”). The Act retroactively provides that, for purposes of the tax-exempt bond financing rules only, the GO Zone includes the Alabama counties of Colbert and Dallas. Effective Date: For bonds issued after Dec. 21, 2005 and before Jan. 1, 2011, for tax years ending after Aug. 27, 2005.
§1400N(d)(3)(B)	**Dec. 31, 2007 deadline to start manufacture, construction or production of certain "qualified GO Zone property" is retroactively eliminated** The 2005 Gulf Opportunity Zone Act provided, among other special tax benefits and incentives, bonus depreciation for "qualified GO Zone property," subject to several placed-in-service deadline rules. Under pre-Act law, for property manufactured, constructed or produced by the taxpayer, the manufacture, construction or production had to begin before Jan. 1, 2008, to constitute qualified GO Zone property. The Act amends this requirement by removing the commencement date restriction for self-constructed GO Zone extension property. Effective Date: For property placed in service after Dec. 31, 2007.

Digest of the Hubbard Act

(P.L. 110-317; Aug. 29, 2008)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter 1, and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest.

The following provision is operative for Hawaii income tax purposes.

CODE SECTION	DESCRIPTION OF PROVISION
§685	**Repeal of dollar limitation on contributions to funeral trusts**
	Under pre-Act law, a dollar limitation (as provided in §685(c)) was imposed on contributions to qualified funeral trusts. The Act repeals the dollar limitation imposed with respect to contributions to qualified funeral trusts and redesignates pre-Act subsections (d), (e), and (f) as subsections (c), (d), and (e) respectively.
	Effective Date: Aug. 29, 2008.

Digest of the Emergency Economic Stabilization Act of 2008

(P.L. 110-343; Oct. 3, 2008)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter 1, and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest.

CODE SECTION	DESCRIPTION OF PROVISION
	The following provisions are operative for Hawaii income tax purposes.
§108(a)(1)(E)	**Exclusion of debt discharge income from home mortgages is extended for three years until the end of 2012** Under pre-Act law, the "mortgage forgiveness exclusion" for debt discharge income on mortgages for principal residences applied to discharges made after Dec. 31, 2006 and before Jan. 1, 2010. The Act extends the exclusion for three additional years, so that it applies to indebtedness discharged before Jan. 1, 2013. Effective Date: For discharges of indebtedness after Dec. 31, 2009, and before Jan. 1, 2013.
§§162(m) and (m)(5)	**Executive compensation deduction is capped at $500,000 for employers selling more than $300 million of troubled assets in bailout program** Any applicable employer that sells troubled assets aggregating in excess of $300 million for all tax years to the Treasury Secretary under the 2008 Economic Stabilization Act through the Troubled Asset Relief Program (TARP) is subject to a $500,000 limit on deductions for compensation paid to applicable employees for an applicable tax year. The $500,000 limit is reduced (but not below zero) by any golden parachute payments paid during the authorized period and any payment of the excise tax under §4985 for stock compensation of insiders in an expatriated corporation. Effective Date: Tax years ending on or after Oct. 3, 2008.
§280G(e)	**Golden parachute rules apply to severance payments to top executives of employers that sell more than $300 million of troubled assets in bailout program** Generally, §280G disallows a tax deduction to a corporate payor of an excess parachute payment. A parachute payment is compensation paid to or for the benefit of a disqualified individual if (1) the payment is contingent on an change in ownership or effective control of a corporation, or in the ownership of a substantial part of the corporation's assets; and (2) the aggregate present value of all such contingent compensation payments equals, or exceeds, three times the base amount (as defined by §280G of the Code). The Act amends §280G by broadening the definition of "parachute payment" with respect to employers

participating in the Troubled Assets Relief Program to include payments to covered executives of such employers due to involuntary termination, employer's bankruptcy, liquidation or receivership of employers (including noncorporate entities).

Effective Date: Effective Oct. 3, 2008 through Dec. 31, 2009, subject to a 2-year extension (but to no later than Oct. 3, 2010) upon the submission of a written certification justifying the extension to Congress by the Treasury Secretary.

The following provision is NOT operative for Hawaii income tax purposes.

§1221 **Gain or loss from the sale or exchange of certain preferred stock is treated as ordinary income or loss after Dec. 31, 2007**

Under Pre-Act law a financial institution's gains and losses from sales or exchanges of stock were treated as capital, rather than ordinary, gains or losses. The Act provides that gain or loss from the sale or exchange of any "applicable preferred stock" by any "applicable financial institution" is treated as ordinary income or loss.

For the purposes of this Act, "applicable preferred stock" is any stock that 1) is preferred stock in either the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac"); and 2) was held by the applicable financial institution on Sept. 6, 2008, or was sold or exchanged by an "applicable financial institution" on or after Jan. 1, 2008, and before Sept. 7, 2008.

For the purposes of this Act, "applicable financial institution" is a financial institution as referred to in IRC §582(c)(2) (i.e. a bank, small business investment company, business development corporation, or certain other financial institutions); or a depository institution holding company.

Capital gain/loss treatment applies to a sale or exchange of applicable preferred stock after Sept. 6, 2008, if the taxpayer was an applicable financial institution at all times during the period beginning on Sept. 6, 2008, and ending on the date of the sale or exchange of the applicable preferred stock.

In addition, the IRS may extend (by guidance, rules or regulations) the provisions of the new law to all or a portion of the gain or loss from a sale or exchange in any case where:

1) An applicable financial institution sells or exchanges applicable preferred stock after Sept. 6, 2008, which the applicable financial institution did not hold on that date, but the basis of which in the hands of the applicable financial institution at the time of the sale or exchange is the same as the basis in the hands of the person that held that stock on that date, or
2) The applicable financial institution is a partner in a partnership that:
   a) Held that stock on Sept. 6, 2008, and later sold or exchanged that stock, or
   b) Sold or exchanged the stock on or after Jan. 1, 2008, and before Sept. 7, 2008.

Effective Date: Sales or exchanges occurring after Dec. 31, 2007, in tax years ending after Dec. 31, 2007.

Digest of the Energy Improvement and Extension Act of 2008

(P.L. 110-343; Oct. 3, 2008)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter 1, and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest.

CODE SECTION	DESCRIPTION OF PROVISION
The following provisions are NOT operative for Hawaii income tax purposes.	
§§24(b)(3)(B), 25(e)(1)(C)(ii), 25B(g)(2), 26(a)(1), 30D, 30B(d)(3)(D), 38(b)(35), 1400C(d)(2), and 6501(m)	**"New qualified plug-in electric drive motor vehicle (NQPEDMV) credit" is allowed for tax years beginning after Dec. 31, 2008, for property purchased before Jan. 1, 2015** The Act adds §30D to the Code to provide a credit for NQPEDMVs purchased before Jan. 1, 2015. The credit is the applicable amount for each NQPEDMV placed in service by the taxpayer during the tax year. Subject to a limit based on weight, the applicable amount is the sum of $2,500, plus $417 for each kilowatt (kw) hour of traction battery capacity in excess of 4 kw hours. For this purpose, traction battery capacity is measured in kw hours from a 100% state of charge to a 0% state of charge. The calculated credit cannot exceed the following amounts: $7,500 for any NQPEDMV with a gross vehicle weight rating (GVWR) of 10,000 pounds (lbs) or less; $10,000 for any NQPEDMV with a GVWR greater than 10,000 lbs and less than 14,000 lbs; $12,500 for any NQPEDMV with a GVWR greater than 14,000 lbs and less than 26,000 lbs; and $15,000 for any NQPEDMV with a GVWR greater than 26,000 lbs. A phaseout period exists for the NQPEDMV credit, beginning two calendar quarters after the calendar quarter in which the total number of NQPEDMVs sold for use in the U.S. after Dec. 31, 2007 meets or exceeds 250,000. If a NQPEDMV is sold during this phaseout period, then only a percentage of the otherwise allowable credit is allowed as follows: 50% for the first 2 calendar quarters of the phaseout period, 25% for the third and fourth calendar quarters of the phaseout period, and 0% for each later calendar quarter. The portion of the credit for NQPEDMVs that is attributable to depreciable property is treated as a credit that is part of the general business credit (GBC) for the tax year, and not as a NQPEDMV credit. The portion of the credit for NQPEDMVs that is not attributable to depreciable property is treated as a Subpart A, or personal, credit. The non-depreciable property portion of the credit for NQPEDMVs cannot exceed for any tax year the sum of the taxpayer's AMT and regular tax liability, less the sum of the allowable foreign tax credit (§27); the allowable Subpart A credits (other than the §23 adoption credit); and the residential energy efficiency credit (§25D). The Act includes other provisions with respect to the §30D credit to define terms and address property used outside of the U.S., property sold to certain tax-

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	exempt persons, basis reduction, reduction of other tax benefits, prohibition of the §30B alternative motor vehicle credit, recapture, and election out of §30D. Effective Date: Tax years beginning after Dec. 31, 2008, for property purchased before Jan. 1, 2015.
§§25C(c), (d)(2)(C), (d)(3)(C), (d)(3)(D), (d)(3)(E), (d)(3)(F) and (d)(6)	**Credit for nonbusiness energy property includes biomass fuel stoves and excludes geothermal heat pumps; changes to water heater and roofing requirements** In addition to extending the nonbusiness energy property credit, discussed below, the Act: Adds "biomass mass fuel stoves" to the list of energy-efficient building property that qualifies for the nonbusiness energy credit; Removes "geothermal heat pumps" from the list of energy efficient building property (as a residential geothermal heat pump credit is now allowed under §25D), and deletes references to geothermal heat pumps from §25C. Broadens the definition of the type of water heaters that qualify as energy efficient property to include natural gas propane, or oil water heaters that have a thermal efficiency of at least 90% Adds asphalt roofs with appropriate cooling granules to the definition of "qualified energy efficiency improvements." Effective Date: With the exception of the provisions related to asphalt roofs with appropriate cooling granules, which is effective for property placed in service after Oct. 3, 2008, the above provisions apply to expenditures made after Dec. 31, 2008.
§25C(g)	**Nonbusiness energy property credit, which expired Dec. 31, 2007, will be reinstated after Dec. 31, 2008 through Dec. 31, 2009** Individual taxpayers were allowed a nonrefundable personal tax credit called the "nonbusiness energy property credit" for certain energy-efficient property installed in the taxpayer's principal residence and placed in service after Dec. 31, 2005, and before Jan. 1, 2008. The Act reinstates this credit for one year, for property placed in service after Dec. 31, 2008, and before Jan. 1, 2010. Effective Date: For expenditures made after Dec. 31, 2008, and before Jan. 1, 2010.
§§25D(a)(4), (a)(5), (b)(1)(D), (b)(1)(E), (d)(4), (d)(5), (e)(4)(A)(iv), (e)(4)(A)(v) and 45(d)(1)	**Residential energy efficient property (REEP) credit is allowed for residential wind property and geothermal heat pumps** Individuals are allowed a personal credit for residential energy efficient property (REEP) expenditures. The Act adds two new components of the REEP credit for residential wind property and geothermal heat pumps. The REEP credit for the two new components is equal to 30% of "qualified small wind energy property" or "qualified geothermal heat pump property" expenditures made by

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the taxpayer during the tax year.

"Qualified small wind energy property expenditure" is an expenditure for property that uses a wind turbine to generate electricity for use in connection with a dwelling unit located in the U.S. and used as a residence by the taxpayer. The REEP credit for residential wind property is limited to $500 for each 0.5 kilowatt (kw) of capacity, not to exceed $4,000, of wind turbines for which qualified small wind energy property expenditures are made. "

The REEP credit for geothermal heat pumps is equal to 30% of the qualified heat pump property expenditures made by the taxpayer during the tax year. "Qualified geothermal heat pump property expenditure" is an expenditure for qualified geothermal heat pump property installed on or in connection with a dwelling unit located in the U.S. and used as a residence by the taxpayer. "Qualified geothermal heat pump property" is any equipment that uses the ground or ground water as a thermal energy source to heat the dwelling unit or as a thermal energy sink to cool the dwelling unit; and meets the Energy Star program requirements in effect when the expenditure is made. The geothermal heat pump REEP credit is limited to $2,000 for any qualified geothermal heat pump property expenditures.

The Act also provides that the §45 renewable electric production credit isn't allowed for any facility for which any qualified small wind property expenditure is taken into account in determining the REEP credit.

Effective Date: The credits for qualified small wind energy property and qualified geothermal heat pump property are allowed for expenditures after Dec. 31, 2007, for property placed in service before Jan. 1, 2017.

§§25D(b)(1) and (e)(4)(A)

Credit for solar electric property expenditures is allowed without limit

Individuals are allowed a personal credit for expenditures for residential energy efficient property (REEP), which includes qualified solar electric property expenditures. Under pre-Act law, a REEP credit was allowed for 30% of the qualified solar electric property expenditures made by the taxpayer during the tax year, up to a maximum of $2,000.

Rules are also provided for allocating the credit where two or more individuals jointly occupy a dwelling unit and use it as a residence. Under pre-Act law, the maximum amount of expenditures taken into account by all individuals for the calendar year was $6,667 for any qualified solar electric property expenditures.

The Act eliminates the $2,000 limitation on the credit allowed for a tax year for qualified solar electric property expenditures. Likewise, there is no longer a limit on the amount of qualified solar electric property expenditures that may be taken into account by all resident individuals when two or more jointly occupy a dwelling unit and use it as a residence.

Effective Date: Tax years beginning after Dec. 31, 2008.

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§25D(g)	**Residential energy efficient property credit is extended for eight years, through 2016** Individuals are allowed a personal tax credit, the "residential energy efficient property" (REEP) credit for expenditures for qualified solar electric property, qualified solar water heating property, and qualified fuel cell property for property placed in service before Jan. 1, 2009. The Act extends the credit by eight years to apply through Dec. 31, 2016. Effective Date: Tax years beginning after Dec. 31, 2007.
§26(a)(1), as it affects §§25D(c), 24(b)(3)(B), 25B(g)(2) and 23(b)(4)(B)	**Residential energy efficient property (REEP) credit may be claimed against AMT** Under Code §26(a)(2), which applies to tax years 2000 through 2007 under pre-Act law, the combined total of the taxpayer's nonrefundable personal credits could be applied against a taxpayer's regular and alternative minimum tax (AMT) liability. For tax years not falling within 2000 through 2007, the nonrefundable personal credits could only be applied against a taxpayer's regular tax liability. The Act extends the provisions of §26(a)(2) to apply to tax years beginning in 2008 and adds the residential energy efficient property credit to the list of nonrefundable personal credits within the purview of §26(a)(2). The nonrefundable personal credits that can be claimed against both regular tax and AMT are claimed in the following order: Child tax credit (§24b)(3)(B)); Saver's credit (§25B(g)(2)); Adoption credit (§23(b)(4)(B)); and Residential energy efficient property credit (§25D(c)(1)(B)). The amendments related to the residential energy efficient property credit are subject to Title IX of the 2001 Economic Growth and Tax Relief Reconciliation Act (EGTRRA) and will not apply to tax years beginning after Dec. 31, 2010. Effective Date: Tax years beginning after Dec. 31, 2007.
§30C(c)(2)(C)	**Electricity is treated as a clean burning fuel for purposes of the qualified alternative fuel vehicle (QAFV) refueling property credit** Under pre-Act law, taxpayers could claim a 30% income tax credit for the cost of installing QAFV refueling property to be used in a taxpayer's trade or business, or installed at the taxpayer's principal residence. The credit was limited to $30,000 per tax year, per location, in the case of depreciable QAFV refueling property used in a trade or business; and $1,000 per tax year, per location, for any other QAFV refueling property installed on property used as a principal residence. QAFV refueling property was defined as property (not including a building or its structural components) for the storage or dispensing of certain clean-burning fuels into the fuel tank of a motor vehicle propelled by the fuel, but only if the storage or dispensing of the fuel is at the point where the fuel is

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	delivered into the fuel tank of the motor vehicle. Clean-burning fuels included any fuel at least 85% of the volume of which consists of ethanol, natural gas, compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen. Any mixture of biodiesel, diesel fuel, or kerosene and containing at least 20% of the volume of which consists of biodiesel without regard to any kerosene, also qualified as a clean fuel.
	The Act provides that clean-burning fuels also include electricity for purposes of the definition of QAFV refueling property.
	Effective Date: For property placed in service after Oct. 3, 2008, in tax years ending after that date.
§30C(g)(2)	**Termination date of the credit for non-hydrogen qualified alternative fuel vehicle (QAFV) refueling property is extended for one year to apply to property placed in service before Jan. 1, 2011**
	Under pre-Act law, Taxpayers could claim a 30% income tax credit for the cost of installing QAFV refueling property to be used in a taxpayer's trade or business, or installed at the taxpayer's principal residence.
	Under pre-Act law, the credit was available for property placed in service after Dec. 31, 2005, and (except in the case of hydrogen refueling property) before Jan. 1, 2010.
	The Act extends the credit for installing QAFV refueling property (other than property relating to natural gas, compressed natural gas (CNG), liquefied natural gas (LNG), or hydrogen) to include property placed in service after Dec. 31, 2010.
	Effective Date: For property placed in service after Oct. 3, 2008, in tax years ending after that date.
§§38(b)(34) and 45Q	**Income tax credit is provided for qualified carbon dioxide captured after Oct. 3, 2008**
	The Act establishes a carbon dioxide sequestration credit for any tax year equal to the sum of $20 per metric ton of qualified carbon dioxide which is both captured by the taxpayer at a qualified facility and disposed of by the taxpayer in secure geological storage and $10 per metric ton of qualified carbon dioxide which is both captured by the taxpayer at a qualified facility, and used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project. These amounts are not adjusted for inflation, but will be for any tax year beginning in a calendar year after 2009. The credit applies only to qualified carbon dioxide which is captured and disposed, or used, within either the U.S. or a U.S. possession. It is subject to recapture, as provided by regulations to be issued by the IRS.
	"Qualified carbon dioxide" is carbon dioxide captured from an industrial source that would otherwise be released into the atmosphere as industrial emission of greenhouse gas, and is measured at the source of capture and verified at the point of disposal or injection. It also includes the initial deposit of captured carbon dioxide used as a tertiary injectant, but excludes carbon dioxide that is re-captured, recycled, and re-injected as part of the enhanced oil and natural

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gas recovery process.

The carbon dioxide sequestration credit is a component of the business credit for purposes of §38.

Effective Date: For carbon dioxide captured after Oct. 3, 2008.

§§38(c)(4)(B)(v) and (c)(4)(B)(vi)

The energy credit can offset 100% of the alternative minimum tax (AMT)

Under pre-Act law, the energy credit, a component of the investment credit for purposes of §38, cannot be used to offset liability for AMT.

The Act makes the energy credit allowable against the AMT, by adding the investment credit (determined under §46) to the list of specified credits that may be applied against AMT, but only to the extent that the credit is attributable to the energy credit (determined under §48).

The Act also makes a technical amendment to §38(c)(4)(B) (relating to the inclusion of the rehabilitation credit, a component of the investment credit, as a specified credit, but only with respect to qualified rehabilitation expenditures property taken into account for periods after Dec. 31, 2007) to conform the existing language to the language of the Act.

The Act further redesignates pre-Act §38(c)(4)(B)(vi), as amended by the Housing Assistance Tax Act of 2008, as §38(c)(4)(B)(vi) and §38(c)(4)(B)(vii).

Effective Date: For credits determined under §46 in tax years beginning after Oct. 3, 2008 and to carryback of those credits.

§§40(d)(7), 40A(d)(5), 6426(i) and 6427(e)(5)

Alcohol, biodiesel, renewable diesel, and alternative fuel income and excise tax incentives are made inapplicable to fuel produced outside the U.S. for use outside the U.S.

The Code provides per-gallon incentives for alcohol (including ethanol), biodiesel (including agri-biodiesel), renewable diesel, and alternative fuels. The incentives may be taken as an income tax credit, excise tax credit, or excise tax refund.

The Act modifies the alcohol fuel income tax credit, the biodiesel fuel income tax credit, and the excise tax credit provisions for alcohol fuel, biodiesel, alternative fuel mixtures, and alternative fuel to provide that no credits (or excise tax refund) will be allowed for any of those fuels produced outside the U.S. for use as a fuel outside the U.S.

Effective Date: For claims for credit or payment made after May 14, 2008.

§§40A(b) and (f)(2), and §6426(c)(2)

Income and excise tax credits for biodiesel are increased by 50 cents per gallon to one dollar per gallon

Tax credits are allowed for certain types of biodiesel fuels. The biodiesel fuels income tax credit (§40A(g)) is comprised of: (1) the "biodiesel mixture credit" for biodiesel used in the production of a qualified biodiesel mixture; (2) the "biodiesel credit"for biodiesel, not in a mixture that is used by the taxpayer as a fuel in a trade or business and not sold in a retail sale, or sold by the taxpayer at

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retail to a person and placed in the fuel tank of that person's vehicle; and (3) the "small agri-biodiesel producer credit." Under pre-Act law, items 1 and 2 were allowed credits of 50 cents per gallon of biodiesel, or an alternate credit of $1 per gallon for agri-biodiesel. The credit for item 3 was 10 cents per gallon for up to 15 million gallons of agri-biodiesel produced by small producers.

Under pre-Act law, a "biodiesel mixture excise tax credit" could be applied against the §4081 removal-at terminal excise tax equal to $.50/gallon of biodiesel (or $1/gallon of agri-biodiesel) used by the taxpayer in producing a biodiesel mixture for sale or use in the taxpayer's trade or business. An incentive allowing $1 per gallon of renewable diesel fuel was also specified under pre-Act law. For these purposes, renewable diesel fuel is treated the same as biodiesel fuel, except for the $1 per gallon incentive.

The Act increases the biodiesel mixture income tax credit, the biodiesel income tax credit, and the biodiesel mixture excise tax credit to $1/gallon. The special $1 rates for agri-biodiesel and renewable diesel are eliminated by the Act.

Effective Date: For fuel produced, and sold or used, after Dec. 31, 2008, and before Jan. 1, 2010.

§§40A(d)(2) and (g), §§6426(c)(6) and 6427(e)(5)(B)

Income and excise tax credits for biodiesel and renewable diesel are extended to apply through Dec. 31, 2009

Under pre-Act law, biodiesel fuels income tax credit (§40A), the biodiesel mixture excise tax credit (§6426(c), §6427(e)(5)(B)), and the renewable diesel fuel income and excise tax credits (§40A(f), §6426(c), §6427(e)(5)(B)) were to expire for fuel sold after Dec. 31, 2008. In addition, "agri-biodiesel," a subset of biodiesel, meant biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, and from animal fat.

The Act extends each of the above credits for one year by amending §40A(g), §6426(c)(6), and §6427(e)(5)(B) to allow credits for fuel sold until Dec. 31, 2009.

The Act also adds camelina to the definition of agri-biodiesel.

Effective Date: For fuel produced, and sold or used, after Dec. 31, 2008, and before Jan. 1, 2010.

§40A(f)(3)

Requirement that renewable diesel fuel be made using a thermal depolymerization process is eliminated for purposes of income and excise tax incentives

An income tax credit, excise tax credit, and/or excise tax refund is allowed for renewable diesel fuel, which generally, for purposes of the Code is treated the same as biodiesel fuel. As defined, renewable diesel fuel was diesel fuel that was derived from biomass using a thermal depolymerization process and met certain Environmental Protection Agency and American Society of Testing Materials standards.

The Act re-defines renewable diesel fuel to require that it be liquid fuel derived

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	from biomass, and eliminates any requirement that such fuel be derived using a thermal depolymeritization process. Further, the renewable diesel fuel may satisfy a standard equivalent to that of the American Society of Testing and Materials. Effective Date: For fuel produced, and sold or used, after Oct. 3, 2008, and before Jan. 1, 2010.
§40A(f)(3)	**Credit for renewable diesel fuel is modified to exclude fuel derived from coprocessing biomass with a feedstock that isn't biomass** An income tax credit, excise tax credit, and/or excise tax refund is allowed for renewable diesel fuel, which generally, for purposes of the Code is treated the same as biodiesel fuel. The IRS issued Notice 2007-37, in which it provided that fuel produced as a result of co-processing biomass and petroleum feed stock ("co-produced fuel") qualified for the renewable diesel incentives to the extent of the fuel attributable to the biomass in the mixture. In co-produced fuel, the fuel attributable to the biomass does not exist as a distinct separate quantity prior to mixing. The Act amends the definition of renewable diesel fuel so that it excludes fuel derived from co-processing biomass with a feedstock that is not biomass, although it allows de minimis use of catalysts. Effective Date: For fuel produced, and sold or used, after Dec. 31, 2008, and before Jan. 1, 2010.
§40A(f)(4)	**Credit for renewable diesel fuel is extended to apply to certain aviation fuel** An income tax credit, excise tax credit, or excise tax refund are allowed for renewable diesel fuel. The Act expands the definition of renewable diesel fuel to include fuel derived from biomass which satisfies the requirements of a Department of Defense specification for military jet fuel or an American Society of Testing and Materials specification for aviation turbine fuel (renewable jet fuel). For purposes of the biodiesel mixture income tax credit and biodiesel mixture excise tax credit, kerosene will be treated as diesel fuel when in a mixture with renewable jet fuel. Effective Date: For fuel produced, and sold or used, after Dec. 31, 2008, and before Jan. 1, 2010
§§45(b)(2) and (e)(8)	**Credit amount for steel industry fuel qualifying for the electricity production credit is $2 per barrel-of-oil equivalent amount, indexed for inflation** A credit for electricity production from qualified resources, including refined coal, is allowed under §45(a). Under pre-Act law, the definition for refined coal did not include any specifications for steel industry fuel. As noted below, the Act amends the definition of refined coal for purposes of the electricity production credit by providing that the term "refined coal" includes fuel "which is steel industry fuel."

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The Act further applies the following rules to refined coal production facilities with respect to steel industry fuel:

> In determining the credit amount for steel industry fuel, the credit determined for any tax year is increased by an amount equal to $2 per barrel-of-oil equivalent of steel industry fuel produced by the taxpayer at a refined coal production facility and sold to an unrelated party during the following credit period.
> The credit period begins on the later of the date the facility was originally placed in service; the date modifications were placed in service; or Oct. 1, 2008.
> The credit period ends on the later of Dec. 31, 2009 or the date which is 1 year after the date the facility or the modifications were placed in service.
> "Modifications" means modifications to an existing facility which allow that facility to produce steel industry fuel.
> "Barrel-of-oil equivalent" is the amount of steel industry fuel that has a Btu content of 5.8 million Btus.
> Credit phaseout rules do not apply.

The Act also provides that the energy credit amount for a refined coal production facility producing steel industry fuel will be indexed for inflation.

Effective Date: For fuel produced and sold after Sept. 30, 2008.

§§45(b)(4)(A), (c)(1)(I), (c)(10), (d)(5) and (d)(11)

Electricity production credit is expanded to include electricity produced from marine and hydrokinetic renewable energy

Under pre-Act law, certain facilities were allowed to claim a credit for electricity produced from certain renewable resources (the "electricity production credit"). Marine and hydrokinetic energy, however, were not included among those resources.

The Act adds marine and hydrokinetic renewable energy to the resources eligible for the credit for electricity produced from renewable resources. Marine and hydrokinetic energy refers to energy derived from: (1) waves, tides, and currents in oceans, estuaries, and tidal areas; (2) free-flowing water in rivers, lakes, and streams; (3) free-flowing water in an irrigation system, canal or other man-made channel, including projects that utilize non-mechanical structures to accelerate the flow of water for electric power production purposes; or (4) differentials in ocean temperature (ocean thermal energy conversion). Marine and hydrokinetic energy does not include any energy that is derived from any source that uses a dam, divisionary structure (except as provided in item 3), or impoundment for electric power production purposes.

For facilities producing electricity from marine and hydrokinetic renewable energy, a “qualified facility” is any facility owned by the taxpayer that has a nameplate capacity rating of at least 150 kilowatts, and is originally placed in service on or after Oct. 3, 2008, and before Jan. 1, 2012. Electricity produced from marine and hydrokinetic renewable energy facilities, qualifies for the reduced credit rate as adjusted for inflation of 1 cent per kilowatt hour of electricity.

The Act also accelerates the placed-in-service end date for small irrigation

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	power facilities from Dec. 31, 2010 to Oct. 3, 2008 (the date of enactment of the credit for marine and hydrokinetic renewable energy facilities), since after Oct. 3, 2008, small irrigation power facilities are within the definition of marine and hydrokinetic renewable energy facilities for purposes of the electricity production credit. Effective Date: For electricity produced and sold after Oct. 3, 2008, in tax years ending after Oct. 3, 2008.
§45(c)(7)	**Steel industry fuel is added to the definition of refined coal as a qualified resource for purposes of the electricity production credit** A credit for electricity production from qualified resources, including refined coal, is allowed under §45(a). Under pre-Act law, the definition for refined coal did not include any specifications for steel industry fuel. The Act amends the definition of refined coal for purposes of the electricity production credit by providing that the term "refined coal" includes fuel "which is steel industry fuel." "Steel industry fuel" is defined as a fuel which is produced through the process of liquefying coal waste sludge and distributing it as coal, and is used as a feedstock for the manufacture of coke. "Coal waste sludge" refers to the tar decanter sludge and related byproducts of the coking process (including those materials that have been stored in ground, in tanks and in lagoons) that have been treated as hazardous waste under applicable federal environmental rules, absent liquefaction and processing with coal into a feedstock for the manufacture of coke. Effective Date: For fuel produced and sold after Sept. 30, 2008.
§45(c)(7)(A), (c)(7)(B)	**Definition of refined coal for electricity production credit eliminates increased market value test and increases required sulfur dioxide and mercury emission deduction** A credit for electricity production from refined coal and other qualified resources is allowed under §45. Under pre-Act law, a four-pronged test applied to satisfy the definition of refined coal. The third and fourth prongs required that the fuel, resulting from liquid, gaseous, or solid fuel produced from coal had to result in a qualified emission reduction (i.e., a reduction of at least 20% of the emissions of nitrogen oxide and either sulfur dioxide or mercury released when burning refined coal), as certified by the taxpayer; and such fuel be produced in a manner that resulted in a an increase of at least 50% of the market value of the refined coal as compared with the value of feedstock coal (the "increased market value test"). The Act eliminates the increased market value test, and, with respect to the third prong, redefines “qualified emission reduction” to mean a reduction of at least 20% of the emissions of nitrogen oxide, and at least 40% of the emissions of either sulfur dioxide or mercury released when burning the refined coal. Effective Date: For coal produced and sold after Dec. 31, 2008.
§45(c)(8)(C)	**Nonhydroelectric dams providing hydropower for purposes of the electricity production credit must be operated for flood control, navigation or water supply purposes**

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	An electricity production credit is allowed for “qualified energy resources,” which includes “qualified hydropower production." For this purpose, “qualified hydropower production” includes, hydropower production from an nonhydroelectric dam facility.
	According to the pre-Act definition of "qualified hydropower production", a facility is a nonhydroelectric dam if: 1) it is licensed by the Federal Energy Regulatory Commission (FERC) and meets all other applicable environmental, licensing, and regulatory requirements; 2) it is placed in service before Aug. 8, 2005 and did not produce hydroelectric power on Aug. 8, 2005; and 3) turbines or other generating devices are to be added to the facility after Aug. 8, 2005 to produce hydroelectric power, but only if there is not any enlargement of the diversion structure, or construction or enlargement of a bypass channel, or the impoundment or any withholding of any additional water from the natural stream channel.
	The Act modifies the pre-Act definition of a nonhydroelectric dam facility to mean a facility for which: (1) the hydroelectric project installed on the nonhydroelectric dam is licensed by FERC and meets all other applicable environmental, licensing and regulatory requirements; (2) the nonhydroelectric dam was placed in service before Oct. 3, 2008 and operated for flood control, navigation, or water supply purposes and did not produce hydroelectric power on Oct. 3, 2008; and (3) the hydroelectric project is operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license requirements imposed under applicable law that change the water surface elevation for the purpose of improving environmental quality of the affected waterway.
	Effective Date: For property originally placed in service after Dec. 31, 2008.
§§45(d)(1), (d)(2)(A), (d)(3)(A), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8) and (d)(9)	**Placed-in-service date is extended through Dec. 31, 2010 for certain qualified facilities for purposes of the electricity production credit; placed-in-service dates for qualified wind and refined coal facilities are extended through Dec. 31, 2009**
	Under pre-Act law, each of the following types of facilities had to be originally placed in service before Jan. 1, 2009 in order to be a qualified facilities for purposes of the credit for electricity produced from renewable resources: wind facilities; closed-loop biomass facilities; open-loop biomass facilities; geothermal energy facilities; small irrigation power facilities; landfill gas facilities; trash combustion facilities; refined coal production facilities; and qualified hydropower facilities.
	The Act extends the placed-in-service period for certain qualified facilities for purposes of the credit for electricity produced from renewable resources as follows: wind facilities and refined coal production facilities, Jan. 1, 2010; closed-loop biomass facilities, open-loop biomass facilities, geothermal energy facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities and qualified hydropower facilities, Jan. 1, 2011.
	Effective Date: For property originally placed in service after Dec. 31, 2008.

CODE SECTION	DESCRIPTION OF PROVISION
§45(d)(2)(B)	**Definition of closed-loop biomass facilities is expanded for purposes of the electricity production credit** An electricity production credit is allowed with respect to electricity produced by a qualified closed-loop biomass facility, as defined by §45(d)(2). The Act broadens the definition of a qualified closed-loop biomass "facility" to include a new unit placed in service after Oct. 3, 2008 in connection with a closed-loop biomass facility, but only to the extent of the increased amount of electricity produced at the facility by reason of the new unit. Pre-Act §45(d)(2)(B) is re-designated as §45(d)(2)(C). Effective Date: For property placed in service after Oct. 3, 2008.
§45(d)(3)(B)	**Definition of open-loop biomass facilities is expanded for purposes of the electricity production credit, and §45(d)(3)(B) re-designated as (d)(3)(C)** For purposes of qualifying for the electricity production credit, an "open-loop biomass facility" is a power plant consisting of all components necessary for the production of electricity from open-loop biomass (and, if applicable, other energy sources). The Act expands the definition of a qualified open-loop biomass facility to include a new unit placed in service after Oct. 3, 2008 in connection with a open-loop biomass facility (as defined by §45(d)(3)), but only to the extent of the increased amount of electricity produced at the facility by reason of the new unit. The Act redesignates pre-Act §45(d)(3)(B) to §45(d)(3)(C). Effective Date: For property placed in service after Oct. 3, 2008.
§45(d)(7)	**Trash facility can be a qualified facility for the electricity production credit without the need for burning waste to produce electricity** A credit is allowed for electricity produced from qualified municipal solid waste facilities, which include qualified landfill gas facilities and qualified trash combustion facilities. In the case of a facility which burns municipal solid waste to produce electricity ("trash combustion facility"), the term "qualified facility" meant any facility owned by the taxpayer that was originally placed in service after Oct. 22, 2004 and before Jan. 1, 2009. Also, under pre-Act law, "trash combustion facilities" were, in part, defined as facilities that burned municipal solid waste to produce steam to drive a turbine for the production of electricity. The Act extends the placed-in-service date to include any facility owned by the taxpayer which is originally placed in service after Oct. 22, 2004 and before Jan. 1, 2011. The Act also amends the definition of qualified trash combustion facility by permitting facilities that use municipal solid waste as part of an electricity generation process to qualify for the electricity production credit, whether or not those facilities utilize a process that involves burning the waste, such a qualified facility now being referred to as qualified "trash facilities" as opposed to "trash

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	combustion facilities".
	Effective Date: For electricity produced and sold after Oct. 3, 2008.
§45(d)(8)	**Placed-in-service date is extended through Dec. 31, 2009 for refined coal production facilities for purposes of the electricity production credit**
	Pre-Act law provided an electricity production credit that applied to the domestic production of refined coal from a qualified facility (a "refined coal production facility") placed in service after Oct. 22, 2004, and before 2009. The credit is allowed during a ten-year period beginning on the date the facility is originally placed in service. The credit is generally equal to $6.061 for 2008 (as indexed for inflation) per ton of qualified refined coal, and phases out as the market price of refined coal exceeds certain threshold levels.
	The Act extends the placed-in-service date for facilities producing steel industry fuel and producing refined coal from before Jan. 1, 2009, to before Jan. 1, 2010.
	Effective Date: For fuel produced and sold after Sept. 30, 2008.
§§45(e)(9)(B)(ii) and 45K(g)(2)(E)	**Coordination of the electricity production credit for steel industry fuel produced from refined coal with the nonconventional fuel credit**
	Under pre-Act law, with respect to the electricity production credit from a refined coal facility, §45(e)(9)(B) provided that a qualified facility did not include any refined coal production facility the electricity production from which was allowed as a nonconventional fuel credit under §45K.
	The Act provides that the above nonconventional fuel credit exception does not apply to a facility producing steel industry fuel, with respect to so much of the refined coal that is steel industry fuel. However, the Act also provides that the §45K nonconventional fuel credit is not allowed with respect to any qualified fuel that is steel industry fuel if an electricity production credit is allowed to the taxpayer for the fuel under the §45. The Act also re-numbers pre-Act §45(e)(9)(B) as §45(e)(9)(B)(i).
	Effective Date: For fuel produced and sold after Sept. 30, 2008.
§45L(g)	**Energy efficient home credit for eligible contractors is extended one year through Dec. 31, 2009**
	An eligible contractor may claim a business credit for each qualified new energy efficient home that the contractor constructs and which is acquired by a person from the contractor for use as a residence. The credit is either $2,000 (for a 50% energy reduction in energy usage) or $1,000 (for a 30% energy reduction in energy usage).
	Under pre-Act law, this credit is only available for qualified new energy efficient homes acquired before Jan. 1, 2009.
	The Act extends the credit by one year, to apply to qualified new energy efficient homes acquired before Jan. 1, 2010.

CODE SECTION	DESCRIPTION OF PROVISION
	Effective Date: For qualified new energy efficient homes acquired before Jan. 1, 2010.
§§45M(b), (e)(2), (f)(1), (f)(3), (f)(4), (f)(5), (f)(9), (f)(10)	**Qualifying standards and credit amounts for dishwashers, clothes washers and refrigerators under the energy efficient appliance credit is changed for production after Dec. 31, 2007**

An "energy efficient appliance credit" is awarded, on a per-item-produced basis, to manufacturers of "qualified energy efficient appliances". The credit is subject to annual eligible production limits, an annual percentage-of-gross-receipts limit, and a cumulative aggregate limit. The credit is also part of the general business credit (GBC) under Code §38.

Under pre-Act law, the per-item credit amounts available for qualified energy efficient appliances are as follows:

1) $32.31 for dishwashers manufactured in calendar years 2006 and 2007 that met the requirements of the Energy Star program that were in effect for dishwashers in 2007.
2) $100 for clothes washers manufactured in calendar years 2006 or 2007 that met the requirements of the Energy Star program that were in effect for clothes washers in 2007.
3) $75, $125, or $175 for refrigerators manufactured in calendar years 2006 or 2007 that consumed a certain percentage (ranging from 15% to 25%) kilowatt hours per year than the energy conservation standards issued by the U.S. Department of Energy, effective Jul., 1, 2001.

For refrigerators that consume at least 15% (but less than 20%) fewer kilowatt hours ("15% refrigerators") in accordance with the above standards, the maximum aggregate credit that a Taxpayer may claim with respect to such refrigerators is $20 million.

The Act changes the per-item credit amounts for dishwashers, clothes washers, and refrigerators as follows:

1) $45 or $75 for dishwashers manufactured in calendar years 2008 or 2009 which use no more than 324 kilowatt hours per years and 5.8 gallons per cycle, or 307 kilowatt hours per year and 5.0 gallons per cycle, respectively.
2) $75, $125, $150, or $250 for clothes washers manufactured in calendars 2008, 2009, or 2010 that satisfy certain water consumption and energy factors. The amount of the per-item credit also depends on whether the clothes washer is front-loading or top-loading, and for residential or commercial use.
3) $50, $75, $100, or $200 for refrigerators manufactured in calendar years 2008, 2009, or 2010, that satisfy certain energy consumption standards. There is no longer a category for "15% refrigerators," and thus, the $20 million cap on the credit for such refrigerators was repealed by the Act.

Pre-Act Code sections 45M(f)(4), (f)(5), (f)(6), and (f)(7) are redesignated as 45M(f)(5), (f)(6), (f)(7), and (f)(8), respectively.

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Effective Date: For appliances produced after Dec. 31, 2007.

§§45M(c)(1)(B), (c)(2) and (d)

Eligible production limits on the energy efficient appliance credit are modified for appliances produced after Dec. 31, 2007

An "energy efficient appliance credit" is available, on a per-item-produced basis, to manufacturers of "qualified energy efficient appliances". The credit is subject to annual eligible production limits, an annual percentage-of-gross-receipts limit, and a cumulative aggregate limit. It is part of the general business credit (GBC) provided by Code §38.

Under pre-Act law, the eligible production limits were provided under a general rule and a special rule. Under the general rule, the eligible production in a calendar year with respect to each “type of energy efficient appliance" was the excess of the number of appliances of the type produced by the taxpayer in the U.S. during the calendar year, over the average number of appliances of the type produced by the taxpayer (or any predecessor) in the U.S. during the preceding 3-calendar year period (the "base period" for determining eligible production).

Under the special rule (the "110% rule for refrigerators"), which applied only to the three types of refrigerators for which credit was available under pre-2008 Energy Act law, the eligible production in a calendar year with respect to each type of refrigerator was the excess of the number of appliances of the type produced by the taxpayer in the U.S. during the calendar year, over 110% of the average number of appliances of the type produced by the taxpayer (or any predecessor) in the U.S. during the preceding 3-calendar year period.

Types of "energy efficient appliances" were included in a pre-Act list under §45M(d) that qualified types of dishwashers, clothes washers, and refrigerators.

The Act eliminates the 110% rule for refrigerators. It also changes the base period to include only two prior calendar years.

In addition to changing the efficiency standards for certain dishwashers, clothes, washers, and refrigerators, the Act re-designates §45M(c)(1)(A) as §45M(c)(1), and §45M(c)(1)(B) as §45M(c)(2).

Effective Date: For appliances produced after Dec. 31, 2007.

§§45M(e)(1) and (e)(2)

Aggregate limit on the energy efficient appliance credit is modified, and taxpayers receive a "fresh start", for appliances manufactured after Dec. 31, 2007

An "energy efficient appliance credit" is available, on a per-item-produced basis, to manufacturers of "qualified energy efficient appliances". The credit is subject to annual eligible production limits, an annual percentage-of-gross-receipts limit, and a cumulative aggregate limit. It is part of the general business credit (GBC) provided by Code §38.

Under pre-Act law, a taxpayer cannot claim more than $75 million in aggregate credits for energy efficient appliances in any tax year, reduced by the amount of such credit allowed to the taxpayer (or any predecessor) for all earlier tax years

CODE SECTION	DESCRIPTION OF PROVISION
	(the "pre-2008 Act cumulative aggregate limit").
	The Act provides that the aggregate amount of credit allowed to the taxpayer for any tax year cannot exceed $75 million reduced by the amount of the credit allowed to the taxpayer (or any predecessor) for all earlier tax years beginning after Dec. 31, 2007 (the cumulative aggregate limit). However, refrigerators qualifying for a $200 per-refrigerator credit and clothes washers qualifying for the $250 per clothes washer credit are excluded when calculating the cumulative aggregate limit.
	Effective Date: For appliances produced after Dec. 31, 2007.
§§48(a)(1), (a)(3)(A)(v), (c)(1)(E), (c)(2)(E) and (c)(3)	**10% business energy tax credit is expanded to apply to "combined heat and power system property" (CHP)**
	Taxpayers are allowed a non-refundable "business energy credit" for certain specified energy properties.
	The Act adds the category "combined heat and power system property" to the list of property eligible for a 10% energy credit. "CHP property" means property comprising a system which: (1) Uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (measured in Btu, and including heating and cooling applications);(2) produces at least 20% of its total useful energy (Btu) in the form of thermal energy which is not used to produce electrical or mechanical power (or combination thereof), or at least 20% of its total useful energy (Btu) in the form of electrical or mechanical power (or combination thereof); (3) has an energy efficiency percentage in excess of 60%; and (4) is placed in service before Jan. 1, 2017.
	Similar to the business energy credit for qualified fuel cell property and qualified microturbine property, the credit for CHP property is subject to a limit based upon kilowatt capacity.
	Effective Date: Periods after Oct. 3, 2008, in tax years ending after Oct. 3, 2008, under rules similar to rules of former §48(m).
§§48(a)(2)(i)(II), (a)(3)(A)(ii), (c)(1)(E) and (c)(2)(E)	**Business energy tax credit for solar energy property, qualified fuel cell property, and microturbine property is extended from Dec. 31, 2008 to Dec. 31, 2016**
	The non-refundable business energy credit for any tax year is the energy percentage (30% or 10%, depending on the type of property) of the basis of each energy property placed in service during the tax year. The energy percentage is 30% for (1) qualified fuel cell property; (2) energy property using solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purpose of heating a swimming pool; and (3) energy property that uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight. For any other energy property, such as qualified microturbine property, the credit is 10%. Under pre-Act law, the 30% credit for solar energy property described in (2) is reduced to 10% for periods after Dec.

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	31, 2008. In addition, the credits for qualified fuel cell property, solar energy property described in item (3), and qualified microturbine property are eliminated for periods after Dec. 31, 2008. The Act extends the 30% credits for properties described in items (1) through (3), and the 10% credit for microturbine property by eight years, through Dec. 31, 2016. Effective Date: Oct. 3, 2008.
§§48(a)(3), (c)(1)(D) and (c)(2)(D)	**The energy credit is permitted for public utility property** Certain specified energy properties are allowed a non-refundable "business energy credit." However, "public utility property" that otherwise meet the requirements of any of the specified energy properties are disqualified from the business energy credit, unless it is qualified fuel cell property and qualified microturbine property used predominantly in the trade or business of the furnishing or sale of telephone service, telegraph service by means of domestic telegraph operations, or other telegraph services other than international telegraph services qualified for the credit even if they were public utility property. The Act repeals the restrictions on public utility property so that such property is now eligible for the energy credit. Because all public utility property is now eligible, the exceptions for fuel cell property and microturbine property are eliminated. Effective Date: Periods after Feb. 13, 2008, in tax years ending after Feb. 13, 2008, under rules similar to the rules of former §48(m) (as in effect on Nov. 4, 1990).
§§48(a)(3)(A)(vi), (a)(2)(A)(i)(IV), (c)(4) and (a)(1)	**30% energy credit is allowed for qualified small wind energy property** Certain specified energy properties are allowed a non-refundable "business energy credit." The Act adds "qualified small wind energy property" to the list of property eligible for the energy credit. The credit amount for qualified small wind energy property is 30%. However, barring future legislation, the energy credit for qualified small wind energy property will no longer be available to taxpayers for property placed in service after Dec. 31, 2016. "Qualified small wind energy property" means property that uses a qualifying small wind turbine (a wind turbine that has a nameplate capacity of not more than 100 kilowatts) to generate electricity. For all qualified small wind energy property placed in service during the tax year, the taxpayer's credit otherwise determined for all of such property for that tax year cannot exceed $4,000. Effective Date: Periods after Oct. 3, 2008, in tax years ending after Oct. 3, 2008, under rules similar to the rules of former Code §48(m) (as in effect on Nov. 4, 1990).
§48(a)(3)(A)(vii)	**10% energy credit is allowed for geothermal heat pump systems**

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	Certain specified energy properties are allowed a non-refundable "business energy credit." The adds geothermal heat pump systems to the list of property defined as eligible energy property. Geothermal heat pump systems are eligible for the 10% energy credit for property placed in service through Dec. 31, 2016. A "geothermal heat pump system" is equipment that uses the ground or ground water as a thermal energy source to heat a structure, or as a thermal energy sink to cool a structure. Effective Date: Periods after Oct. 3, 2008, in tax years ending after Oct. 3, 2008, under rules similar to the rules of former Code §48(m) (as in effect on Nov. 4, 1990).
§48(c)(1)(B)	**Credit limitation for qualified fuel cell property is increased from $500 to $1,500 for each 0.5 kilowatt (kw) of capacity** For qualified fuel cell property, an energy credit of 30% of the basis of the property placed in service during the tax year is allowed. Under pre-Act law, however, this credit cannot exceed $500 per 0.5 kw of capacity of that property. The Act raises the fuel cell credit cap from $500 per 0.5 kw to $1,500 per 0.5 kw of capacity. Effective Date: Periods after Oct. 3, 2008, in tax years ending after Oct. 3, 2008, under rules similar to the rules of former §48(m) (as in effect on Nov. 4, 1990).
§§48A(a), (d)(2)(A), (d)(3)(A), (d)(3)(B), (d)(5), (e)(1)(G), (e)(3)(B)(iii), (e)(3)(C) and (i)	**Investment credit for qualified investment in a qualifying advanced coal project expanded to include 30% credit for additional advanced coal-based generation technology projects** An investment credit is allowed for investment in qualifying advanced coal projects. The credit is available for projects certified by the IRS, in consultation with the Department of Energy, using a competitive bidding process. Under pre-Act law, the credit for any tax year was an amount equal to 20% of the qualified investment for the tax year in "integrated gasification combined cycle projects," plus 15% of the qualified investment in projects that use "other advanced coal-based generation technologies." The aggregate credits could not exceed $1.3 billion, with $800 million for integrated gasification combined cycle projects, and $500 million for projects using other advanced coal-based generation. Applications for certification could only be submitted during the 3-year period beginning on Feb. 21, 2006, through Feb. 20, 2009. The Act expands the amount of aggregate credits from $1.3 billion to $2.55 billion. The Act also creates a new 30% credit for certain advanced coal-based generation technology projects certified during a certain period. The Act also limits the $800 million of credits available for integrated gasification combined cycle projects to those projects the application for which is submitted during the three-year period beginning on the date the IRS established the coal

CODE SECTION	DESCRIPTION OF PROVISION
	project program (Feb. 21, 2006). The $500 million of credits available for projects which use other advanced coal-based generation technologies is limited to projects the application for which is submitted during the same period. Effective Date: For credits the application for which is submitted during the period described in §48A(d)(2)(A)(ii) and which are allocated or reallocated after Oct. 3, 2008, except that the changes relating to disclosure of allocations in §48A(d)(5) apply to certifications made after Oct. 3, 2008.
§§48B(a), (c)(7)(H), (d)(1), (d)(4) and (f)	**Coal gasification investment credit is expanded and modified** Under pre-Act law, the qualifying gasification project credit component of the investment credit for any tax year is an amount equal to 20% of the qualified investment for the tax year, subject to a $350 million credit limit on total qualifying gasification project credits awarded. The qualifying gasification project credit program is administered by the IRS, in consultation with the Secretary of Energy. To be eligible for the credit, qualified gasification projects must also be carried out by an eligible entity, which, under pre-Act law, was defined as any person whose application for certification is principally intended for use in a domestic project that employs domestic gasification applications related to chemicals, fertilizers, glass, steel, petroleum residues, forest products, and agriculture, including feedlots and dairy operations. The Act increases the qualifying gasification project credit for any tax year to 30% of the qualified investment for the tax year in the case of credits allocated to qualifying gasification projects that include equipment which separates and sequesters at least 75% of the project's total carbon dioxide emissions, and allows an additional $250 million of credits for such qualifying gasification projects (in addition to the $350 million allocable credits available under pre-Act law). The Act also strikes the rule requiring that the allocation be made under rules similar to the rules provided in §48A(d)(4) (i.e., rules for the review and redistribution of qualifying advanced coal project credits for purposes of the §48A). Further, the list of eligible entities is expanded to include any persons whose application for certification is principally intended for use in a domestic project that employs domestic gasification applications related to transportation grade liquid fuels. Finally, credit recapture provisions are added with respect to any project which fails to attain or maintain the separation and sequestration requirements for that project under §48B(d)(1). Effective Date: For credits described in §48B(d)(1)(B) which are allocated or reallocated after Oct. 3, 2008.

<u>CODE SECTION</u> <u>DESCRIPTION OF PROVISION</u>

§54(m)

Authority to issue clean renewable energy bonds is extended for one year through Dec. 31, 2009

State and local governments may issue tax credit bonds as an alternative to traditional tax-exempt bonds. One such bond is the clean renewable energy bond ("old CREB"), which is defined as any bond issued by a qualified issuer if, among other requirements, 95% or more of the proceeds are used to finance capital expenditures incurred by qualified borrowers for qualified projects.

Under pre-Act law, the old CREBs could not be issued after Dec. 31, 2008. The Act extends the termination date for the authority to issue CREBs by one year to Dec. 31, 2009.

Effective Date: For obligations issued after Oct. 3, 2008, through Dec. 31, 2009.

§§54A(d)(1)(C), (d)(2)(C)(iii) and 54D

Qualified energy conservation bond is a new type of tax credit bond

The Act creates a new category of tax credit bonds called a "qualified energy conservation bond" by adding §54D to the Code. A qualified energy conservation bond is any bond issued as part of an issue if: (1) 100% of the issue's available project proceeds are to be used for one or more qualified conservation purposes; (2) the bond is issued by a state or local government; and (3) the issuer designates the bond as a qualified energy conservation bond. The amount of the annual credit is equal to 70% of the annual credit determined under §54A(b). New §54D sets forth the rules for qualified energy conservation bonds. In addition to satisfying the requirements enumerated therein, qualified energy conservation bonds must be part of an issue that meets the specific requirements that apply for "qualified tax credit bonds" as provided by §§54A(d)(2) through 54A(d)(6).

The national qualified energy conservation bond limitation is $800 million. The IRS shall allocate the $800 million among the states in proportion to the state's population. Any state with a large local government (as defined by §54D) shall allocate to each local government within the state a portion of that state's allocation that bears the same ratio to the state's allocation as the large local government's population bears to the state's population.

Effective Date: For obligations issued after Oct. 3, 2008.

§§54A(d) and 54C

New clean renewable energy bond ("new CREB") is a new type of tax credit bond

The Act adds §54C to the Code, in which it provides a new category of qualified tax credit bonds called new clean renewable energy bonds (“new CREBs”). A new CREB is any bond issued as part of an issue if: (1) 100% of the issue's available project proceeds are to be used for capital expenditures incurred by government bodies, public power providers, or cooperative electric companies for one or more qualified renewable energy facilities; (2) the bond is issued by a qualified issuer; and (3) the issuer designates the bond as a new CREB. §54C provides certain rules that must be satisfied to qualify as new CREBs.

For new CREBs, the annual credit determined under the general rules of credits

CODE SECTION	DESCRIPTION OF PROVISION
	for holders of qualified tax credit bonds is reduced to 70% of the amount that would have been available under the old CREB rules. The national limitation for new CREBs is $800 million, which the IRS must allocate as follows: not more than one-third of the $800 million limitation ($266.7 million) may be allocated to qualified projects of public power providers; not more than one-third limitation may be allocated to qualified projects of government bodies; and the remaining one-third may be allocated to cooperative electric companies. Because new CREBs are categorized as "qualified tax credit bonds," they are also subject to the requirements delineated in §§54A(d)(2) through (d)(6). Effective Date: For obligations issued after Oct. 3, 2008.

The following provision is operative for Hawaii income tax purposes.

CODE SECTION	DESCRIPTION OF PROVISION
§§132(f)(1)(D), (f)(2)(C), (f)(4) and (f)(5)(F)	**Qualified transportation fringe benefits geared to bicycle commuters to start in 2009** Under pre-Act law, there was no allowance for providing transportation fringe benefit to bicycle commuters. The Act adds "qualified bicycle commuting reimbursement" to the list of qualified transportation fringe benefits. "Qualified bicycle commuting reimbursement" means, for any calendar year, any employer reimbursement during the 15-month period beginning with the first day of that calendar year for reasonable expenses incurred by the employee during that calendar year for the purchase of a bicycle and bicycle improvements, repair, and storage if the bicycle is regularly used for travel between the employee's residence and place of employment. Qualified bicycle commuting reimbursement is limited to the "applicable annual limitation", which is the product of $20 multiplied by the number of qualified bicycle commuting months during the year, for any employee for any calendar year. A "qualified bicycle commuting month" is any month in which an employee regularly uses a bicycle for a substantial portion of the travel between his residence and his place of employment, and does not receive any of the other qualified transportation fringe benefits (e.g., commuter transportation, transit passes, and parking). Unlike the other qualified transportation fringe benefits, a qualified bicycle commuting reimbursement benefit cannot be funded through employee elective salary contributions. Effective Date: Tax years beginning after Dec. 31, 2008.

CODE SECTION	DESCRIPTION OF PROVISION
	The following provision is NOT operative for Hawaii income tax purposes.
§§142(l), (l)(8) and (l)(9)	**Tax-exempt status is extended for qualified green building and sustainable design project bonds issued before Oct. 1, 2012** State and local bonds for qualified green building and sustainable design projects (brownfields demonstration projects) qualify as tax-free exempt facility bonds. Under pre-Act law, tax-exempt bond status for qualified green building and sustainable design project bonds generally applied only to bonds issued before Oct. 1, 2009. Also, under two related provisions of pre-Act law, the IRS was required to determine whether there had been substantial compliance with the rules for qualified green building and sustainable design projects not later than five years “after the date of issuance"; and the $2 billion national limitation on the aggregate amount of qualified green building and sustainable design project bonds did not apply to any bond (or series of bonds) issued to refund an exempt facility bond used to finance a qualified green building and sustainable design project issued before Oct. 1, 2009, if certain requirements were met. The Act extends tax-exempt bond status for qualified green building and sustainable design project bonds to bonds issued before Oct. 1, 2012. It also amends the requirement that IRS make a determination not later than five years “after the date of issuance” to provide that this determination be made not later than five years after “the date of issuance of the last issue with respect to such project." Further, the Act extends by three years the exception to the $2 billion national limitation, so that the limitation exception applies to bonds issued before Oct. 1, 2012. Effective Date: Oct. 3, 2008.
	The following provisions are operative for Hawaii income tax purposes.
§§168(b)(2)(C), (e)(3)(D)(iii), (e)(3)(D)(iv), (i)(18) and (i)(19)	**"Smart" electric meters and distribution grid systems are designated as modified accelerated cost recovery system (MACRS) ten-year property** The Act classifies any "qualified smart electric meter" and any "qualified smart electric grid system" to the ten-year property class for purposes of depreciation under §168. As such, qualified smart electric meters and qualified smart electric grid systems are depreciated using the 150% declining balance method, switching to the straight-line method for the first tax year in which the straight-line method will yield a larger deduction. A "qualified smart electric meter" is any "smart electric meter" that is placed in service by a taxpayer that is a supplier of electric energy or a provider or electric energy services, and does not have a class life of less than ten years, determined without regard to §168(e) (which assigns recovery classes to MACRS property). A "smart electric meter" is any time-based meter and related communication equipment which is capable of being used by the taxpayer as part of a system that measures and records electricity usage data on a time-differentiated basis in at least 24 separate time segments per day; provides for the exchange of information between supplier or provider and the customer's energy management device in support of time-based rates or other forms of demand response; provides data to the supplier or provider so that the supplier

CODE SECTION	DESCRIPTION OF PROVISION
	or provider can provide energy usage information to customers electronically; and provides net metering.
	A "qualified smart electric grid system" is any "smart grid property" that is used as part of a system for electric distribution grid communications, monitoring and management placed in service by a taxpayer that is a supplier of electric energy or a provider of electric energy services, and does not have a class life of less than ten years (determined without regard to §168(e)). "Smart electric grid property" means electronics and related equipment that is capable of: sensing, collecting and monitoring data of or from all portions of a utility's electric distribution grid; providing real-time, two-way communications to monitor or manage the grid; and providing real-time analysis of, and event prediction based upon, collected data that can be used to improve electric distribution system reliability, quality and performance.
	The Act also re-designates §168(b)(2)(C) as §168(b)(2)(D).
	Effective Date: For property placed in service after Oct. 3, 2008.
§§168(l) and (l)(3)	**50% bonus depreciation and alternative minimum tax (AMT) depreciation relief for property used to produce "cellulosic biomass ethanol" are expanded to cover property used to produce any "cellulosic biofuel"**
	Under pre-Act law, a 50% bonus depreciation and an exemption from applying the AMT depreciation adjustment were available for “qualified cellulosic biomass ethanol plant property.”
	The Act substitutes the term "cellulosic biofuel" for the term "cellulosic biomass ethanol" everywhere "cellulosic biomass ethanol" appears in §168(l). "Cellulosic biofuel" is defined as any kind of liquid fuel which is produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis. Thus, the 50% bonus depreciation and AMT depreciation adjustment exemption provisions apply to qualified cellulosic biofuel plant property instead of to qualified cellulosic biomass ethanol plant property. Other provisions that would have applied to qualified cellulosic biomass ethanol plant property now apply to qualified cellulosic biofuel plant property.
	Effective Date: For property placed in service after Oct. 3, 2008, in tax years ending after Oct. 3, 2008, but only if the property is acquired by the taxpayer by purchase after Dec. 20, 2006 (and not under a written binding contract for the acquisition in effect before Dec. 21, 2006) and placed in service by the taxpayer before Jan. 1, 2013.

The following provision is NOT operative for Hawaii income tax purposes.

CODE SECTION	DESCRIPTION OF PROVISION
§168(m)	**50% bonus depreciation and alternative minimum tax (AMT) depreciation relief are allowed for "qualified reuse and recycling property"**
	For most tangible property, the depreciation deduction under §167(a) is determined under the modified accelerated cost recovery system (MACRS) provided by §168. Moreover, under §56(a)(1), certain property depreciated on the 200% declining balance method for regular income tax purposes must be depreciated using the 150% declining balance method for AMT purposes (the

CODE SECTION DESCRIPTION OF PROVISION

"AMT depreciation adjustment").

For certain categories of depreciable property, there is allowed both a 50% additional first-year depreciation in the year that the property is placed in service (with corresponding reduction in basis), as well as an exemption from the AMT depreciation adjustment. The broadest category to which this applies is such "qualified property" as specified under §168(k). Generally, "qualified property" includes most tangible personal property, most computer software, and certain leasehold improvements. The 50% bonus depreciation and AMT depreciation adjustment exemption do not apply to classes of qualified property for which the taxpayer elects out of. The elect-out inseparably covers both tax benefits; one cannot elect out of one without electing out of the other.

The Act adds subsection (m) to §168 of the Code, which provides that "qualified reuse and recycling property" is subject to a 50% depreciation allowance equal to 50% of the property's adjusted basis for the year the property is placed in service. The adjusted basis of the property is reduced by the amount of the 50% deduction allowed for year the property is placed in service before computing the amount otherwise allowable as a depreciation deduction for the tax year and any later tax year.

For purposes of determining alternative minimum taxable income under §55, any depreciation deduction determined under MACRS for "qualified reuse and recycling property" is determined under §168 (MACRS) without regard to any adjustment under §56. (Note: Because Hawaii does not have AMT, this provision addressing AMT, as delineated in §168(m)(2)(D) of the Code, is not operative.)

"Qualified reuse and recycling property" is "reuse and recycling property" that is property to which MACRS applies; has a useful life of at least five years; the original use of the property begins with the taxpayer after Aug. 31, 2008; and the property is either acquired by the taxpayer after Aug. 31, 2008 by "purchase", and no written binding contract for the acquisition can be in effect before Sept. 1, 2008, or the property must be acquired by the taxpayer under a written binding contract entered into after Aug. 31, 2008.

"Reuse and recycling property" is any machinery and equipment (not including buildings or real estate), along with any appurtenant property (including software) necessary to operate such equipment, which is used exclusively to collect, distribute or recycle "qualified reuse and recyclable materials", as defined by the Act. "Reuse and recycling property" does not include rolling stock or other equipment used to transport reuse and recyclable materials.

A taxpayer may elect not to apply the bonus depreciation provisions of §168(m).

Effective Date: For property placed in service after Aug. 31, 2008, but only if the property is acquired by the taxpayer by purchase after Aug. 31, 2008 (and no written binding contract for the acquisition was in effect before Sept. 1, 2008), or if the property was under a written binding contract entered into after Aug. 31, 2008.

The following provisions are operative for Hawaii income tax purposes.

CODE SECTION	DESCRIPTION OF PROVISION
§§179C(c)(1)(B), (c)(1)(F), (d) and (e)(2)	**Election to expense certain refineries is extended for 2 years and modified to include fuel derived from shale and tar sands**

§179C(a) provides that a taxpayer can elect to treat 50% of the cost of any qualified refinery property as an expense which is not chargeable to a capital account, and that any cost so treated is allowed as a deduction for the tax year in which the qualified refiner property is placed in service. Under pre-Act law, to be "qualified refinery property," in addition to satisfying other requirements, the property has to be placed in service by the taxpayer after Aug. 8, 2005, and before Jan. 1, 2012, and satisfy one of the following:

1) The construction of the portion is subject to a written binding construction contract entered into before Jan. 1, 2008;
2) The portion is placed in service before Jan. 1, 2008; or
3) In the case of self-constructed property, the construction of that portion began after June 14, 2005, and before Jan. 1, 2008.

The Act amends the definition of "qualified refinery" to include a refinery located in the U.S. that has the primary purpose of processing liquid fuel from shale or tar sands. Previously, liquid fuel could only be processed from crude oil or qualified fuels. The production capacity requirements of §179C(e)(2) may now be met with respect to the processing of liquid fuel from shale or tar sands.

In addition to re-defining "qualified refinery" and amending the production capacity requirements, the Act extends the placed-in-service requirement for qualified refinery properties by two years so that qualified refinery property must be placed in service after Aug. 8, 2005, and before Jan. 1, 2014. Also, the contractual, placed-in-service, and construction deadlines enumerated above are each extended by 2 years (replace Jan. 1, 2008 with Jan. 1, 2010).

Effective Date: For property placed in service after Oct. 3, 2008.

§179D(h)	**Deduction for energy efficient commercial building property is extended for five years to property placed in service after Dec. 31, 2008 and before Jan. 1, 2014**

A deduction is allowed for the cost of "energy efficient commercial building property" placed in service during the tax year. The maximum deduction for any building for any tax year is the excess (if any) of the product of $1.80, and the square footage of the building, over the aggregate amount of the deduction for the building for all earlier tax years. Under pre-Act law, this deduction does not apply for property placed in service after Dec. 31, 2008.

The Act extends the energy efficient commercial buildings deduction for five years, through Dec. 13, 2013.

Effective Date: For property placed in service after Dec. 31, 2008, and before Jan. 1, 2014.

CODE SECTION	DESCRIPTION OF PROVISION

The following provisions are NOT operative for Hawaii income tax purposes.

§§199(d)(2) and (d)(9) **Domestic production activities deduction is reduced for production of oil, gas, or their primary products**

Code §199 allows taxpayers to claim a deduction called the "domestic production activities deduction" equal to a percentage of the taxpayer's qualified production activities income for the tax year. The percentage used to calculate the §199 deduction is 6% for tax years beginning in 2007-2009, and 9% thereafter.

The Act reduces the §199 deduction for taxpayers with "oil-related qualified production activities income" for tax years beginning after 2009 by 3% of the least of:

1) The taxpayer's oil-related qualified production activities income for the tax year;
2) The taxpayer's qualified production activities income for the tax year; or
3) The taxpayer's taxable income.

"Oil-related qualified production activities income" for a tax year means the qualified production activities income that is attributable to the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof during that tax year.

Effective Date: Tax years beginning after Dec. 31, 2008. However, the deduction for oil-related qualified production activities income will be reduced for tax years beginning after 2009.

§§451(i)(3) and (i)(6) **Gain deferral election for "qualifying electric transmission transactions" is extended retroactively through Dec. 31, 2009 for dispositions by a "qualified electric utility"**

Generally, taxpayers may elect to recognize gain from "qualifying electric transmission transactions" over an 8-year period, to the extent the amount realized from the sale is used to purchase exempt utility property. Under pre-Act law, a "qualifying electric transmission transaction" was any sale or other disposition before Jan. 1, 2008, of either: 1) property used in the trade or business of providing electric transmission services; or 2) any interest in a corporation or partnership whose principal trade or business consists of providing electric transmission services, but only if the sale or disposition is to an independent transmission company.

The Act extends the election period to include any sale or other disposition by a "qualified electric utility" occurring before Jan. 1, 2010. A "qualified electric utility" is defined as a person that is vertically integrated as of the date of the qualifying electric transmission transaction, in that it is both: 1) a transmitting utility (as defined in section 3(23) of the Federal Power Act) with respect to the transmission facilities to which the election to recognize gain over an 8-year period applies; and 2) an electric utility (as defined in section 3(22) of the Federal Power Act).

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	The Act also re-designates pre-Act §451(i)(6) through §451(i)(10) as §451(i)(7) through §451(i)(11), respectively.
	Effective Date: Transactions after Dec. 31, 2007.

The following provisions are operative for Hawaii income tax purposes.

§451(i)(4)(B)(ii)	**Definition of "independent transmission company" for purposes of the gain deferral election for "qualifying electric transmission transactions" is retroactively modified**
	Generally, taxpayers may elect to recognize gain from “qualifying electric transmission transactions” over an 8-year period, to the extent the amount realized from the sale is used to purchase exempt utility property. As noted above, a “qualifying electric transmission transaction” is any sale or other disposition of: (1) property used in the trade or business of providing electric transmission services; or (2) any interest in a corporation or partnership whose principal trade or business consists of providing electric transmission services, but only if the sale or disposition is to an “independent transmission company.”
	Under pre-Act law, an “independent transmission company” included, among others, a person: (i) who the Federal Energy Regulatory Commission (FERC) determines in its authorization of the transaction under §203 of the Federal Power Act or by declaratory order is not a market participant; and (ii) whose transmission facilities to which the election to recognize gain over an 8-year period applies are under the operational control of a FERC-approved independent transmission provider before the close of the period specified in that authorization, but not later than Dec. 31, 2007.
	The 2008 Energy Act provides that the transmission facilities to which the election applies must be under the operational control of a FERC-approved independent transmission provider before the close of the period specified in that authorization, but no later than the date which is 4 years after the close of the tax year in which the transaction occurs.
	Effective Date: For transactions occurring after Oct. 22, 2004.
§451(i)(5)(C)	**"Exempt utility property" for the gain deferral election for "qualifying electric transmission transactions" is modified to exclude property located outside the U.S.**
	With respect to the §451 election to defer gain from qualifying electric transmission transactions discussed above, under pre-Act law, “exempt utility property” is property used in the trade or business of: (1) generating, transmitting, distributing, or selling electricity; or (2) producing, transmitting, distributing, or selling gas.
	The Act excludes property which is located outside the U.S. from “exempt utility property.”
	Effective Date: For transactions occurring after Oct. 3, 2008.
§613A	**Suspension of taxable income limit on percentage depletion from**

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	marginal wells is extended for tax years beginning after Dec. 31, 2008, and before Jan. 1, 2010
	Taxpayers are permitted to recover their oil and gas well investments through depletion deductions, which may in certain cases be determined using the percentage depletion method. However, for oil and gas properties, the amount deducted cannot exceed 100% of the taxable income from that property in any year. With respect to "marginal" properties (i.e., domestic crude oil and natural gas production from stripper well property or form heavy oil property), special percentage depletion rules apply. The special rules include a provision that the 100%-of-taxable-income limitation does not apply to domestic oil and gas production from marginal properties during any tax year beginning after Dec. 31, 1997, and before Jan. 1, 2008.
	The Act extends the above special provision to include any tax year beginning after Dec. 31, 2008, and before Jan. 1, 2010.
	Effective Date: Tax years beginning after Dec. 31, 2008, and before Jan. 1, 2010.
§§1012(c) and (d)	**Basis of securities sold, disposed of, or exchanged starting Jan. 1, 2011 will be determined on an account-by-account basis, but a fund or dividend reinvestment plan can elect to treat acquired shares as one account**
	Under pre-2008 Energy Act law, where a taxpayer acquired securities, such as shares of stock or bonds, at different prices and did not maintain adequate indentifying information, he had to make certain prescribed assumptions to determine the gain or loss on sale or other transfer of the shares. For instance, a "first-in, first-out" method was used to determine basis for securities sold or transferred by a taxpayer who purchased or otherwise acquired lots of the shares at different times or at different prices, and the lot from which the shares were sold or transferred could not be adequately identified. If the lot from which a security was sold could be adequately identified, the specific-identification method was used to determine basis. A taxpayer who owned shares in a regulated investment company (RIC) generally could elect, instead of the specific-identification method or the FIFO method, to determine the basis of RIC shares sold using one of two average-cost (average basis) methods.
	Under the new law, in the case of the sale, exchange, or other disposition of a "specified security" on or after the "applicable date," the valuation conventions (i.e., FIFO, specific identification, average basis) will apply on an account-by-account basis. Except for those stocks acquired via a dividend reinvestment plan, any stock for which an average basis method is permissible under §1012 which is acquired before Jan.1, 2012, will be treated as a separate account from any stock acquired on or after Jan. 1, 2012. A RIC may elect, on a stockholder-by-stockholder basis, to treat as "covered securities" all stock in the company held by the stockholder without regard to when the stock was acquired. When this election applies, the average basis of a customer's RIC stock is determined by taking into account shares of stock acquired before, on, and after January 1, 2012.
	For purposes of the above, a "covered security" means any "specified security"

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	acquired on or after the "applicable date," if the security was acquired through a transaction in the account in which the security is held, or was transferred to the account from an account in which the security was a covered security, but only if the broker received a statement under Code section 6045A with respect to the transfer.
	A "specified security" is: (a) any share of corporate stock (including stock of a regulated investment company); (b) any note, bond, debenture, or other evidence of indebtedness; (c) any commodity, or contract or derivative with respect to the commodity, if the IRS determines that adjusted basis reporting is appropriate for purposes of Code section 6045(b) reporting requirements; and (d) any other financial instrument with respect to which the IRS determines that adjusted basis reporting is appropriate for purposes of the Code section 6045(g) reporting requirements.
	"Applicable date" means: (a) January 1, 2011, in the case of any specified security which is stock in a corporation (other than any stock for which an average basis method is permissible under Code section 1012); (b) January 1, 2012, in the case of any stock for which an average basis method is permissible under Code section 1012; and (3) January 1, 2013, or any later date the IRS determines in the case of any other specified security.
	In addition, for stock acquired after Dec. 31, 2010, in connection with a dividend reinvestment plan, the basis of the stock while held as part of the plan will be determined using one of the methods used for determining the basis of stock in an open-end fund. Stock will be treated as acquired in connection with a dividend reinvestment plan if the stock is acquired under the plan or if the dividends paid on the stock are subject to the plan.
	Effective Date: January 1, 2011.
§1016(a)(37)	**Basis of "new qualified plug-in electric drive motor vehicles" ("NQPEDMV") property reduced by §30D credit**
	As previously discussed, the Act provides a tax credit for NQPEDMVs and amends §1016 to provide that the basis of such property is reduced by the NQPEDMV credit.
	Effective Date: Tax years beginning after Dec. 31, 2008 for property purchased before Jan. 1, 2015.

Digest of the Tax Extenders and AMT Relief Act

(P.L. 110-343; Oct. 3, 2008)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter 1, and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest.

CODE SECTION	DESCRIPTION OF PROVISION
	The following provision is NOT operative for Hawaii income tax purposes.
Non-Code section	**Additional $500 exemption is available for taxpayers who house people displaced in Midwestern disaster area for tax years beginning in 2008 or 2009** The 2005 Katrina Relief Act (Katrina Act §302) provided an additional exemption of $500 for each "Hurricane Katrina displaced individual" housed by a taxpayer. A "Hurricane Katrina displaced individual" (HKDI) was any natural person if: (1) The person's principal place of abode on Aug. 28, 2005 was in the "Hurricane Katrina disaster area"; (2) in the case of an abode located in the "core disaster area" the person was displaced from the abode, and in the case of an abode located outside the "core disaster area," the person was displaced from the abode and either (a) the abode was damaged by Hurricane Katrina, or (b) the person was evacuated from the abode because of Hurricane Katrina; and (3) the taxpayer provided the person with housing free of charge in the taxpayer's principal residence for a period of 60 consecutive days that ends in that tax year. HKDIs did not include the spouse or any dependent of the taxpayer. The reduction in taxable income could not exceed $2,000, minus any reduction under these rules for prior tax years. HKDIs could not be taken into account for the exemption if the taxpayer already took such a deduction for that HKDI in any prior tax year. Additionally, no deduction for the additional exemption was permitted if the taxpayer received any rent or other amount from any source in connection with providing the housing. However, reimbursements for such non-normal housing costs as food, clothing, or long distance telephone calls, were allowed. The taxpayer claiming the exemption had to include the taxpayer identification number (TIN) of the HKDI on the tax return for that tax year to receive the exemption. The exemption was also not subject to income-based phase-outs, and was allowed in computing alternative minimum taxable income. The Act extends the additional exemption to apply to those taxpayers housing a Midwestern displaced individual from a Midwestern disaster area, as further provided by the Act. Effective Date: For tax years beginning in 2008 or 2009.

CODE SECTION	DESCRIPTION OF PROVISION

The following provision is operative for Hawaii income tax purposes.

Non-Code section

Income averaging provided for, and tax-free retirement plan contributions may be made from, amounts received from the Exxon Valdez litigation

The 1989 Exxon Valdez oil spill in Alaska's Prince William Sound led to a 1994 class action jury trial, where $287 million for actual damages and $5 billion in punitive damages were awarded to the plaintiff class. The plaintiff class consisted of 32,000 fishermen, Alaska natives, landowners and others whose lives and work were affected by the oil spill. However, the case was ultimately brought before the Supreme Court, where the damages award against Exxon was reduced to $507.5 million in 2008. Punitive damages awarded in a judgment, or in settlement of litigation, is income to the recipient.

The Act establishes special income averaging and rollover rules for amounts received from the Exxon Valdez litigation. For purposes of the income averaging provision available to farmers and fishermen pursuant to §1301, the Act provides that any "qualified taxpayer" who receives any "qualified settlement income" in any tax year is treated as engaged in a fishing business, and can treat the qualified settlement income as income attributable to a fishing business for the tax year. A "qualified taxpayer" is (1) any individual who is a plaintiff in the Exxon Valdez litigation (No. 89-095-CV (HRH) 25 (Consolidated) (D Alaska)), or (2) any individual who is a beneficiary of the estate of a plaintiff in that case who acquired the right to receive the "qualified settlement income" from that plaintiff, and was the spouse or an immediate relative of that plaintiff. "Qualified settlement income" is defined as any interest and punitive damage awards which are otherwise includible in taxable income, and was received in connection with the Exxon Valdez litigation, whether received pre- or post-judgment.

The Act also allows qualified taxpayers who receive qualified settlement income during a tax year may, at any time before the end of the tax year in which the settlement income was received make one or more contributions to an eligible retirement plan (as defined by §402(c)(8)(B). The aggregate amount of the contributions must not exceed the lesser of: (1) $100,000 (reduced by the amount of qualified settlement income contributed to an eligible retirement plan in earlier tax years under this rule), or (2) the amount of qualified settlement income received by the individual during the tax year. If a contribution is made into an eligible retirement plan, then:

(1) Except as provided in the special rules applicable to Roth IRAs and Roth 401(k)s, qualified settlement income is excluded from taxable income to the extent of the contribution and for purposes of the taxation of distributions under §72, the contribution is not considered to be an investment in the contract;
(2) The qualified taxpayer is, to the extent of the amount of the contribution, treated as having received the qualified settlement income either as a rollover to an IRA under §408(d)(3) or as a rollover contribution to any other eligible retirement plan under §402(f)(2); and as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution;
(3) The §408(d)(3)(B) one-year waiting period between rollovers from one IRA to another does not apply with respect to amounts treated as a follover

CODE SECTION	DESCRIPTION OF PROVISION

under these rules; and

(4) The §408A(c)(3)(B) limits preventing rollover contributions to a §408(A)(b) Roth IRA or designated Roth contributions to a §402A Roth 401(k), where an individual's AGI exceeds $100,000 or the individual is married filing separately, do not apply to the rollover of qualified settlement income under these rules.

For contributions of qualified settlement income to a Roth IRA or to a Roth 401(k), the qualified settlement income is includible in taxable income, and for purposes of the taxation of the distributions from these plans under §72, the contribution is considered to be investment in the contract.

Effective Date: Oct. 3, 2008.

The following provisions are NOT operative.

§24(d)(4)

Refundable amount of child tax credit is increased for 2008

Under pre-Act law, subject to limits based on adjusted gross income, taxpayers are allowed a refundable credit of up to $1,000 for each qualifying child. The refundable portion of the child tax credit is based on 15% of the taxpayer's earned income in excess of $12,050 for 2008 (or $1,000 per qualifying child for taxpayers whose earned income does not exceed $12,050. Special rules apply to taxpayers with three or more qualifying children.

The Act adds a special rule for calculating the refundable amount of the child tax credit for 2008, by applying $8,500 instead of $12,500 in the above calculation.

Effective Date: Tax years beginning in 2008, but only for those tax years beginning in 2008.

§26(a)(2), as it affects §§23(b)(4), 24(b)(3), 25B(g), 25(e)(1)(C), 25D(c)(2), 904(i), and 1400C(d)

Nonrefundable personal credits can offset AMT through 2008

Under pre-Act law, specified nonrefundable personal credits could be used to offset both a taxpayer's entire regular tax liability and AMT tax liability, but subject to the limit of the actual liability or AMT amount.

While the §26(a)(2) AMT offset rule was originally set to cease for tax years beginning after 2007, the Extenders Act extends the rule to apply to tax years beginning in 2008. As a result, taxpayers may continue to use nonrefundable personal credits to offset their AMT as well as their regular tax liability for tax years beginning in 2008.

The applicable nonrefundable personal credits are:

1) Child and dependent care credit (§21);
2) Elderly and disabled credit (§22);
3) Adoption expense credit (§23);
4) Child tax credit (§24);
5) Mortgage credit certificate (MCC) credit (§25);
6) Credit for higher education expenses (the Hope credit and Lifetime Learning credit) (§25A);

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7) Saver's credit (credit for elective deferrals and IRA contributions) (§25B);
8) Nonbusiness energy property credit for energy-efficient improvements to a principal residence (§25C);
9) Residential energy efficient property (REEP) credit for photovoltaic, solar hot water, and fuel cell property added to a residence (§25D); and
10) First-time homebuyer credit for the District of Columbia ("first-time D.C. homebuyer credit") (§1400C).

Barring further legislative action, each credit's normal limitations when §26(a)(2) is not in effect will apply for tax years beginning in 2009.

Effective Date: Tax years beginning after Dec. 31, 2007, but only for tax years beginning in 2008.

§26(b)(2)(X) **Interest charge and additional 20% tax assessed under §457A not to be treated as regular tax for purposes of applying nonrefundable credits.**

The Act adds §457A, which addresses the taxation of nonqualified deferred compensation (NQDC) paid by nonqualified entities. The tax on an amount of NQDC that was previously undeterminable that would have been included in gross income but for the amount being undeterminable, is increased by an interest charge plus an additional tax of 20% of the amount of the compensation, when the NQDC becomes determinable.

The Act amends §26(b)(2)(X) to exclude the interest charge and the additional 20% tax imposed by § 457A from "regular tax liability" for purposes of calculating the tax liability limitation on nonrefundable personal credits.

Effective Date: For deferred amounts attributable to services performed after Dec. 31, 2008. With respect to NQDC attributable to services performed before Jan. 1, 2009 and which is not included solely because the amount is attributable to services performed before Jan. 1, 2009, to the extent the NQDC is not includible in gross income in a tax year beginning before 2018, that amount will be includible in gross income in the later of (1) the last tax year beginning before 2018; or (2) the tax year in which there is no substantial risk of forfeiture of the right to the compensation.

§30A **Possessions tax credit for American Samoa extended through 2009 for existing claimants**

Although the Code §936 possessions tax credit has generally expired, the 2006 Tax Relief and Health Care Act extended the possessions tax credit for U.S. corporations that were existing credit claimants for American Samoa and that elected the application of §936 for their last tax year beginning before Jan. 1, 2006 (qualifying domestic corporations). Under pre-Act law, the possessions tax credit allowed to U.S. corporations that were existing credit claimants was allowed for the first two tax years of a corporation that began after Dec. 31, 2005 and before Jan. 1, 2008, and thus was not available for tax years beginning after Dec. 31, 2007.

The Act extends the possessions tax credit for American Samoa so that the credit is allowed for the first four tax years of a corporation that began after Dec. 31, 2005 and before Jan. 1, 2010.

CODE SECTION	DESCRIPTION OF PROVISION
	Effective Date: Tax years beginning after Dec. 31, 2007 and before Jan. 1, 2010.
§38(c)(4)(B)(v)	**Railroad track maintenance credit can offset AMT liability for qualified railroad track expenditures paid or incurred during tax years beginning after Dec. 31, 2007 and before Jan. 1, 2010**
	Under pre-Act law, the railroad track maintenance credit determined under Code §45G was not listed as a "specified credit" in §38(c)(4), and thus was not subject to special rules that apply a different tax liability limitation calculation to specified credits. Under the special rules applied to specified credits, the tentative minimum tax does not prevent a taxpayer from claiming the credit.
	The Act adds the railroad track maintenance credit to the list of specified credits.
	Effective Date: For credits determined under §45G in tax years beginning after Dec. 31, 2007 (but before Jan. 1, 2010), including any carryback of the credits.
The following provisions are operative for Hawaii income tax purposes.	
§41(c)(5)(A)	**Alternative simplified research credit is increased to 14% for tax years ending after Dec. 31, 2008**
	Taxpayers may elect an alternative simplified research credit (ASC) in lieu of the regular research credit.
	Under pre-Act law, the ASC was equal to 12% of the excess of the qualified research expenses (QREs) for the tax year over 50% of the average QREs for the three tax years preceding the tax year for which the credit is being determined.
	The Act retains the 12% rate for tax years ending before Jan. 1, 2009 and increases the ASC rate to 14% for tax years beginning Jan. 1, 2009. .
	Effective Date: Tax years beginning after Dec. 31, 2007.
§41(h)(1)(B)	**Research credit is retroactively extended to apply to amounts paid or incurred after Dec. 31, 2007 and before Jan. 1, 2010**
	Under pre-Act law, the research credit, including its components, was scheduled to expire and was not available for any otherwise qualifying research expenses paid or incurred after Dec. 31, 2007.
	The Act extends the research credit and its components for two years by striking the Dec. 31, 2007 expiration date and replacing it with Dec. 31, 2009.
	Effective Date: Amounts paid or incurred after Dec. 31, 2007 and before Jan. 1, 2009.
§41(h)(2)	**Elective alternative incremental research credit terminates for tax years**

CODE SECTION	DESCRIPTION OF PROVISION
	beginning after Dec. 31, 2008
	A taxpayer may elect an alternative incremental research credit (AIRC) in lieu of the regular research credit. Under pre-Act law, the research credit, including the AIRC, was scheduled to expire and was not available for any otherwise qualifying research expenses paid or incurred after Dec. 31, 2007.
	Although the research credit was extended, the AIRC was not. The Act stipulates that no election of the AIRC is available for tax years beginning after Dec. 31, 2008.
	Pre-Act Code §41(h)(2) (rules providing for the computation of the research credit in tax years in which the credit is not in effect for the entire tax year) is redesignated as §41(h)(3).
	Effective Date: Tax years beginning after Dec. 31, 2007 (although the AIRC is terminated for tax years beginning after December 31, 2008).
§41(h)(2), redesignated §41(h)(3)	**Computation of the research credit's base amount for a tax year in which the credit isn't in effect for the entire tax year is modified**
	Under pre-Act law, when the research credit was applied to a number of days less than the total number of days in the tax year, the base amount used in computing the credit for the tax year was a calculation of the base amount for that year, multiplied by the fraction of days the credit was applied to out of the total year. The based amount is equal to the fixed base percentage multiplied by the average annual gross receipts of the taxpayer for the four tax years before the credit year.
	The ASC was calculated as 12% of the excess of the QREs for the tax year, over 50% of the average QREs for the three tax years preceding the tax year for which the credit was being determined. However, under pre-Act law, when the ASC was being computed in tax years when the research credit wasn't in effect for the entire tax year, the base amount was calculated as the average QREs for the three tax years preceding the tax year for which the credit was being determined.
	The Act provides that for any tax year to which the §41 research credit applies to less than the total number of days in the tax year, for purposes of computing the base amount, the amount determined to be the taxpayer's average annual gross receipts for the four tax years before the credit year under §41(c)(1)(B) is the amount which bears the same ratio to such amount (determined without regard to this rule) as the number of days in the tax year to which the research credit applies out of the total number days in the tax year.
	Similarly, in determining the ASC, when calculating the average QREs for the preceding three tax years, the Act provides that the average QREs for the preceding three taxable years is the amount which bears the same ratio to the average QREs (determined without regard to this rule) as the number of days in the tax year to which the research credit applies out of the total number of days in the tax year.
	Effective Date: Tax years beginning after Dec. 31, 2007.

CODE SECTION	DESCRIPTION OF PROVISION
	The following provisions are NOT operative for Hawaii income tax purposes.
§45A(f)	**Indian employment credit for wages paid to qualified Native Americans is extended for two years through Dec. 31, 2009** Under pre-Act law, a 20% credit given to employers for the first $20,000 of qualified wages and insurance costs paid to a qualified Indian employee was scheduled to terminate for tax years beginning after Dec. 31, 2007. The Act extends for two years the employment credit provision, by providing that it not apply to tax years beginning after Dec. 31, 2009. Effective Date: Tax years beginning after Dec. 31, 2007 and before Jan. 1, 2010.
§45C(b)(1)(D)	**Code §41 orphan drug credit to remain in effect for periods after Dec. 31, 2009** Under pre-Act law, qualified clinical drug testing expenses are eligible for the orphan drug credit. For purposes of the orphan drug credit, §41 was considered to remain in effect for periods after Dec. 31, 2007. The Extenders Act provides that, for purposes of the orphan drug credit, §41 is considered to remain in effect for periods after Dec. 31, 2009. Effective Date: Amounts paid or incurred after Dec. 31, 2007 and before Jan. 1, 2010.
§45D(f)(1)(D)	**New markets tax credit is extended through calendar year 2009** Under pre-Act law, the new markets tax credit available for qualified equity investments in a qualified community development entity was available through Dec. 31, 2008. The Act extends the new markets tax credit for one year, Dec. 31, 2009, subject to a nationwide credit limitation of $3.5 billion. Effective Date: Oct. 3, 2008.
§45G(f)	**Railroad track maintenance credit for qualified expenditures is extended two years to include qualified expenditures paid or incurred during tax years beginning before Jan. 1, 2010** A credit is available under Code §45G for 50% of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the tax year. Under pre-Act law, the credit is available for expenditures paid or incurred during tax years beginning after Dec. 31, 2004, and before Jan. 1, 2008. The Act extends the credit, providing a credit for qualified railroad track maintenance expenditures paid or incurred before Jan. 1, 2010. Effective Date: Expenditures paid or incurred during tax years beginning after Dec. 31, 2007 and before Jan. 1, 2010.

CODE SECTION	DESCRIPTION OF PROVISION
§45N(e)	**Mine rescue team training credit is extended for one year to tax years beginning before Jan. 1, 2010** Under pre-Act law, the mine rescue team training credit did not apply to tax years beginning after Dec. 31, 2008. The Act extends the mine rescue team training credit by one year to tax years beginning before Jan. 1, 2010. Effective Date: Oct. 3, 2008.
§51	**Work opportunity tax credit (WOTC) hiring period is extended for two years for some individuals working in the Hurricane Katrina core disaster area** A WOTC is available to employers (taxpayers) for qualified first-year wages paid to members of “targeted groups". One such group is “Hurricane Katrina employees”. Under pre-Act law, a Hurricane Katrina employee was any individual who on Aug. 28, 2005 had a principal place of abode in the “core disaster area” (certain parishes and counties in Louisiana, Mississippi and Alabama heavily damaged by Hurricane Katrina), and was either hired during the two-year period beginning on Aug. 28, 2005 for a position the principal place of employment of which is located in the core disaster area (a "Type 1 Hurricane Katrina employee"); or displaced from the principal place of abode referred to above because of Hurricane Katrina and hired during the period beginning on Aug. 28, 2005 and ending on Dec. 31, 2005 (a "Type 2 Hurricane Katrina employee"). The Act extends by two years the two-year period during which a Type 1 Hurricane Katrina employee could be hired by replacing the phrase "two-year period" with the phrase "four-year period". As such, the last day of the WOTC hiring period for Type 1 Hurricane Katrina employees to qualify their employer for the credit is Aug. 27, 2009. Effective Date: For individuals hired after Aug. 27, 2007.
§53(e)(2)	**AMT refundable credit for individuals reduces tax over maximum of two years instead of five years** An individual's alternative minimum tax liability is based upon a person's taxable income increased by certain preference items and adjusted by denying the regular-tax income deferral allowed for certain items ("deferral adjustments"). Under pre-Act law, AMT attributable to deferral adjustments generated a nonrefundable minimum tax credit (MTC) that could be used to reduce an individual's regular tax liability (but not alternative minimum tax liability) in a later year. Some relief was provided for individuals with long-term unused minimum tax credits (i.e., unused MTCs carried over from before the third tax year immediately preceding the tax year) in the form of an "AMT refundable credit amount" that allowed the long-term unused MTCs to be claimed over five years. The Extenders Act changes the method of determining the AMT refundable credit amount used in computing the refundable portion of the MTC allowed for tax years beginning after 2007 and before 2013 to individuals who have long-

CODE SECTION	DESCRIPTION OF PROVISION
	term unused MTCs. The Act generally allows the long-term unused MTC to be claimed over a two-year period, rather than five years, and eliminates the AGI-based phaseout of the AMT refundable credit amount.
	Effective Date: Tax years beginning after Dec. 31, 2007 and before Jan. 1, 2013.
§53(f)	**Underpayments (and interests and penalties) attributable to pre-2008 AMT adjustments for incentive stock options (ISOs) are abated; already-paid interest and penalties increase minimum tax credits for 2008 and 2009**

To compute AMT for the tax year in which an individual exercises an incentive stock option (ISO), the net value of the stock (i.e., stock value minus the price paid for the stock) must be included in AMTI for the exercise year. The net value of the stock that is added to AMTI represents a "deferral adjustment," as no income is recognized upon the exercise of an incentive stock option for regular tax purposes. A taxpayer's AMT that is attributable to a deferral adjustment generates a MTC that can be applied against an individual's regular tax, but not AMT, liability in a later year. As discussed above, long-term unused MTCs are partially refundable.

Under pre-Act law, because there was no adjustment to the MTC where the stock declined in value (i.e., if the stock value included in AMTI at exercise was more than the regular tax gain that resulted when the stock was later sold), the AMT for the exercise year was, in effect, paid on "phantom" income. In addition, pre-Act law did not allow the IRS discretion in abating interest and/or penalties caused by the AMT adjustments for ISOs.

As noted above, in addition to the changes in the method of determining the AMT refundable credit amount, the 2008 Extenders Act also provides specific relief for AMT attributable to the ISO adjustment. Under the Act, the following amounts are abated if they are outstanding on Oct. 3, 2008:

1) Underpayments of tax for tax years before 2008 that are attributable to the AMT ISO adjustment;
2) Any interest on underpayments described in (1) above;
3) Any penalty applicable to any underpayment described in (1) above; and
4) Any interest imposed on any penalty described in (3) above.

Any tax abated pursuant to the above is excluded from the MTC calculation.

In addition, the AMT refundable credit amount, and the MTC for a taxpayer's first two tax years beginning after December 31, 2007, are each increased by 50% of the aggregate amount of the interest and penalties which were paid by the taxpayer before October 3, 2008 and which (but for the payment) would have been abated under the rules described above.

Effective Date: October 3, 2008.

CODE SECTION	DESCRIPTION OF PROVISION
§§54A(d)(1)(D) and (d)(2)(C)(iv)	**Requirements applicable to qualified zone academy bonds by reason of their becoming qualified tax credit bonds**

Under pre-Act law, both the requirements for qualified zone academy bonds (QZAB) and the allowance of a credit for eligible holders of QZABs were included in §1397E. As further explained below, under the Act, QZABs are now classified as qualified tax credit bonds subject to the provisions of §54A, including expenditure requirements, reporting requirements, special arbitrage rules, maturity limitations, and prohibitions on financial conflicts of interests.

Effective Date: For obligations issued after Oct. 3, 2008.

§§54A(d)(1)(D), 54A(d)(2)(C)(iv), 54E and 1397E(m) — **Credit for qualified zone academy bonds (QZABs) is extended for two years through 2009, is no longer restricted to financial institution holders, and is subject to the §54A qualified tax credit bond rules**

Under pre-Act law, a qualified zone academy bond (QZAB) provided a qualified financial institution, including certain banks and insurance companies, or a corporation actively engaged in the business of lending money, with a tax credit so as to provide funds for specified purposes for certain public schools or academic programs within a public school. The school had to be located in an empowerment zone (or enterprise community), or had to be reasonably expected as of the date of the bond's issuance to have at least 35% of its students eligible for free or reduced-cost lunches.

Under pre-Act law, the national limitation on the issuance of QZABs was $400 million for each of the years 1998 through 2007. The rules for QZABs were enumerated in Code Sec. 1397E.

The Act extends the credit for holders of QZABs for two years through 2009, and the $400 million national annual limitation continues to apply for 2008 and 2009 and adds §54E to the Code, in which the rules for QZABs are delineated (§1397E will not apply to QZABs issued after Oct. 3, 2008). The Act also provides that QZABs will be provided as qualified tax credit bonds, and will be subject to the rules of qualified tax credit bonds under §54A.

Effective Date: For obligations issued after Oct. 3, 2008.

§§55(d)(1)(A) and (d)(1)(B) — **AMT exemption amounts for 2008 are increased**

In computing the alternative minimum tax (AMT) for individuals, the AMT tax rate is applied against the taxpayer's alternative minimum taxable income (AMTI), as reduced by the taxpayer's exemption amount.

For tax years beginning in 2008, the 2008 Extenders Act increases the AMT exemption amounts as follows:

1) To $69,950 (up from $66,250 in 2007) for married couples filing a joint return and surviving spouses;
2) To $46,200 (up from $44,340 in 2007) for an individual who neither married nor a surviving spouse; and
3) To $34,975 (up from $33,125 in 2007) for married individuals filing separate returns.

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	For children subject to the "kiddie tax" (i.e. certain children with unearned income over $1,800 for 2008), the AMT exemption amount cannot exceed the sum of the child's earned income plus $6,400 in 2008. In addition, the kiddie tax AMT exemption cannot be more than the child's regular AMT exemption.
	The Act does not change the $22,500 exemption amount for an estate or trust; nor does it change the phase-out rules for the AMT exemption amount.
	Effective Date: One-year increase in AMT exemptions are only applicable to tax years beginning in 2008.
§§56(b)(1)(E)	**Non-itemizers can take additional standard deduction for net losses from federally declared disasters for both regular tax and AMT purposes**
	Individual taxpayers who do not itemize deductions are allowed a standard deduction in computing taxable income. The standard deduction is the sum of: (1) the basic standard deduction, (2) the additional standard deduction for individuals who are age 65 or over and/or blind, and (3) the real property tax deduction. The standard deduction is not allowed for alternative minimum tax (AMT) purposes.
	Under pre-Act law, the standard deduction was computed without regard to disaster losses. Thus, only taxpayers who itemized could deduct those losses.
	The Act adds an individual's disaster loss deduction as a fourth component to the standard deduction. The “disaster loss deduction” is defined for this purpose as the net disaster loss, as defined by §165(h)(3)(B).
	The disaster loss deduction component of the standard deduction is deductible for AMT purposes in computing AMTI. This provision of the Act is not operative for Hawaii purposes, as Hawaii does not have AMT.
	Effective Date: For disasters declared in tax years beginning after Dec. 31, 2007. The provision applies to "net disaster losses", which are net losses from federally declared disasters occurring before Jan. 1, 2010.
§§56(d)(3)	**"Qualified disaster losses" from pre-2010 disasters can be carried back five years and are deductible against 100% of adjusted minimum taxable income (AMTI)**
	A net operating loss (NOL) is the excess of business deductions (computed with certain modifications) over gross income in a particular tax year. The loss can be deducted, through an NOL carryback or carryover, in another tax year in which gross income exceeds business deductions. In general, NOLs may be carried back 2 years and forward 20 years. The NOL is first carried back to the earliest tax year for which the loss is allowable as a carryback or a carryover, and is then carried to the next earliest tax year. A longer carryback period applies to certain types of losses. Any portion of an NOL that is attributable to certain losses with special carryback periods, such as an eligible loss, farming loss, or specified liability loss, is considered a separate NOL and is applied as a carryback or carryover after the remainder of the NOL for that tax year is applied.
	An alternative tax net operating deduction (ATNOLD) is allowed for alternative

CODE SECTION	DESCRIPTION OF PROVISION

minimum tax (AMT) purposes. The ATNOLD is generally the same as the regular tax NOL, except that: (1) it generally is limited to 90% of alternative minimum taxable income (AMTI), determined without regard to the ATNOLD and the §199 domestic production activity deduction; and (2) it is determined with each of the AMT adjustments and reduced by each of the items of tax preference, to the extent the item increased the NOL for the year. The 90%-of-AMTI limitation does not apply to carrybacks and carryovers of 2001 and 2002 NOLs, or to carrybacks and carryovers of qualified Gulf Opportunity (GO) Zone losses.

The Act provides a special five-year carryback period for NOLs to the extent of a qualified disaster loss. A taxpayer entitled to a five-year carryback for a qualified disaster loss from any loss year may elect to forego the extended carryback period. Such an election must be made in the manner prescribed by the IRS by the due date (including extensions) for filing the taxpayer's return for the tax year of the NOL, and is irrevocable for the tax year for which it was made.

A “qualified disaster loss” is the lesser of:

1. The sum of the losses allowable under §165 for the tax year attributable to a federally declared disaster, occurring before Jan. 1, 2010 and occurring in a disaster area (as defined by §165(h)(3)(C)(ii)), and the deduction for the tax year for qualified disaster expenses that is allowable under §198A(a), or that would be allowable if not otherwise treated as an expense; or
2. The taxpayer's NOL for the tax year.

Under item 2, the NOL to which the five-year carryback period applies is limited to the amount of the overall NOL for the tax year. Any remaining portion of the NOL is subject to the general two-year carryback period. A qualified disaster loss does not include losses from property described in §1400N(p)(3) (i.e., property used in connection with a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, or store whose principal business is the sale of alcoholic beverages for off-premises consumption; and gambling or animal racing property).

In computing the ATNOLD of a taxpayer with a qualified disaster loss for the tax year, the taxpayer may apply the carrybacks and carryovers of that loss to offset up to 100% of AMTI.

Effective Date: Losses arising in tax years beginning after Dec. 31, 2007, in connection with disasters declared after that date and before Jan. 1, 2010.

CODE SECTION	DESCRIPTION OF PROVISION
The following provision is operative for Hawaii income tax purposes.	
§62(a)(2)(D)	**Up-to-$250 above-the-line deduction for teachers' out-of-pocket classroom-related expenses, scheduled to expire after 2007, is extended through 2009** Eligible educators (K-12 teachers, instructors, counselors, principals, or aides in any elementary or secondary school) are provided an above-the-line deduction of up to $250 for out-of-pocket expenses they paid in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services), other equipment, and supplementary materials used in the classroom. Under pre-Act law, this deduction did not apply to tax years beginning after Dec. 31, 2007. This Act extends the educator expense deduction for two years, to include tax beginning before Jan. 1, 2010. Effective Date: Tax years beginning after Dec. 31, 2007, and before Jan. 1, 2010.
The following provisions are NOT operative for Hawaii income tax purposes.	
§63(c)(1)(C)	**Additional standard deduction available to non-itemizers for real property taxes in 2008 is extended through 2009** The Housing Assistance Tax Act of 2008 adds the real property tax deduction (equal to the lesser of (1) the amount allowable as a deduction under the itemized deduction rules for state and local real property taxes; or (2) $500 ($1,000 for a joint return)) as a component of the standard deduction for the tax years beginning in 2008 only. This allows taxpayers who do not itemize deductions on their individual tax returns, to claim a real property tax deduction on their 2008 individual income tax returns. The Act extends the real property tax deduction provision to include tax years beginning in 2009. Effective Date: Tax years beginning after Dec. 31, 2008, and before Jan. 1, 2010.
63(c)(1)(D) and 63(c)(8)	**Non-itemizers can take additional standard deduction for net losses from federally declared disasters.** Individual taxpayers who do not itemize deductions are allowed a standard deduction in computing taxable income. The standard deduction is the sum of: (1) the basic standard deduction, (2) the additional standard deduction for individuals who are age 65 or over and/or blind, and (3) the real property tax deduction. The standard deduction is not allowed for alternative minimum tax (AMT) purposes. Under pre-Act law, the standard deduction was computed without regard to disaster losses. Thus, only taxpayers who itemized could deduct those losses.

CODE SECTION	DESCRIPTION OF PROVISION
	The Act adds an individual's disaster loss deduction as a fourth component to the standard deduction. The “disaster loss deduction” is defined for this purpose as the net disaster loss, as defined by §165(h)(3)(B).
	Effective Date: For disasters declared in tax years beginning after Dec. 31, 2007. The provision applies to "net disaster losses", which are net losses from federally declared disasters occurring before Jan. 1, 2010.

The following provisions are operative for Hawaii income tax purposes.

§108	**Discharges of nonbusiness debt of individuals in Midwestern disaster area by financial institutions and government agencies are excluded from income for debt cancellations on or after the applicable disaster date and before Jan. 1, 2010**
	Gross income includes income that is realized by a debtor from a discharge of indebtedness. However, certain debtors do not recognize income on the discharge of a debt. Instead, they must reduce their tax attributes (the loss or tax credit carryovers or basis in their assets).
	The 2005 Katrina Relief Act provided an exclusion from gross income for any amount that would otherwise have been includible by reason of a discharge (in whole or part) of the indebtedness of a natural person whose principal place of abode on Aug. 25, 2005 was located either in the “core disaster area”, or in the “Hurricane Katrina disaster area,” but outside the core disaster area, if the person suffered economic loss by reason of Hurricane Katrina. The exclusion did not apply to: (1) any indebtedness incurred in connection with a trade or business; or (2) any discharge of indebtedness to the extent that real property securing the indebtedness is located outside the Hurricane Katrina disaster area. The amount excluded from gross income reduced the taxpayer's tax attributes.
	The Act extends the exclusion to apply to individuals whose principal place of abode was in the Midwestern disaster area.
	Effective Date: For debt cancellations on or after the applicable disaster date and before Jan. 1, 2010.
§139(c)(2)	**Changes are made to reflect new definition of “federally declared disaster”**
	Under pre-Act law, various Code provisions applied to a “Presidentially declared disaster.” The Act makes a series of changes to Code provisions that under pre-Act law referred to "Presidentially declared disasters" to reflect the new definition of a "federally declared disaster." Specifically, references to "Presidentially declared disaster" is changed to "federally declared disaster" in §139(c)(2) (exclusion of disaster relief payment from gross income).
	Effective Date: For disasters declared in tax years beginning after Dec. 31, 2007, and occurring before Jan. 1, 2010.

CODE SECTION	DESCRIPTION OF PROVISION

The following provision is NOT operative for Hawaii income tax purposes.

§143(k)(12)

Taxpayers whose homes are damaged or destroyed in federally declared disasters after Dec. 31, 2007 and before Jan. 1, 2010 don't have to meet first-time homebuyer or purchase-price requirements for mortgage bond assistance

Any private activity bond that is a mortgage revenue bond is not subject to federal income taxes if certain conditions are met. To be a mortgage revenue bond, the bond must be a "qualified mortgage bond" (QMB) or a "qualified veterans mortgage bond" (QVMB) under §143. As a means of ensuring that subsidy benefits individuals and areas that need the subsidies the most, borrowers must satisfy certain requirements, including the requirement that borrowers generally cannot have had a present interest in a principle residence at any time within the 3 years immediately before the mortgage's execution (the "first-time homebuyer requirement"); and the purchase price of all residences financed with the QMBs is limited to 90% of the average purchase price in the area where the home is located (the "purchase-price requirement").

The Act enacts a special rule for a taxpayer whose principal residence has been either rendered unsafe for use as a residence because of a federally declared disaster occurring before Jan. 1, 2010; or demolished or relocated because of a state government's or political subdivision's order on account of a federally declared disaster occurring before Jan. 1, 2010. If this special rule applies, then the taxpayer can elect that, for the two-year period beginning on the date of the disaster declaration, the aforementioned first-time homebuyer requirement will not apply, and the purchase-price requirement will allow a residence purchase price of 110% of the average purchase price in the area where the home is located, instead of 90%. This election cannot be revoked without the IRS's consent.

The Act also provides that a taxpayer whose principal residence has been damaged as a result of a federally declared disaster occurring before Jan. 1, 2010 may elect to treat any owner-financing provided to repair or reconstruct that residence as a qualified rehabilitation loan. If a taxpayer elects to have the above special rules (as delineated in §143(k)(12)) apply, the special provisions applied to disaster areas, in general, under pre-Act §143(k)(11) will not apply.

Effective Date: For disasters occurring after Dec. 31, 2007, and before Jan. 1, 2010.

The following provision is operative for Hawaii income tax purposes.

§164(b)(5)(I)

Election to claim itemized deduction for state and local general sales taxes is extended for two years, to apply through 2009

Pre-Act law provided taxpayers with an election to take an itemized deduction for state and local general sales taxes instead of an itemized deduction for state and local income taxes, but only for tax years beginning after Dec. 31, 2003, and before Jan. 1, 2008.

The Act extends the above election to include taxable years beginning before Jan 1, 2010.

Effective Date: Tax years beginning after Dec. 31, 2007 and before Jan. 1, 2010.

CODE SECTION	DESCRIPTION OF PROVISION
The following provisions are NOT operative for Hawaii income tax purposes.	
§§165 and 165(h)(1)	**Individuals' per-casualty floor for personal-use property increased from $100 to $500 for 2009** An individual's §165 deduction for casualty and theft losses to personal use property is allowed to the extent each casualty and theft loss exceeds $100 and to the extent the aggregate casualty and theft losses exceed 10% of the individual's adjusted gross income (AGI). The Act amends §165(h)(1) to state that an individual is allowed a deduction for a casualty or theft loss of personal property "to the extent that the amount of the loss to such individual arising from each casualty, or from each theft, exceeds $500 ($100 for taxable years beginning after Dec. 31, 2009)." Effective Date: The increase in the per casualty limitation applies to taxable years beginning after Dec. 31, 2008 and before Jan. 1, 2010. The disaster amendments apply to disasters declared in taxable years beginning after Dec., 31, 2007.
§§165, 165(h)(3), (h)(4)(B), (i)(1) and (i)(4)	**10%-of-AGI limit on personal casualty losses is waived for "federally declared disasters" in 2008 and 2009** An individual's deduction for casualty and theft losses to personal-use property is subject to two limitations: A $100 per-casualty floor, and a 10%-of-adjusted-gross-income (AGI) limitation. Under the 10%-of-AGI limitation (applied after the $100 per-casualty floor), net casualty losses are deductible only to the extent they exceed 10% of AGI. Under pre-Act law, there were no exceptions to this 10%-of-AGI limitation for disaster losses. The Act waives the 10%-of-AGI limitation for losses attributable to a federally declared disaster. Thus, for a tax year in which an individual has a net loss from a federally declared disaster occurring before 2010, the individual's losses are allowed to the extent of the sum of: (1) the amount of the personal casualty gains for the tax year; plus (2) the net disaster loss; plus (3) so much of the excess of personal casualty losses over personal casualty gains, reduced by the net disaster loss, as exceeds 10% of the individual's AGI. “Net disaster loss” means the excess of the personal casualty losses attributable to a federally declared disaster occurring before Jan. 1, 2010, and occurring in a disaster area; over personal casualty gains. “Federally declared disaster” means a disaster later determined by the President to warrant federal assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and “disaster area” is the area determined to warrant assistance. A taxpayer who suffers a loss from a disaster can take the deduction in the tax year in which the disaster occurs, or can elect to deduct the loss in the tax year immediately preceding the tax year in which the disaster occurs. In coordinating this amendment with other forms of tax relief, the Act provides another stipulation with the possible purpose of avoiding duplicate disaster relief, but refers to a nonexistent section of the Act in doing so. Effective Date: For disasters declared in tax years beginning after Dec. 31, 2007, and occurring before Jan. 1, 2010.
The following provision is operative for Hawaii income tax purposes.	

CODE SECTION	DESCRIPTION OF PROVISION
§§168(e)(3)(B)(vii) and (g)(3)(B)	**Most new farming machinery and equipment placed in service during calendar year 2009 is designated as modified accelerated cost recovery system (MACRS) 5-year property**

For most tangible property, the depreciation deduction allowed for the exhaustion of property used in a trade or business, or for the production of income, is determined under MACRS (§168). A recovery period (or depreciation period) is generally assigned to classes of MACRS property under the General Depreciation System (GDS) rules, and is usually made by reference to that property's "class life." Taxpayers may also be required, or may elect, to depreciate MACRS property under an alternative depreciation system (ADS) instead of under the GDS.

Under pre-Act law, most machinery and equipment used in a farming business had a 7-year recovery period, based on a class life of 10 years.

The Act assigns a 5-year MACRS recovery period to certain machinery or equipment used in a "farming business". To qualify for the 5-year recovery period, the property must satisfy the following requirements:

1) The original use of the property must begin with the taxpayer after Dec. 31, 2008;
2) The property must be placed in service before Jan. 1, 2010; and
3) The property cannot be a grain bin, cotton ginning asset, fence or other land improvement.

Qualified farming property is further assigned a class life of 10 years for purposes of determining the ADS recovery period.

A "farming business" is defined as the trade or business of farming, which is an activity that must involve the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity.

Effective Date: For property placed in service after Dec. 31, 2008, and before Jan. 1, 2010.

The following provisions are operative for Hawaii income tax purposes.

§§168(e)(3)(E)(iv) and (e)(3)(E)(v)	**Fifteen-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant improvements is extended for two years to property placed in service before Jan. 1, 2010**

Pre-Act law provided that qualified leasehold improvement property placed in service before Jan. 1, 2008, and qualified restaurant property placed in service before Jan. 1, 2008 could be depreciated over 15 years.

The Act extends 15-year depreciation period to qualified leasehold improvement property and qualified restaurant property placed in service before Jan. 1, 2010.

Effective Date: For property placed in service after Dec. 31, 2007 and before Jan. 1, 2010.

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§§168(e)(3)(E)(ix), (e)(8), (b)(3)(I), and (g)(3)(B)	**Fifteen-year straight-line cost recovery can be used for certain improvements to retail space** Under pre-Act law, certain property could be depreciated over 15 years as provided in §168. The Act adds "qualified retail improvement property" (QRIP), as defined therein, that is placed in service after Dec. 31, 2008, and before Jan. 1, 2010, to the list of properties depreciated over 15 years using the straight-line method. Also, the Act excludes QRIP from the bonus depreciation provisions and provides that QRIP has a class life of 39 years. Effective Date: Property placed in service after Dec. 31, 2008, and before Jan. 1, 2010.
§168(e)(7)	**Qualified restaurant property subject to 15-year straight-line cost recovery includes buildings as well as improvements to buildings placed in service after Dec. 31, 2008, and before Jan. 1, 2010** The Act amends the definition of qualified restaurant property to mean any Code §1250 property that is a building, if that building is placed in service after Dec. 31, 2008, and before Jan. 1, 2010; or an improvement to a building. In addition, for the building or improvement to be qualified restaurant property, more than 50% of the building's square footage must be devoted to preparation of, and seating for on-premises consumption of, prepared meals. Qualified restaurant property is not eligible for bonus depreciation. Effective Date: For property placed in service after Dec. 31, 2008, and before Jan. 1, 2010.
§168(i)(15)(D)	**Placed-in-service deadline for the treatment of "motorsports entertainment complexes" as 7-year MACRS property is extended two years to Dec. 31, 2009** Under pre-Act law, a motor sports entertainment complex placed in service after Oct. 22, 2004 and before Jan. 1, 2008 was depreciated over a 7-year period. The Act extends this 7-year recovery period by two years through Dec. 31, 2009. Effective Date: For property placed in service after Dec. 31, 2007 and before Jan. 1, 2010.

The following provisions are NOT operative for Hawaii income tax purposes.

§168(j)(8)	**Depreciation tax breaks for Indian reservation property are extended for two years to property placed in service through Dec. 31, 2009** Under pre-Act law, shortened depreciation recovery periods could be used for qualified Indian reservation property placed in service before Jan. 1, 2008. The Act extends for two years the shortened depreciation recovery period

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	allowable for qualified Indian reservation property by providing that such a recovery period not applies to property placed in service before January 1, 2010. Effective Date: For property placed in service after Dec. 31, 2007, and before Jan. 1, 2010.
§168(n)	**50% bonus depreciation and alternative minimum tax (AMT) depreciation relief are allowed in connection with disasters federally declared after 2007 and occurring before 2010** For most tangible property, the depreciation deduction under §167(a) is determined under the modified accelerated cost recovery system (MACRS) provided by §168. Certain property depreciated using the 200% declining balance method for regular income tax purposes must be depreciated on the 150% declining balance method for AMT purposes ("AMT depreciation adjustment"). However, for certain categories of depreciable property, there is allowed both 50% additional first-year depreciation ("50% bonus deprecation") in the year that the property is placed in service (with corresponding reduction in basis), and an exemption from the AMT depreciation adjustment. The Act provides that, for "qualified disaster assistance property," the depreciation deduction under §167(a) for the tax year in which the property is placed in service includes an allowance equal to 50% of the adjusted basis of the property; and the adjusted basis of the property is reduced by the amount of that deduction before computing the amount otherwise allowable as a depreciation deduction for the tax year and any later tax year. The provisions for qualified disaster assistance property are set forth in new subsection (n) to §168. For purposes of the bonus depreciation for "qualified disaster assistance property" (§168(n)), the rules of §168(k)(2)(G) (providing the exemption of qualified property from the AMT depreciation adjustment) apply. *As Hawaii does not have AMT, this provision is not operative for Hawaii.* The Act enumerates six requirements that must be met for property to be "qualified disaster assistance property," relating to the type of property, a requirement regarding active business use in a qualifying disaster area, a requirement that the property is acquired to rehabilitate or replace similar local property, an original use requirement, a timely acquisition requirement, and a timely placed-in-service requirement. Certain property are disqualified from being "qualified disaster assistance property," for purposes of §179, including property receiving other tax benefits; property for gambling, racing, and certain other leisure facilities; property depreciated under the alternative depreciation system; tax-exempt bond financed property; and qualified revitalization buildings. A taxpayer may elect to not apply §168(n) to all property in that class placed in service during the tax year. Effective Date: For property placed in service after Dec. 31, 2007, with respect to disasters declared after Dec. 31, 2007, but only if the disaster occurs before Jan. 1, 2010; the property is purchased on or after the applicable disaster date;

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	and the property is placed in service by the end of the third calendar year (fourth calendar year for nonresidential real property and residential rental property) following the applicable disaster date.

The following provisions are operative for Hawaii income tax purposes.

§170	**Volunteers donating services for Midwestern-related relief can exclude from income mileage reimbursements during the period beginning on the applicable disaster date and ending on Dec. 31, 2008**
	A taxpayer who operates a vehicle in providing donated services to a charity can either deduct actual out-of-pocket expenditures or, in the case of a passenger automobile, use the charitable standard mileage rate to determine the charitable deduction. Volunteer drivers who are reimbursed for mileage expenses have taxable income to the extent the reimbursement exceeds deductible travel expenses.
	The 2005 Katrina Relief Act provided that reimbursement by a §170(c) organization—including public charities and private foundations—to a volunteer for the cost of operating a passenger automobile for the charity's benefit in connection with providing donated services for relief related to Hurricane Katrina during the period after Aug. 24, 2005 and before 2007 was excludable from the volunteer's gross income for tax years ending after Aug. 24, 2005, subject to a limit based on the substantiation requirements of §274(d) applying the standard business mileage rate.
	The Act extends the income exclusion to apply for tax years beginning after the applicable disaster date for persons providing relief relating to the Midwestern disaster area during the period beginning on the applicable disaster date and ending on Dec. 31, 2008.
	Effective Date: For use of a vehicle during the period beginning on the applicable disaster date and ending on Dec. 31, 2008.
§170(b)(3)	**Special higher charitable deduction limitations on qualified conservation contributions by qualified farmers or ranchers expanded to apply to contributions of apparently wholesome food inventory through end of 2008**
	An individual's qualified conservation contributions are generally allowed up to the excess of 50% of the taxpayer's contribution base over the amount of all other allowable charitable contributions. However, if the individual is a qualified farmer or rancher for the tax year in which the qualified conservation contribution is made, the contribution is allowed to the extent the aggregate of those contributions do not exceed the excess of 100% (rather than 50%) of the taxpayer's contribution base over the amount of all other allowable charitable contributions, subject to a restriction if the property is used or available for use in agriculture or livestock production.
	The deduction of charitable contributions by a corporation may not exceed 10% of its taxable income, subject to exceptions. Under one exception for a corporation that, for the tax year of the contribution, is a qualified farmer or rancher and whose stock is not readily tradable on an established securities

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	market at any time during that year, qualified conservation contributions are allowed up to 100% of the taxpayer's taxable income, after taking into account other allowable charitable contributions. A 15-year carryover is allowed. The contribution must be of property that is used in or available for agriculture or livestock production and must be subject to a restriction that the property remain available for agriculture or livestock production. (§170(b)(2)(B))
	A "qualified farmer or rancher" is a taxpayer whose gross income from the trade or business of farming is greater than 50% of the taxpayer's gross income for the tax year. Gross income includes all income from whatever source derived, except as otherwise provided.
	In general, "qualified conservation contribution" refers to a contribution of a qualified real property interest, made to a qualified organization, exclusively for conservation purposes (§170(h)).
	The Act provides that, in the case of a qualified farmer or rancher, any charitable contribution of food to which the "apparently wholesome food rule" applies, and which is made during the period beginning on Oct. 3, 2008 and before Jan. 1, 2009, will be treated for purposes of Code §170(b)(1)(E) or (b)(2)(B), whichever is applicable, as if it were a qualified conservation contribution that would otherwise meet the requirements of those provisions.
	Effective Date: Tax years ending after Oct. 3, 2008, for contributions made during the period beginning on Oct. 3, 2008 and before Jan. 1, 2009.
§170(e)(3)(C)(iv)	**Above-basis deduction for charitable contributions of apparently wholesome food inventory is extended through end of 2009**
	Generally, deductions for charitable contributions of property are subject to the "ordinary income property rule", which generally limits the amount of the deduction for contributed ordinary income property to the property's basis. However, a C corporation that makes a "qualified contribution" of inventory-type property to a §501(c)(3) charitable organization that will use it for the care of the ill, the needy, or infants, is entitled to an enhanced, "above-basis" deduction. These "regular qualified contribution rules" apply to a charitable contribution of food from any trade or business of the taxpayer without regard to whether the contribution is made by a C corporation, but only if the food is "apparently wholesome food." For purposes of this Act, "apparently wholesome food" shares the same definition as section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), and generally refers to food that is intended for human consumption that meets all quality and labeling standards imposed by federal, state, and local laws and regulations.
	For a taxpayer other than a C corporation, however, the aggregate amount of contributions of apparently wholesome food that may be taken into account for the tax year under the above rule may not exceed 10% of the taxpayer's aggregate net income for that tax year from all trades or businesses from which those contributions were made for that tax year, computed without regard to the above rule.
	Under pre-Act law, the above rules regarding qualified contributions of

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	apparently wholesome food did not apply to contributions made after Dec. 31, 2007. The Act extends the apparently wholesome food contribution rules by two years, to apply to contributions made before Jan. 1, 2010. Effective Date: For contributions made after Dec. 31, 2007, and before Jan.1, 2010.
§170(e)(3)(D)(iii) and (e)(3)(D)(iv)	**Corporate above-basis charitable deduction for book inventory contributions to schools is extended two years through 2009** A C corporation that makes a charitable "qualified book contribution" to a qualified donee organization is entitled to an enhanced, "above-basis" deduction. The donee organization must be one that: (1) Is a public school that satisfies the specified requirements under §170(b)(1)(A)(ii); (2) provides elementary or secondary education (kindergarten through grade 12); and (3) satisfies specified certification requirements regarding the donated books and its use of those books. Under pre-Act law, the above rules did not to apply to contributions made after Dec. 31, 2007. The Act extends the above rules by two years to apply to contributions made after Dec. 31, 2007, and before Jan. 1, 2010. The Act further amends that for purposes of the special rule for contributions of book inventory to public schools, a qualified contribution is limited to the books themselves. Effective Date: For contributions made after Dec. 31, 2007, and before Jan. 1, 2010.
§170(e)(6)(G)	**Enhanced deduction for qualified computer contributions by corporations is extended for two years through 2009** A C corporation (other than a personal holding company or "service organization") that makes a "qualified computer contribution" of computer technology or equipment (software, computer or peripheral equipment, and fiber optic cable relating to computer use) to a Code §170(b)(1)(A)(ii) exempt educational organization, a tax-exempt organization that supports elementary and secondary education, or a public library for use in the U.S. for educational purposes related to the donee's purpose or function may claim a deduction equal to the lesser of the contributor's basis plus half of the property's appreciation; or twice the property's basis. Under pre-Act law, the qualified computer contribution rule was not to apply to contributions made in tax years beginning after Dec. 31, 2007. The Act extends the rule by two years by providing that the qualified computer contribution rule will apply to contributions made in tax years beginning before Jan. 1, 2010. Effective Date: For contributions made in tax years beginning after Dec. 31, 2007, and before Jan. 1, 2010.
§170(i)	**Charitable standard mileage rate for Midwestern-related relief is increased**

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	to 70% of business mileage rate during the period beginning on the applicable disaster date and ending on Dec. 31, 2008
	Unreimbursed expenses incurred in connection with performing services for a charitable organization are generally deductible. A taxpayer qualifying for a deduction for the use of his car to provide charitable services may determine the deductible amount using either actual expenses or the standard mileage rate. The charitable standard mileage rate for 2008 is $.14 per mile, with no indexing for inflation.
	The 2005 Katrina Relief Act provided that, for charitable use of a vehicle in providing relief related to Hurricane Katrina during the period after Aug. 24, 2005, and before 2007, the standard mileage rate was 70% of the business standard mileage rate ($.405 per mile in 2005) in effect at the time of the use, rounded to the next highest cent. Taxpayers could determine the amount of the deduction using actual out-of-pocket expenditures instead of using the applicable mileage rate.
	The Act provides that the special mileage rate applies for persons providing relief relating to the Midwestern disaster area.
	Effective Date: For use of a vehicle during the period beginning on the applicable disaster date and ending on Dec. 31, 2008.
§§172(b)(1)(F)(ii)(II) and (b)(1)(F)(ii)(III)	**Changes are made to Code provisions to reflect new definition of “federally declared disaster”**
	Under pre-Act law, various Code provisions applied to a “Presidentially declared disaster.” The Act makes a series of changes to Code provisions that under pre-Act law referred to "Presidentially declared disasters" to reflect the new definition of a "federally declared disaster." Specifically, references to "Presidentially declared disaster" is changed to "federally declared disaster" in the §§172(b)(1)(F)(ii)(II) and (b)(1)(F)(ii)(III) (three-year, rather than two-year, carryback period for net operating losses incurred by small businesses and farmers that are attributable to disasters).
	Effective Date: For disasters declared in tax years beginning after Dec. 31, 2007, and occurring before Jan. 1, 2010.

The following provisions are NOT operative for Hawaii income tax purposes.

§§172(b)(1)(F)(ii), (b)(1)(J), (i)(1) and (j)	**"Qualified disaster losses" from pre-2010 disasters can be carried back five years**
	A net operating loss (NOL) is the excess of business deductions (computed with certain modifications) over gross income in a particular tax year. The loss can be deducted, through an NOL carryback or carryover, in another tax year in which gross income exceeds business deductions. In general, NOLs may be carried back 2 years and forward 20 years. The NOL is first carried back to the earliest tax year for which the loss is allowable as a carryback or a carryover, and is then carried to the next earliest tax year. A longer carryback period applies to certain types of losses. Any portion of an NOL that is attributable to certain losses with special carryback periods, such as an eligible loss, farming

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loss, or specified liability loss, is considered a separate NOL and is applied as a carryback or carryover after the remainder of the NOL for that tax year is applied.

The Act provides a special five-year carryback period for NOLs to the extent of a qualified disaster loss. A taxpayer entitled to a five-year carryback for a qualified disaster loss from any loss year may elect to forego the extended carryback period. Such an election must be made in the manner prescribed by the IRS by the due date (including extensions) for filing the taxpayer's return for the tax year of the NOL, and is irrevocable for the tax year for which it was made.

A “qualified disaster loss” is the lesser of:

3. The sum of the losses allowable under §165 for the tax year attributable to a federally declared disaster, occurring before Jan. 1, 2010 and occurring in a disaster area (as defined by §165(h)(3)(C)(ii)), and the deduction for the tax year for qualified disaster expenses that is allowable under §198A(a), or that would be allowable if not otherwise treated as an expense; or
4. The taxpayer's NOL for the tax year.

Under item 2, the NOL to which the five-year carryback period applies is limited to the amount of the overall NOL for the tax year. Any remaining portion of the NOL is subject to the general two-year carryback period. A qualified disaster loss does not include losses from property described in §1400N(p)(3) (i.e., property used in connection with a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, or store whose principal business is the sale of alcoholic beverages for off-premises consumption; and gambling or animal racing property).

Effective Date: Losses arising in tax years beginning after Dec. 31, 2007, in connection with disasters declared after that date and before Jan. 1, 2010.

§179(e)

Code §179 expensing is increased for qualified disaster assistance property

Generally, a taxpayer can elect to treat the cost of any §179 property as an expense which is not chargeable to a capital account. Any cost so treated is allowed as a deduction for the tax year in which the §179 property is placed in service. For any tax year beginning in 2008, the maximum expense deduction cannot exceed $250,000; the beginning-of-phase-out amount is $800,000.

In the case of an enterprise zone business, the maximum expense deduction is increased by the lesser of $35,000 or the cost of §179 property which is qualified zone property placed in service during the tax year; and only 50% of the cost of any §179 property which is qualified zone property is taken into account when calculating the phaseout.

The Act adds special provisions for qualified §179 disaster assistance property in subsection (e) to §179, which provides that the maximum expense amount that can otherwise be deducted under Code §179 for the tax year is increased by the lesser of $100,000, or the cost of qualified §179 disaster assistance

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	property placed in service during the tax year. Furthermore, the beginning-of-phase-out amount otherwise in effect for the tax year is increased by the lesser of $600,000, or the cost of qualified §179 disaster assistance property placed in service during the tax year. For purposes of the special rules that apply to enterprise zone businesses and renewal community businesses, a taxpayer is not entitled to the increased §179 deduction available for qualified zone property and qualified renewal property if the taxpayer is taking the increased §179 disaster assistance property deduction. Recapture rules similar to those under §179(d)(10) apply with respect to any qualified §179 disaster assistance property which ceases to be qualified §179 disaster assistance property. Effective Date: For property placed in service after Dec. 31, 2007, with respect to disasters declared after Dec. 31, 2007.

The following provision is operative for Hawaii income tax purposes.

§179E(g)	**Election to expense the cost of qualified advanced mine safety equipment property is extended by one year to property placed in service before Jan. 1, 2010** A taxpayer can elect to treat 50% of the cost of any qualified advanced mine safety equipment property as an expense that is not chargeable to capital account. Thus, any cost for which the election is made is allowed as a deduction for the tax year in which the qualified advanced mine safety equipment property is placed in service. Under pre-Act law, the election did not apply to property placed in service after Dec. 31, 2008. The Act extends the election by one year to include qualified advanced mine safety equipment property placed in service before Jan. 1, 2010. Effective Date: Oct. 3, 2008.

The following provision is NOT operative for Hawaii income tax purposes.

§§181(a)(2)(A), (d)(3)(A), and (f)	**Qualified film and TV production expense election is extended for one year and permitted for up to $15 million in cost even where cost exceeds $15 million** Under pre-Act law, a taxpayer could elect to treat not more than $15 million of expenses as deductible qualified film or television production costs. A $20 million deduction limitation applied if a significant amount of the production expenses were incurred in certain low-income or distressed areas. However, if the aggregate production costs exceeded the aforementioned dollar limitations, no election could be made to deduct qualified film or production costs. Production costs include "qualified compensation", which under pre-Act law referred to all payments made by the owner for services performed in the U.S.

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by actors, directors, producers, and other relevant production personnel with respect to the production.

Under pre-Act law, the expensing election was only available for qualified film or television productions that began before Jan. 1, 2009.

The Act extends the deduction for one year, allowing a deduction with respect to qualified productions that commence before Jan. 1, 2010. Moreover, the deduction is available for larger productions which exceed the dollar limitations. Under the new law, the deduction is limited to a maximum of $15 million of qualified film or television production costs ($20 million, if a significant amount of the production expenses is incurred in low-income or distressed areas). The Act also amends the definition of "qualified compensation" to provide that the term means compensation for services performed in the U.S. by actors, production personnel, directors, and producers.

Effective Date: For qualified film and television productions commencing after Dec. 31, 2007, and before Jan. 1, 2010.

The following provision is operative for Hawaii income tax purposes.

§198(h) — **Election to expense qualified environmental remediation expenditures is extended for two years to include expenditures paid or incurred before Jan. 1, 2010**

Taxpayers may elect to treat certain environmental remediation expenditures that would otherwise be chargeable to capital account as deductible in the year paid or incurred. The deduction applies for both regular and alternative minimum tax (AMT) purposes. The expenditure must be incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site.

Under pre-Act law, §198, which allows the election to expense qualified environmental remediation costs, did not apply to expenditures paid or incurred after Dec. 31, 2007.

The Act extends the expensing provision under §198 for two years through Dec. 31, 2009.

Effective Date: For expenditures paid or incurred after Dec. 31, 2007 and before Jan. 1, 2010.

The following provisions are NOT operative for Hawaii income tax purposes.

§198A — **Taxpayers may expense qualified disaster expenses**

Generally, deductions are not allowed for the costs of demolishing structures, and the costs are, instead, charged to the capital account of the underlying land. For the cost of debris removal, the treatment depends on the nature of the costs incurred. Sometimes the cost of debris removal is an ordinary and necessary business expense which is deductible in the year paid or incurred. However, if the debris removal costs are in the nature of replacement of part of the property that was damaged, the costs are capitalized and added to the taxpayer's basis in the property.

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The Act adds §198A to the Code, which allows a taxpayer to elect to treat any qualified disaster expenses which are paid or incurred by the taxpayer as an expense that is not chargeable to capital account. Any expense that is so treated is allowed as a deduction for the tax year in which it is paid or incurred.

For these purposes, a "qualified disaster expense" is any expenditure which is:

(1) Paid or incurred in connection with a trade or business or with business-related property;
(2) For (a) the abatement or control of hazardous substances that were released on account of a federally declared disaster, (b) the removal of debris from, or the demolition of structures on, real property which is business-related property damaged or destroyed as a result of a federally declared disaster occurring before that date, or (c) the repair of business-related property damaged as a result of a federally declared disaster occurring before that date; and
(3) Otherwise chargeable to capital account.

For these purposes, business-related property is property held by the taxpayer for use in a trade or business or for the production of income, or described in §1221(a)(1) (inventory) in the hands of the taxpayer. Special depreciation and recapture rules apply to §1245 property for which a §198A election is made.

The election to expense qualified environmental remediation costs (§198), the prohibition on deduction of building demolition losses (§280B), and the election to accelerate the deduction of certain coal mining and solid waste disposal site reclamation and closing costs (§468), do not apply to amounts treated as expenses under §198A.

Effective Date: For amounts paid or incurred after Dec. 31, 2007, in connection with disasters declared after that date.

§199(b)(2)(D), (c)(6), and (d)(1)(A)(iv) — **Definition of "W-2 wages" for a qualified film added, definition of "qualified film" expanded, and attribution rules added for partnerships and S corporations, for purposes of the domestic production activities deduction**

Taxpayers may claim a "domestic production activities deduction" (DPAD) equal to a specified percentage of the taxpayer's "qualified production activities income" for the tax year. "Qualified production activities income" is the taxpayer's "domestic production gross receipts" (DPGR), which includes the gross receipts from the production of "qualified films" in whole or in significant part by the taxpayer within the U.S. The amount of the DPAD is subject to a taxable income/adjusted gross income limitation, as well as a 50%-of-W-2-wages limitation. Under the latter, the DPAD cannot exceed 50% of the taxpayer's W-2 wages for the tax year.

Under pre-Act law, "qualified films" included any motion picture film or video tape, but only if not less than 50% of the total compensation relating to the production of that film was compensation for services preformed in the U.S. by actors and production personnel, directors, and producers (the "not-less-than-50%-of-total-compensation" test). In addition, "W-2 wages" was defined as the sum of the wages subject to income tax withholding (§6051(a)(3)) and the

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	amounts described under §6051(a)(8) (requiring W-2 reporting of elective deferrals to a cash or deferred arrangement, certain deferred compensation, and designated Roth contributions), paid with respect to employment of employees during the calendar year ending during that tax year. Further, for purposes of §199, the DPAD rules apply at the partnership or S corporation level. However, if property was transferred between a pass-through entity and an owner of an interest in that pass-through entity, that owner was not treated as conducting the production activities of the pass-through entity, and vice versa. The Act amends the definition of "qualified film" to include any copyrights, trademarks, or other intangibles with respect to the film. Further, the methods and means of distributing a qualified film will not affect the availability of the DPAD. The Act also adds a special rule for a qualified film for purposes of determining the 50%-of-W-2-wages limitation. "W-2 wages" now includes compensation for services performed in the U.S. by actors, production personnel, directors and producers. Thus, compensation is not restricted to W-2 wages for the limitation of qualified films. Further, the Act modifies the application of the DPAD to partnerships and S corporations by providing that each partner who owns at least a 20% capital interest, or an S corporation shareholder who owns at least a 20% stock interest, either directly or indirectly, in the entity is treated as having engaged directly in any film produced by the partnership or S corporation. Additionally, a partnership or S corporation is treated as having engaged directly in any film produced by any partner who owns at least a 20% capital interest or S shareholder who owns at least a 20% stock interest, either directly or indirectly, in the partnership or S corporation. Effective Date: For tax years beginning after Dec. 31, 2007.
§§199(d)(8)(A), (d)(8)(B), and (d)(8)(C)	**Allowance of Code §199 domestic production activities deduction for Puerto Rico activities is extended by two years to include taxpayer's first four tax years beginning after 2005** If a taxpayer has gross receipts from sources within the Commonwealth of Puerto Rico that are all taxable for that tax year under either §1 (imposing taxes on individuals and on estates and trusts) or §11 (imposing taxes on regular corporations), then §199(d)(8)(A) allows that taxpayer to treat Puerto Rico as part of the U.S. for purposes of the domestic production activities deduction rules. Under pre-Act law, this rule applied only to a taxpayer's first two tax years beginning after Dec. 31, 2005, and before Jan. 1, 2008. The domestic production activities deduction may not exceed 50% of the taxpayer's W-2 wages for the tax year. Under §3401(a)(8), remuneration paid to U.S. citizens for services performed within Puerto Rico are excluded from being treated as wages subject to withholding. However, for any taxpayer with gross receipts from Puerto Rico treatable as domestic production gross receipts, the determination of W-2 wages of that taxpayer is given an exception under §199(d)(8)(B) to allow the taxpayer to take into account wages paid to bona fide residents of Puerto Rico for purposes of calculating the 50% limitation. Under pre-Act law, this exception rule did not apply for tax years beginning after Dec.

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	31, 2007.
	The Act extends both the §199(d)(8)(A) and §199(d)(8)(B) provisions to a taxpayer's first four tax years beginning after Dec. 31, 2005 and before Jan. 1, 2010.
	Effective Date: Tax years beginning after Dec. 31, 2007, and before Jan. 1, 2010.
§222(e)	**Above-the-line deduction for higher-education expenses is extended for two years through 2009**
	Individuals are allowed an above-the-line deduction for "qualified tuition and related expenses" paid for the enrollment or attendance of the taxpayer, the taxpayer's spouse, or any dependent for whom a taxpayer may claim an exemption, at an eligible institution of higher education, or in connection with an academic term beginning in the tax year or during the first three months of the following tax year. Under pre-Act law, this deduction did not apply to tax years beginning after Dec. 31, 2007.
	The Act extends the deduction for higher-education expenses for two years, allowing the deduction tax years beginning before Jan. 1, 2010.
	Effective Date: Tax years beginning after Dec. 31, 2007, and before Jan. 1, 2010.
The following provisions are operative for Hawaii income tax purposes.	
§408(d)(8)(F)	**Rule allowing tax-free treatment of IRA distributions donated to charity is extended to 2008 and 2009**
	The Pension Protection Act of 2006 amended the individual retirement account (IRA) distribution rules to allow tax-free treatment of up to $100,000 in "qualified charitable distributions" from IRAs for tax years beginning in 2006 and 2007.
	The Act extends those tax-free qualified charitable distribution rules to apply to distributions made in tax years beginning after Dec. 31, 2007 and before Jan. 1, 2010.
	Effective Date: For IRA distributions made in tax years beginning after Dec. 31, 2007 and before Jan. 1, 2010.
§457A	**Nonqualified deferred compensation (NQDC) from certain tax-indifferent corporations and partnerships is includible in gross income when not subject to substantial forfeiture risk**
	Under pre-Act law, there were no special rules limiting the deferral of income from NQDC involving tax-indifferent foreign corporations and partnerships consisting of foreign persons and U.S. tax-exempt entities.
	The Act adds §457A to the Code, which provides that any compensation that is deferred under an NQDC plan of a nonqualified entity is includible in gross

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	income when there is no substantial risk of forfeiture of the rights of the compensation. NQDCs within the purview of §457A must also comply with other requirements imposed on NQDCs by other Code sections or principles of tax law (e.g., §409A of the Code). If an amount of NQDC is not determinable at the time it is otherwise includible in gross income pursuant to §457A, such amount is included in gross income when it becomes determinable. However, any income tax on an amount that was previously not determinable is increased by sum of an interest charge and an amount equal to 20% of the amount of the compensation. Effective Date: For deferred amounts attributable to services performed after Dec. 31, 2008.
§512(b)(13)(E)(iv)	**Rule including in unrelated business taxable income (UBTI), to a limited extent, "specified payments" received by a tax-exempt parent from its controlled entity, is extended through 2009** In general, interest, rents, royalties, and annuities ("specified payments") are excluded from the UBTI of tax-exempt organizations. However, §512(b)(13) treats otherwise-excluded specified payments as UBTI if the income is received from a subsidiary that is more than 50% controlled by the parent tax-exempt organization, to the extent the payment reduces the net unrelated income (or increases any net unrelated loss) of the controlled entity (determined as if the entity were tax-exempt). The Pension Protection Act of 2006 enacted a special rule providing that, for payments made under a binding written contract in effect on Aug. 17, 2006 (or a renewal, on substantially similar terms, of a binding written contract in effect on Aug. 17, 2006): 1) the general rule of §512(b)(13) applies only to the portion of payments received or accrued in a tax year that exceeds the amount of the payment that would have been paid or accrued if the amount of the payment had been determined under the principles of §482 (i.e., at arm's length), and (2) a 20% penalty is imposed on the larger of (a) the excess payment, determined without regard to any amendment or supplement to a tax return, or (b) the excess, determined with regard to all amendments and supplements to a tax return. Under pre-Act law, this special rule did not apply to payments received or accrued after Dec. 31, 2007. The Act extends the end date by two years, so that the special rule applies to payments received or accrued before Jan. 1, 2010. Effective Date: For payments received or accrued after Dec. 31, 2007, and before Jan. 1, 2010.
The following provisions are NOT operative for Hawaii income tax purposes.	
§§871(k)(1)(C) and (k)(2)(C)	**Withholding tax exemption for regulated investment company (RIC) interest-related dividends and short-term capital gains dividends paid to foreign persons extended for tax years beginning in 2008 and 2009** With respect to dividends in RIC tax years beginning prior to Dec. 31, 2007, the 2004 Jobs Act added a provision that allowed a RIC to designate and pay 1) interest-related dividends out of interest that would generally not be taxable

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	when received directly by a nonresident alien individual or foreign corporations; and 2) short-term capital gains dividends out of short-term capital gains. RIC dividends designated as interest-related dividends and short-term capital gains dividends were also not subject to the withholding tax imposed on nonresident alien individuals and foreign corporations.
	The Act extends the exemption for RIC interest-related dividends and short-term capital gains dividends so that the exemption expires for dividends paid in RIC tax years beginning after Dec. 31, 2009.
	Effective Date: For dividends for RIC tax years beginning after Dec. 31, 2007 and before Jan. 1, 2010.
§897(h)(4)(A)(ii)	**Inclusion of regulated investment company (RICs) in definition of qualified investment entity extended through Dec. 31, 2009**
	Subject to certain exceptions, certain dispositions by a foreign person of stock of a domestically controlled qualified investment entity that would otherwise be treated as a disposition of a U.S. real property interest are not subject to the withholding requirements imposed under the Foreign Investment in Real Property Tax Act (FIRPTA). Under pre-Act law, for dispositions occurring prior to January 1, 2008, RICs are included in the definition of a qualified investment entity.
	The Act extends the inclusion of a RIC in the definition of a qualified investment entity through Dec. 31, 2009, for those situations in which the inclusion would otherwise expire after Dec. 31, 2007.
	Effective Date: Tax years beginning after Dec. 31, 2007, and ending on Dec. 31, 2009.
§§907(a), (b), (c)(4), (f)	**Different treatment of foreign oil and gas extraction income (FOGEI) and foreign oil-related income (FORI) is eliminated**
	In general, the foreign tax credit is limited to the U.S. tax liability on a taxpayer's foreign-source income. However, this general limitation is calculated separately for various separate limitation categories of income. Under pre-Act law, in addition to the general foreign tax credit limitations, FOGEI was subject to a special limitation under which the foreign tax credit for foreign oil and gas extraction taxes could not exceed FOGEI multiplied by: (1) the highest corporate tax rate, in the case of a corporation, or (2) the precredit U.S. tax multiplied by a fraction for which the numerator was the taxpayer's precredit tax and the denominator was the taxpayer's entire taxable income. Foreign taxes paid in excess of that amount on FOGEI were generally neither creditable nor deductible, and the taxes paid or accrued in any tax year which exceeded the FOGEI limitation could be carried back to the immediately preceding tax year and carried forward 10 tax years and credited (not deducted) to the extent that the taxpayer otherwise had an excess FOGEI limitation for those years.
	A similar limitation theoretically applied to foreign taxes paid on FORI, but usually did not apply since it was limited to situations where the foreign law imposing the tax was structured or operated so that the amount of tax imposed

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on FORI was generally materially greater, over a reasonable period of time, than the amount generally imposed on income that was neither FORI nor FOGEI. If this limitation applied, the disallowed portion of the foreign taxes on FORI was re-characterized as a (non-creditable) deductible expense.

Because of the separate rules governing FOGEI and FORI, a taxpayer's determination of the amounts of FOGEI and FORI, as well as the allocation of foreign taxes to each class of income, may have had a significant impact on the taxpayer's overall U.S. tax liability.

The Act combines FOGEI and FORI. As such, the amount of any foreign oil and gas taxes paid or accrued during the tax year which would otherwise be taken into account as a foreign tax credit is reduced by the amount (if any) by which the amount of such taxes exceeds the amount of the combined foreign oil and gas income for the tax year multiplied by:

1) For a corporation, the percentage equal to the highest corporate tax rate; or
2) For an individual, a fraction the numerator of which is the precredit U.S. tax and the denominator the taxpayer's entire taxable income.

A taxpayer's combined foreign oil and gas income for any tax year is the sum of its FOGEI and FORI. A taxpayer's foreign oil and gas taxes equals oil and gas extraction taxes, plus any income, war profits, and excess profits taxes paid or accrued during the tax year on FORI (determined by disregarding the amended carryover rules) or loss which would otherwise be taken into account for foreign tax credit purposes.

The Act also amends the related loss recapture rules so that a taxpayer's combined foreign oil and gas income for a tax year is first reduced for pre-2009 foreign oil extraction losses, and then reduced for post-2008 foreign oil and gas losses. The aggregate amount of the reductions is treated as foreign source income that is not combined foreign oil and gas income. The Act provides rules for calculating pre-2009 and post-2008 foreign oil extraction losses.

The Act further amends the applicable carryback and carryforward rules to apply to foreign oil and gas taxes instead of oil and gas extraction taxes. Thus, if there is a foreign tax credit reduction because the amount of the foreign oil and gas taxes paid or accrued during the tax year exceeds the limitation described above for the tax year (the unused credit year), the excess is carried back as foreign oil and gas taxes paid or accrued in the prior tax year or carried forward to any of the first 10 succeeding tax years, in that order and to the extent not deemed tax paid or accrued in an earlier tax year by reason of the limitation on the use of carryovers, described below. The amount deemed paid or accrued in any tax year, as provided by the Act, may be used as a tax credit if the taxpayer elects to apply the foreign tax credit rules for the year, but cannot be used as a deduction.

Under a transition rule, pre-2009 credits carried forward to post-2008 years continue to be governed by prior law for purposes of determining the amount of carryforward credits eligible to be claimed in years after 2008. Similarly, for purposes of determining whether excess credits generated in 2009 and carried

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	back can be claimed to offset 2008 tax liability, newly enacted Act rules will apply in determining the overall limitation for the carryback year Effective Date: Tax years beginning after Dec. 31, 2008.
§§953(e)(10) and 954(h)(9)	**Exceptions under Subpart F for active banking, financing and insurance income expiring after 2008 extended through tax years beginning before 2010.** Under pre-Act law, certain income from the active conduct of a banking, financing or similar business or from the conduct of an insurance business was temporarily excluded from the definition of Subpart F income, but only for tax years of foreign corporations after Dec. 31, 1998 and before Jan. 1, 2009, and for tax years of U.S. shareholders with or within which any such tax year of the foreign corporation ended. The Act extends the temporary exclusions for active financing income for one year, allowing the exception to apply to tax years of a foreign corporation beginning before Jan.1, 2010, and the tax years of U.S. shareholders with or within which such tax years of foreign corporations end. Effective Date: For tax years of foreign corporations beginning after Dec. 31, 2008, and before Jan 1, 2010, and tax years of U.S. shareholders with or within which such tax years of those foreign corporations end.
§954(c)(6)	**Look-through treatment for payments between related CFCs under foreign personal holding company income rules extended through 2009** Under pre-Act law, dividends, interest, rents, and royalties received by one controlled foreign corporation (CFC) from a related CFC were not treated as foreign personal holding company income (FPHCI) to the extent attributable or properly allocable to non-subpart-F income, or income that was not effectively connected with the conduct of a U.S. trade or business, of the payor. This "look-through treatment" was only applicable for tax years after Dec. 31, 2005, and before Jan. 1, 2009. The Act extends the look-through treatment for related CFCs for one year, allowing look-through treatment to tax years of a foreign corporation beginning before Jan. 1, 2010, and tax years of U.S. shareholders with or within which such tax years of foreign corporations end. Effective Date: Tax years of foreign corporations beginning after Dec. 31, 2008 and before Jan. 1, 2010, and tax years of U.S. shareholders with or within which such tax years of foreign corporations end.

The following provisions are operative for Hawaii income tax purposes.

CODE SECTION	DESCRIPTION OF PROVISION
§1033(a)(2)(B)(i)	**Replacement period is extended to five years (from two years) for involuntarily converted property located in the Midwestern disaster area on or after the applicable disaster date** A taxpayer who receives insurance proceeds or other compensation for property destroyed or damaged by fire, theft, or condemnation (an “involuntary conversion”) ordinarily has to recognize gain if the compensation received exceeds his adjusted basis in the destroyed or damaged property. However,

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the taxpayer can elect to defer the recognition of the gain to the extent that he reinvests the compensation in property that is similar or related in service or use. If a taxpayer makes the deferral election, he recognizes any realized gain only to the extent that the amount realized on the conversion exceeds the cost of the replacement property bought by the taxpayer.

In order to make the deferral election, a taxpayer has to replace the converted property by buying property similar or related in service or use within a certain time period (the "replacement period"). This period begins on the earlier of the date on which the property was destroyed, stolen, condemned, etc., or the date on which condemnation or requisition was first threatened or became imminent; and concludes two years after the close of the first tax year in which any part of the gain upon the conversion is realized (three years in the case of condemnation or threat of condemnation of real property held for productive use in a trade or business or for investment).

The 2005 Katrina Relief Act extended the replacement period to five years instead of two years for property in the Katrina disaster area which was compulsorily or involuntarily converted after Aug. 24, 2005 by reason of Hurricane Katrina. This extension was allowed only if all of the use of the replacement property was in the Hurricane Katrina disaster area.

The Act applies the replacement period extension to property in the Midwestern disaster area. For this purpose, a Midwestern disaster area includes areas for which there was no Presidential determination of eligibility for individual assistance or individual and public assistance. Under the Act, Midwestern disaster area property that was compulsorily or involuntarily converted after the applicable disaster date by reason of a Midwestern disaster is provided a five year replacement period, but only if substantially all of the use of the replacement property is in the Midwestern disaster area.

Effective Date: For property that was compulsorily or involuntarily converted on or after the applicable disaster date.

§§1033(h)(1), (h)(2), and (h)(3) — **Changes are made to involuntary conversion rules to reflect new definition of "federally declared disaster"**

Under pre-Act law, various Code provisions applied to a "Presidentially declared disaster." The Act makes a series of changes to Code provisions that under pre-Act law referred to "Presidentially declared disasters" to reflect the new definition of a "federally declared disaster." Specifically, references to "Presidentially declared disaster" is changed to "federally declared disaster" in §§1033(h)(1), (h)(2), and (h)(3) (involuntary conversions provisions for principal residences and trade or business and investment property damaged by disasters).

Effective Date: For disasters declared in tax years beginning after Dec. 31, 2007, and occurring before Jan. 1, 2010.

CODE SECTION	DESCRIPTION OF PROVISION
§1367(a)(2)	**Rule that S corporation's charitable contribution of property reduces shareholder's basis only by contributed property's basis extended for tax years beginning in 2008 and 2009** The 2006 Pension Protection Act amended the S corporation rules so that, for charitable contributions made in tax years beginning after Dec. 31, 2005 but before tax years beginning after Dec. 31, 2007, the shareholder's basis in the S-corporation stock due to the charitable contribution was decreased by the shareholder's pro rata share of the adjusted basis of the contributed property. Under a technical correction, when the above rule applies to limit the decrease in the basis resulting from the charitable contribution, the rule that limits the aggregate amount of losses and deductions that may be taken by the S corporation shareholder to his basis in the S corporation's stock and debt also does not apply to the extent of the excess of the shareholder's pro rata share of the charitable contribution over the shareholder's pro rata share of the adjusted basis of such property. The Act extends the rule that the decrease in a shareholder's basis in S corporation stock by reason of a charitable contribution made by the S corporation equals the shareholder's pro rata share of the adjusted basis of the contributed property for contributions in tax years beginning before Jan. 1, 2010. Because the rule regarding the decrease in the shareholder's basis is extended, the rule regarding the deduction limitation is similarly extended for tax years beginning in 2008 and 2009. Effective Date: For contributions made in tax years beginning after Dec. 31, 2007, and before Jan. 1, 2010.

The following provisions are NOT operative for Hawaii income tax purposes.

CODE SECTION	DESCRIPTION OF PROVISION
1400(f)(1) and (f)(2)	**DC Enterprise Zone and enterprise community designations are extended for two years through Dec. 31, 2009** Special tax incentives are available to businesses and individual residents within certain economically depressed census tracts in the District of Columbia (DC), designated as the "DC Enterprise Zone". Under pre-Act law, this designation applied for the period beginning on Jan. 1, 1998, and was to end on Dec. 31, 2007. In addition, certain census tracts in DC (the "applicable DC area" under §1400(b)) were designated as an enterprise community. However, under pre-Act law, this designation was also scheduled to expire on Dec. 31, 2007. The Act provides that both designations are to be extended by two years. Effective Date: Periods beginning after Dec. 31, 2007 and ending before Jan. 1, 2010.

CODE SECTION	DESCRIPTION OF PROVISION
§1400A(b)	**Higher tax-exempt enterprise zone facility bond limit for DC Zone bonds is extended to apply to bonds issued before Jan. 1, 2010** Tax-exempt private activity bonds may be issued to finance certain facilities in enterprise zones. For the District of Columbia Enterprise Zone (DC Zone), the amount of outstanding bond proceeds that can be borrowed by a qualified DC Zone business is limited to $15 million, instead of the $3 million limit otherwise applicable for tax-exempt enterprise zone facility bonds. Under pre-Act law, this rule applied to bonds issued during the period beginning on Jan. 1, 1998 and ending on Dec. 31, 2007. The Act extends by two years the higher limit on DC Zone bonds to include bonds issued during the period beginning on Jan. 1, '98 and ending Dec. 31, 2009. Effective Date: For bonds issued after Dec. 31, 2007, and during the period ending on Dec. 31, 2009.
§§1400B(b)(2)(A)(i), (b)(3)(A), (b)(4)(A)(i), (b)(4)(B)(i)(I), (e)(2) and (g)(2)	**Zero-percent capital gains rate for DC Zone assets is extended for two years to apply to assets acquired before Jan. 1, 2010, and thus includes gain attributable to the period before Jan. 1, 2015** Qualified capital gain from the sale or exchange of any "DC Zone" asset (i.e., DC Zone business stock, DC Zone partnership interest, and DC Zone business property) held for more than five years may be excluded from gross income. Under pre-Act law, a DC Zone asset had to be acquired before Jan. 1, 2008 to be within the purview of §1400B; and qualified capital gain did not include any gain attributable to periods after Dec. 31, 2012. The Act extends the deadline for acquiring a DC Zone asset by two years, to Jan. 1, 2010. Additionally, under Act conforming amendments, qualified capital gain does not include any gain attributable to periods after Dec. 31, 2014; and for sales and exchanges of interests in partnerships and S corporations which are DC Zone businesses during substantially all of the period that the taxpayer held the interest or stock, qualified capital gain is determined without regard to any gain attributable to periods before Jan. 1, 1998, and after Dec. 31, 2014. Effective Date: For acquisitions after Dec. 31, 2007, and before Jan. 1, 2010. The conforming amendments are effective on Oct. 3, 2008.
§1400C(i)	**Credit for first-time District of Columbia (DC) homebuyer is extended for two years to property bought before Jan. 1, 2010** An individual who is a first-time homebuyer of a principal residence in DC during any tax year is allowed a nonrefundable credit against income tax liability equal to the lesser of $5,000 or the purchase price of the residence. The credit is phased out beginning at $70,000 of modified adjusted gross income (AGI), or $140,000 on a joint return. Under pre-Act law, this credit applied only to residences purchased after Aug. 4, 2007, and before Jan. 1, 2008. The Act extends the first-time DC homebuyer credit for two years, allowing the credit for residences purchased before Jan. 1, 2010. Effective Date: For property purchased after Dec. 31, 2007, and before Jan. 1, 2010.
§1400N(a)	**Issuance of tax-exempt bonds is permitted through Dec. 31, 2012 to finance**

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	construction and rehabilitation of property damaged by Hurricane Ike
	The 2005 Gulf Opportunity Zone Act provided for the issuance of tax-exempt "qualified bonds" ("Gulf Opportunity Zone Bonds", §1400N(a)) after Dec. 21, 2005, and before Jan. 1, 2011. These bonds are provided to finance the construction and rehabilitation of residential and nonresidential property located in the Gulf Opportunity Zone (the "GO Zone"). Bonds that qualify under these provisions ("qualified Gulf Opportunity Zone Bonds") are treated as either exempt facility bonds or qualified mortgage bonds. Thus, these bonds, which would otherwise be taxable private activity bonds used for private business use, are treated as tax-exempt "qualified bonds," the interest on which is exempt from federal income tax.
	The Act authorizes the issuance of qualified bonds (called "qualified Hurricane Ike disaster area bonds") before Jan, 1, 2013 to finance the construction and rehabilitation of residential and nonresidential property located in states located in the "Hurricane Ike disaster area" in addition to other areas referenced in 1400N(a), and replaces "Gulf Opportunity Zone" with Hurricane Ike disaster area" anywhere the former is used within §1400N(a). The Act provides additional criteria that must be met for qualified Hurricane Ike disaster bonds.
	Effective Date: Oct. 3, 2008, for bonds issued before Jan. 1, 2013.
§1400N(a)	**Tax-exempt bond financing for Midwestern disaster area for bonds issued after Oct. 3, 2008 and before 2013**
	§1400N(a) authorized the issuance, after Dec. 21, 2005, and before Jan. 1, 2011, of tax-exempt qualified bonds (called "Gulf Opportunity Zone Bonds" to finance the construction and rehabilitation of residential and nonresidential property located in the Gulf Opportunity (GO) Zone. Bonds that qualify under these provisions are treated as either exempt facility bonds, or qualified mortgage bonds.
	The Act provides that the §1400N(a) tax-exempt bond financing rules apply to any Midwestern disaster area, as provided by the Act.
	Effective Date: For bonds issued after Oct. 3, 2008, and before Jan. 1, 2013.
§1400N(c)	**Additional allocations of low income housing credit are available for the "Hurricane Ike disaster area" for calendar years 2008, 2009 and 2010**
	§1400N(c) provides low-income housing credit in the Gulf Opportunity (GO) Zone. The Act modifies §1400N(c) so that it applies to any "Hurricane Ike disaster area" for calendar years 2008, 2009, 2010, as further delineated in the Act.
	A "Hurricane Ike disaster area" means an area in Texas or Louisiana that has been declared a major disaster area by the President by reason of Hurricane Ike (under §401 of the Robert T. Stafford Act Disaster Relief and Emergency Assistance Act); and that has also been determined by the President to warrant individual assistance or individual and public assistance from the Federal government under the Stafford Act with respect to damages attributable to Hurricane Ike.
	Effective Date: For calendar years 2008, 2009 and 2010.
§1400N(c)	**Additional low-income housing limitations for Midwestern disaster area**

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for calendar years 2008, 2009 and 2010

The taxpayer/owner of a qualified building not financed by tax-exempt financing is allowed the applicable low-income housing credit only if it has received a credit allocation from the appropriate state or local credit agency. The 2005 Gulf Opportunity Zone Act added §1400N(c) to the Code, providing additional low income housing credit amounts and other special rules for states within the Gulf Opportunity Zone for calendar years 2006, 2007, and 2008.

The Act provides that the provisions of §1400N(c) relating to additional low income housing credit amounts and special rules apply to any Midwestern disaster area, subject to the modifications prescribed by the Act.

Effective Date: For calendar years 2008, 2009 and 2010.

The following provisions are operative for Hawaii income tax purposes.

§1400N(f) **Taxpayers may elect to expense 50% of demolition and debris-removal costs paid or incurred in the Midwestern disaster area on or after the applicable disaster date and before Jan. 1, 2011**

Generally, deductions are not allowed for the costs of demolishing structures, and the costs are, instead, charged to the capital account of the underlying land. The treatment of the cost of debris removal depends on the nature of the costs incurred. The 2005 Gulf Opportunity Zone Act added §1400N(f) allowing taxpayers to elect to treat 50% of any "qualified Gulf Opportunity Zone clean-up cost" as a deductible expense. The remaining 50% was capitalized.

The Act extends this 50% deduction allowance to apply to any Midwestern disaster area, as provided by the Act.

Effective Date: For amounts paid or incurred on or after the date on which the severe storms, tornados, or flooding giving rise to the Presidential declaration occurred (the "applicable disaster date"), and before Jan. 1, 2011.

§1400N(g) **Expensing of qualified environmental remediation expenditures in the Midwestern disaster area extended during the period beginning on the applicable disaster date and ending on Dec. 31, 2010**

The 2005 Gulf Opportunity Act added §1400N(g), providing that expensing of qualified environmental remediation expenditures (§198) applied for expenditures paid or incurred in the Gulf Opportunity Zone until Jan. 1, 2008.

The Act provides that §1400N(g) will apply to any Midwestern disaster area, as further defined by the Act.

Effective Date: For amounts paid or incurred during the period beginning on the applicable disaster date, and ending on Dec. 31, 2010.

The following provisions are NOT operative for Hawaii income tax purposes.

§1400N(h) **Increased rehabilitation credit for qualified structures in the Gulf Opportunity (GO) Zone is extended for one year to Dec. 31, 2009**

After Hurricane Katrina on Aug. 28, 2005, certain tax benefits were enacted related to an area called the Gulf Opportunity ("GO") Zone, including an increased rehabilitation credit for qualified rehabilitation expenditures paid or

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	incurred during the period beginning Aug. 28, 2005, and ending on Dec. 31, 2008. The Act extends the increased rehabilitation credit for one year by providing that the credit for structures in the GO Zone applies to qualified rehabilitation expenditures paid or incurred during the period from Aug. 28, 2005, through Dec. 31, 2009. Effective Date: For expenditures paid or incurred after Oct. 3, 2008, and before Jan. 1, 2010.
§1400N(h)	**Rehabilitation credit for expenditures for qualified rehabilitated structures and certified historic structures in the Midwestern disaster area increased for period beginning on the applicable disaster date and ending on Dec. 31, 2011** A 10% rehabilitation credit was available for qualified rehabilitation expenditures for qualified rehabilitated buildings. For a certified historic structure undergoing a certified rehabilitation, the credit was 20% of qualified expenditures. The 2005 Gulf Opportunity Zone Act added §1400N(h), increasing the rehabilitation credit to 13% for qualified rehabilitated buildings, and 26% for certified historic structures located in the Gulf Opportunity Zone for qualified rehabilitation expenditures paid or incurred before Jan. 1, 2009. The Act provides that §1400N(h), subject to certain modifications, applies to any Midwestern disaster area, as defined by the Act. Effective Date: For amounts paid or incurred during the period beginning on the applicable disaster date, and ending on Dec. 31, 2011.
The following provisions are operative for Hawaii income tax purposes.	
§1400N(k)	**Net operating loss (NOL) carryback period is extended from two to five years for Midwestern disaster area losses incurred on or after the applicable disaster date and before 2011** In general, a net operating loss (NOL) may be carried back two years and forward 20 years to offset taxable income in those years. The 2005 Gulf Opportunity Zone Act added §1400N(k), providing a special five-year carryback period for NOLs to the extent of certain amounts related to Hurricane Katrina or the Gulf Opportunity Zone (the "GO Zone"). The Act extends the five-year carryback period delineated in §1400N(k) to apply to certain amounts related to the Midwestern disaster area, as further provided by the Act. Effective Date: For amounts paid or incurred on or after the applicable disaster date, and before Jan. 1, 2011.

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§1400N(k)(1)(B)	**100% (instead of 90%) ATNOLD is allowed for Midwestern disaster area loss amounts paid or incurred on or after the applicable disaster date and before Jan. 1, 2011** In computing alternative minimum taxable income (AMTI) subject to the alternative minimum tax (AMT), a taxpayer is allowed the alternative tax net operating loss deduction (ATNOLD or ATNOL deduction), instead of the regular tax net operating loss (NOL) deduction allowed by §172. The amount of a taxpayer's ATNOLD generally cannot exceed 90% of AMTI. However, this limitation does not apply to 2001 and 2001 NOLs. Additionally, the 2005 Gulf Opportunity Zone Act added §1400N(k) providing the 90%-of-AMTI limitation did not apply to NOLs attributable to "qualified GO Zone losses" (certain casualty losses and expense amounts related to Hurricane Katrina or the GO Zone). The Act extends the provisions of §1400N(k)(1)(B), exempting certain NOLs from the 90%-of-AMTI limitation, to certain qualified Disaster Recovery Assistance (QDRA) losses in the Midwestern disaster area. Effective Date: For amounts paid or incurred on or after the applicable disaster date, and before Jan. 1, 2011.
The following provisions are NOT operative for Hawaii income tax purposes.	
§1400N(l)	**Tax credit bond financing for Midwestern disaster area for bonds issued after Dec. 31, 2008, and before Jan. 1, 2010** The 2005 Gulf Opportunity Zone Act authorized the issuance of Gulf tax credit bonds with a term of two-years or less that are issued by the States of Alabama, Louisiana, or Mississippi, after Dec. 31, 2005 and before Jan. 1, 2007. Such §1400N(l) bonds had to be designated by the States as Gulf tax credit bonds, and had to meet certain requirements regarding the form and use of the proceeds of the bonds and the limitations on the volume of these bonds that could be issued. The Act extends the rules of §1400N(l) to apply to any Midwestern disaster area, as further delineated by the Act. Effective Date: For bonds issued after Dec. 31, 2008, and before Jan. 1, 2010.
§1400N(n)	**Reliance on representations of tenants displaced in the Midwestern disaster area is allowed in determining compliance with income limits, etc. for qualified residential rental project bonds** Under the 2005 Gulf Opportunity Zone Act, a project operator was allowed to rely on certain representations made by an eligible individual for purposes of determining if any residential rental project meets the applicable income limits, and if any certification meets the project operator certification requirement, which certifies to the IRS that a project continues to fulfill the requirements for being a qualified residential rental project for purposes of qualifying under the tax-exempt bond provisions. This Act extends the aforementioned reliance provisions to apply to any Midwestern disaster area. Effective Date: Oct. 3, 2008.
§1400O	**Hope credit and Lifetime Learning credit maximums are doubled for**

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	higher education expenses of students attending eligible education institutions located in the Midwestern disaster area in 2008 and 2009
	The 2005 Gulf Opportunity Zone Act doubled the Hope and Lifetime Learning credits given with respect to qualified tuition and related (QT&R) expenses at an eligible post-secondary educational institution for qualified students attending (an eligible education institution located in the Gulf Opportunity Zone ("GO Zone") , as provided by §1400O. The Act extends the provisions of §1400O to apply to individuals who attend an eligible educational institution located in the Midwestern disaster area, as defined by the Act, in any tax year beginning in 2008 or 2009. Thus, the doubled 2008 amounts are: (1) a Hope credit of 100% of the first $2,400 of QT&R expenses and 50% of the next $2,400 of QT&R expenses paid; or (2) a Lifetime Learning credit equal to 40% of up to $10,000 ($4,000) of QT&R expenses paid. Effective Date: For tax years beginning in 2008 and 2009.
§1400P	**Value of lodging provided to employees and their families is excluded from employee's income for employees' in the Midwestern disaster area for six-month period**
	The 2005 Gulf Opportunity Zone Act provided, through §1400P(a), that the gross income of a qualified employee did not include the value of any lodging furnished in-kind to that employee, the employee's spouse, or any of the employee's dependents, by or on behalf of a qualified employer for any month during the tax year. The amount that could be excluded from income for any month for which lodging is furnished during the tax year could not exceed $600. The exclusion applied for lodging furnished beginning Jan. 1, 2006 until July, 1, 2006. In general, both "qualified employees" and "qualified employers" meant those individuals who had a principal residence or a business in the Gulf Opportunity Zone ("GO Zone") on Aug. 28, 2005. The Act extends the rules of §1400P to apply to lodging furnished to the employee, the employee's spouse, or any of the employee's dependents, by or on behalf of a qualified employer in the Midwestern disaster area, as defined by the Act. Effective Date: For lodging furnished beginning on the first day of the first month beginning after Oct. 3, 2008, and ending on the date that is 6 months after that first day.
§1400P	**Employer housing credit applies to lodging provided to employees and their families by employers in the Midwestern disaster area for six-month period**
	The 2005 Gulf Opportunity Zone Act provided for a housing credit that is treated as a §38 general business credit (§1400P(b)). The credit was granted to any qualified employer, and was equal to 30% of any amount that was excludable from the gross income of a qualified employee of that employer, and was not otherwise excludable under §119 (addressing meals or lodging furnished for the convenience of the employer). No deduction was allowed for the portion of the wages or salaries paid or incurred for the tax year equal to the Hurricane Katrina housing credit for the tax year. The credit applied for lodging furnished

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	beginning Jan. 1, 2006, and until July 1, 2006.
	The Act extends the §1400P(b) credit to apply to those "qualified employees" who had a principal residence in the Midwestern disaster area, as defined by the Act, and who performed substantially all employment services in the Midwestern disaster area for the qualified employer that furnishes lodging to that individual; and to those qualified employers with a trade or business located in the Midwestern disaster area.
	Effective Date: For lodging furnished during the period beginning on the first day of the first month beginning after Oct. 3, 2008, and ending on the date which is 6 months after that first day.

The following provisions are operative for Hawaii income tax purposes.

§1400Q(a)

Tax relief provided for “qualified Disaster Recovery Assistance distributions” ("QDRA distributions") made under an eligible retirement plan for individuals living in the Midwestern disaster area during the 2008 Midwestern storms

Generally, any amount distributed by a qualified plan, a qualified annuity, a 403(b) annuity, a governmental section 457 plan, or an individual retirement arrangement ("eligible retirement plans"), is taxable in the tax year in which the amount was distributed.

The 2005 Gulf Opportunity Act added §1400Q to the Code, creating exceptions to the general distribution rules for "qualified hurricane distributions," including:

1) A reduction of tax, by providing that a "qualified hurricane distribution" is includible in gross income ratably over three-years (beginning with the tax year in which the distribution was received);
2) Making inapplicable distribution restrictions on amounts in an individual's 401(k) plans, 403(b) annuities, and governmental section 457 plans;
3) Making inapplicable the imposition of a 10% additional tax on early distributions;
4) Making inapplicable a) the direct rollover requirement, b) the §402(f) notice rules, and c) the 20% mandatory withholding provisions; and
5) Continuing the deferral of the income realized from a qualified hurricane distribution, for amounts that were re-contributed to an eligible retirement plan.

A "qualified hurricane distribution" was any distribution from an eligible retirement plan that was made during a specified period, to an individual whose principal place of abode was located in either of the Hurricane Katrina, Rita, or Wilma disaster areas. The aggregate of the distributions that could have been received by an individual and been treated as a qualified hurricane distribution for any tax year could not exceed $100,000, reduced by the aggregate amounts treated as qualified hurricane distributions for all previous years.

The Act extends the §1400Q tax treatment to apply to distributions made by eligible retirement plans on or after the applicable disaster date and before Jan. 1, 2010, to an individual whose principal place of abode on the applicable disaster date was located in the Midwestern disaster area, and who sustained

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	an economic loss attributable to the 2008 Midwestern storms, tornados, or flooding on the applicable disaster date.
	Effective Date: Oct. 3, 2008.
§1400Q(b)	**Recontributions of retirement plan withdrawals taken for home purchases that were cancelled because of 2008 Midwestern storms, tornados, and flooding, which entitle the withdrawals to tax-free treatment**

Qualified 401(k) plans, 403(b) annuities, and §457 plans generally must place restrictions on when amounts may be distributed to plan participants. However, these plans may provide that amounts may be distributed before distribution events (e.g., severance from employment, death, etc.) occur in cases of financial hardship, or, for §457 plans, in cases of unforeseeable emergency. Similarly, IRAs may allow for early distributions under a variety of situations, including hardship. The IRS further has the discretion to waive the 60-day rollover requirement for distributions where an individual suffers a casualty, disaster, or other event beyond his reasonable control, and where not waiving the 60-day requirement would be inequitable.

The 2005 Gulf Opportunity Act allowed certain individuals who received 401(k) plans, 403(b) annuities, or IRA distributions for home purchases that were canceled due to Hurricane Katrina, Rita, or Wilma, to recontribute the distributions to a qualified plan or IRA, tax-free and without penalty, as codified in §1400Q.

The Act extends the §1400Q(b) home buyer recontribution rules to apply to any individual who, during a specified period, received from an eligible retirement plan a "qualified storm damage distribution" that was earmarked for the purchase of a home in the Midwestern disaster area, but that was not so purchased because of the 2008 Midwestern storms, tornados, and flooding.

A "qualified storm damage distribution" is any distribution that was:
(1) Was (a) a 401(k) plan hardship distribution, (b) a distribution from a 403(b) plan due to financial hardship, or a hardship distribution of salary reduction contributions, or (c) a first-time homebuyer distribution from an IRA;
(2) Received after the date that is 6 months before the applicable disaster date and before the date that is the day after the applicable disaster date; and
(3) Earmarked for the purchase or construction of a principal residence in the Midwestern disaster area, but which was not so purchased or constructed because of the storms, tornados, or flooding that gave rise to the designation of the area as a disaster area.

The "applicable period" is the period beginning on the applicable disaster date and ending on March 3, 2009, during which recontributions of any qualified storm damage distribution may be made.

Effective Date: Oct. 3, 2008.

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§1400Q(c) **Plan loan limits increased and repayment deadlines postponed for individuals who sustained loss due to 2008 Midwestern storms, tornados and flooding**

The 2005 Gulf Opportunity Zone Act modified the rules for loans from qualified employer plans for individuals who lived in a designated hurricane disaster area and sustained an economic loss due to Hurricane Katrina, Rita, or Wilma by codifying §1400Q. These modifications increased the amount that could be withdrawn as a loan from qualified employer plans by providing that any loan from a "qualified employer plan" to a "qualified individual" that was made during the "applicable period" was limited to the lesser of either, (1) $100,000; or (2) the greater of $10,000, or the present value of the employee's nonforfeitable accrued benefit under the plan. The modifications also provided a one-year postponement of payments for existing loan plans.

"Qualified employer plans" included: A §401(a) qualified plan which included a trust that was exempt from tax under §501(a); a §403(a) qualified annuity; a §403(b) tax-sheltered annuity; and a governmental §457 plan. A "qualified individual" was any individual whose principal place of abode on a specified date was located in either of the Hurricane Katrina, Rita, or Wilma disaster areas, and who sustained economic loss due to that hurricane. The “applicable period” and the “qualified beginning date” depended on the hurricane disaster area in which the individual lived on the specified date.

The Act extends the §1400Q(c) loan rules to apply to "qualified storm damage individuals" who sustained losses from the 2008 Midwestern storms, tornados, and flooding, for loans and loan repayments made during specified periods. Specifically, it increases the limit on plan loans as prescribed by the 2005 Gulf Opportunity Act on any loan from a qualified employer plan to a "qualified storm damage individual" made during the period beginning on Oct. 3, 2008, and ending on Dec. 31, 2009. Also, the Act extends the due date for repayment by a “qualified storm damage individual” with a loan from a qualified employer plan that was outstanding on or after the applicable disaster date for one year, if the due date for any repayment of that loan occurs during the period beginning on the applicable disaster date and ending on Dec. 31, 2009.

A “qualified storm damage individual” is any individual whose principal place of abode on the applicable disaster date, is located in the Midwestern disaster area and who has sustained an economic loss by reason of any loss or damage attributable to the 2008 Midwestern storms, tornados, and flooding.

Effective Date: Oct. 3, 2008.

§1400Q(d) **Relief for qualified retirement plans due to 2008 Midwestern storms, tornados, and flooding can take effect before plan amendments are adopted (for retroactive amendments made before 2011 plan year)**

The 2005 Gulf Opportunity Act permitted certain plan amendments providing for hurricane relief to be retroactively effective, as provided by §1400Q(d). This relief applied to any amendment of a plan or contract which was made under any provision of §1400Q (or any regulation issued by the IRS or the DOL under any provision of §1400Q), and on or before the later of (1) the last day of the first plan year beginning on or after Jan. 1, 2007, or (2) a date the IRS

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prescribed. For a §414(d) governmental plan, however, the amendment deadline would also be extended by two years from the date that otherwise would have applied.

The Act extends the provisions of §1400Q(d) to apply to plans or annuity contracts that are amended to provide relief for 2008 Midwestern storms, tornados, and flooding, as long as the plans or contracts are amended retroactively before a specified deadline, and are operated in accordance with the amendment for a specified period. As such, this Act applies to any amendment of a plan or contract which is made: (1) to reflect this Act's retirement plan relief for 2008 Midwestern storms, tornados, and flooding, or any regulation issued by the IRS or DOL under that relief; and (2) on or before the later of: (a) the last day of the first plan year beginning on or after Jan. 1, 2010 (for a governmental plan, Jan. 1, 2012), or (b) a date the IRS prescribes.

If a plan or contract amendment is required to maintain a plan's or contract's qualified status as a result of the retirement plan relief provisions under the Act, then the amendment must be made retroactively effective to the date the tax relief change became effective. Further, if a plan or contract amendment is not required to maintain a plan's or contract's qualified status, but is made in accordance with the temporary tax relief changes for areas damaged by 2008 Midwestern severe storms, tornados, and flooding under the Act, then the amendment must be made retroactively effective as of the first day on which the plan or contract was operated in accordance with the amendment.

Effective Date: Oct. 3, 2008.

The following provision is NOT operative for Hawaii income tax purposes.

§1400R(a)

Employee retention credit is allowed for the Midwestern disaster area for 40% of up to $6,000 of qualified wages for each eligible employee for qualified wages paid or incurred after the applicable disaster date and before Jan. 1, 2009

The 2005 Gulf Opportunity Zone Act added §1400R, which provided an employee retention credit for certain employers that sustained damage as a result of Hurricane Katrina. This credit is an income tax credit to qualified employers in an amount equal to 40% of the qualified wages for each qualified employee. Generally, "qualified employers" and "qualified employees" were limited to those working within the Gulf Opportunity Zone (GO Zone) on Aug. 28, 2005. The employer's business had to have been rendered inoperable on any day after Aug. 28, 2005, and before Jan. 1, 2006 as a result of damage sustained during Hurricane Katrina.

The Act extends §1400R(a) to apply to employers in the Midwestern disaster area, as provided by the Act.

Effective Date: For qualified wages paid or incurred after the applicable disaster date and before Jan. 1, 2009.

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The following provisions are operative for Hawaii income tax purposes.

§1400S(a) **Temporary suspension of limitations on charitable deductions is extended to the Midwestern disaster area for 2008**

The 2005 Gulf Opportunity Zone Act enacted §1400S(a), which allows an individual to deduct qualified contributions up to the amount by which his contribution base (adjusted gross income computed without net operating loss carrybacks to the year) exceeds his deduction for other charitable contributions. Qualified contributions in excess of this amount are carried forward for 5 years as contributions to which the 50% limit applies. For a corporation, qualified contributions can be deducted up to its entire taxable income, less other contributions; qualified contributions in excess of this amount are carried forward for 5 years as contributions to which the 10% limit applies. The deduction for qualified contributions is not treated as an itemized deduction for purposes of the overall limitation on itemized deductions.

For the Gulf Opportunity Act, a "qualified contribution" was a cash contribution to a §170(b)(1)(A) charity (other than a §509(a)(3) supporting organization) that was made during the period beginning on Aug. 28, 2005 and ending on Dec. 31, 2005, and that the taxpayer elected to treat as a qualified contribution. A qualified contribution did not include a contribution if it was for the establishment of a new, or maintenance in an existing, segregated fund or account for which the donor had advisory privileges with regard to distributions or investments by reason of the donor's status as donor.

The Act extends the §1400S(a) temporary suspension on charitable contribution limitations to apply to the Midwestern disaster area, as defined by the Act. For this purpose, a contribution is a "qualified contribution" if:

(1) It is paid in cash during the period beginning on the earliest applicable disaster date for all States and ending on Dec. 31, 2008 to a §170(b)(1)(A) charity for relief efforts in one or more Midwestern disaster areas;
(2) The taxpayer obtains from the charity contemporaneous written acknowledgment that the contribution was used (or is to be used) for relief efforts in one or more Midwestern disaster areas; and
(3) The taxpayer elects to treat the contribution as a qualified contribution.

A qualified contribution does not include a contribution made to a §509(a)(3) supporting organization, or for establishment of a new, or maintenance of an existing, donor advised fund.

Effective Date: For contributions beginning on the earliest applicable disaster date for all States and ending on Dec. 31, 2008.

§1400S(b) **Suspension of certain limitations on personal casualty losses is extended to the Midwestern disaster area**

Personal property losses arising from fire, storm, shipwreck or other casualty, or from theft, are allowed only to the extent the amount of the loss from each casualty, or from each theft, exceeds $100 (the “$100-per-casualty floor”), and then only to the extent that total net casualty and theft losses exceed 10% of adjusted gross income (the “10%-of-AGI threshold”). The 2005 Gulf Opportunity Zone Act provided that an individual's casualty losses arising after

CODE SECTION	DESCRIPTION OF PROVISION
	August 24, 2005 and attributable to Hurricane Katrina were not subject to the $100-per-casualty floor and 10%-of-AGI threshold limits on casualty loss deductions, as codified in §1400S(b). The Act extends the §1400S(b) casualty loss relief to apply to the Midwestern disaster area losses. Effective Date: For casualty losses arising on or after the applicable disaster date.
§1400S(c)	**Disaster relief for filing and payment of taxes is extended to the Midwestern disaster area** Under §7508A, the IRS is authorized to provide administrative relief and suspend the performance of required acts described in §7508(a)(1) (such as filing income, estate or gift tax returns, paying taxes, or filing claims for credits or refunds) for a period of up to one year in the case of a Presidentially declared disaster or a terrorist or military action. The 2005 Katrina Relief Act granted this relief for taxpayers affected by the Presidentially declared disaster relating to Hurricane Katrina for a period ending not earlier than Feb. 28, 2006. The 2005 Gulf Opportunity Zone Act codified this rule in §1400S(c), and extended this treatment to apply to Hurricanes Rita and Wilma. Under IRS regs, this postponement of deadlines also applies to the filing and payment of excise and employment (including withholding) taxes. The Act extends §1400S(c) administrative relief to apply to taxpayers affected by the Presidentially declared disaster relating to the Midwestern disaster area. Effective Date: Oct. 3, 2008.

The following provision is NOT operative for Hawaii income tax purposes.

§1400S(d)	**Look-back election for earned income credit and refundable child credit extended to Midwestern disaster area** The 2005 Gulf Opportunity Zone Act codified the 2005 Katrina Relief Act look-back election for the earned income credit (EIC) and the refundable child credit, and extended the election to survivors of Hurricane Rita and Wilma, as set forth in §1400S(d). Specifically, it allows qualified individuals whose principal place of abode was located in the Hurricanes Katrina, Rita or Wilma disaster areas on the applicable dates to make a one-year look-back election in computing the §24(d) child tax credit and §32 EIC if their 2004 earned income amount was greater than their earned income amount for the tax year in which the applicable Hurricane occurred. In other words, the election allowed qualified individuals to use their earned income from the prior tax year. The Act extends the §1400S(d) look-back election to apply to qualified individuals in the Midwestern disaster. For this purpose, a "qualified individual" is an individual whose principal place of abode on the applicable disaster date was located in a Midwestern disaster area, as defined by the Act. Effective Date: For tax years that include the applicable date.

CODE SECTION	DESCRIPTION OF PROVISION
	The following provision is operative for Hawaii income tax purposes.
§1400S(e)	**IRS authority to adjust rules to prevent loss of deductions, credits, and favorable filing status due to temporary relocations is extended to the Midwestern disaster area for tax years 2008 and 2009** The 2005 Gulf Opportunity Zone Act enacted §1400S(e), which authorizes the IRS to make adjustments in the application of the federal tax laws for tax years beginning in 2005 or 2006, as needed to ensure that taxpayers do not lose any deduction or credit, or experience a change of filing status, due to temporary relocations because of Hurricane Katrina, Hurricane Rita, or Hurricane Wilma. Any adjustments made under those rules must ensure that an individual is not taken into account by more than one taxpayer for the same tax benefit. The Act extends this relief to the Midwestern disaster area (defined by the Act). As such, the IRS is authorized to make adjustments in the application of the federal tax laws for tax years beginning in 2008 or 2009, as needed to ensure that taxpayers do not lose any deduction or credit, or experience a change of filing status, because of temporary relocations due to severe storms, tornados, or flooding in the Midwestern disaster area. Effective Date: For tax years beginning after Dec. 31, 2007, and before Jan. 1, 2010.
	The following provisions are NOT operative for Hawaii income tax purposes.
§1400T	**Qualified mortgage bond rules liberalized for Midwestern disaster area** A private activity bond will be tax-exempt if it qualifies as a “qualified mortgage bond,” which is a bond that is part of a “qualified mortgage issue” by a state or a political subdivision of a state whose proceeds are to be used to finance owner-occupied residences, including the purchase, improvement or rehabilitation of those residences. Qualified mortgage bonds used to finance improvements are "qualified home improvement loans." The amount of such a loan cannot exceed $15,000. In order for a bond issue to qualify as a tax-exempt qualified mortgage issue, it must satisfy certain requirements, including, but not limited to, a first-time homebuyer rule, a purchase price requirement for targeted residences, and a mortgagor's income requirement for targeted residences. The Gulf Opportunity Zone Act ("GO Zone Act") liberalized the qualified mortgage bond rules for financing provided before Jan. 1, 2011, for owner-occupied residences in the GO Zone, the Rita GO Zone or the Wilma GO Zone through the enactment of §1400T. As a result, for any owner-occupied residence in the Rita or Wilma GO Zones, the first-time homebuyer requirement is waived; the purchase price requirement and the mortgagor's income requirements for targeted residences apply with certain modifications. The Act extends the provisions of §1400T to apply to residences in the Midwestern disaster area (defined by the Act). Effective Date: For financing provided on or after Oct. 3, 2008, and before Jan. 1, 2011.

CODE SECTION	DESCRIPTION OF PROVISION
	The following provisions are operative for Hawaii income tax purposes.
§§6103(i)(3)(C)(iv) and (i)(7)(E)	**IRS's authority to disclose tax information in terrorism investigations is extended permanently, effective for disclosures after Oct. 3, 2008** IRS is authorized, even if not requested, to disclose in writing return information (other than taxpayer return information) that may be related to a terrorist incident, threat, or activity to the extent necessary to apprise the head of the appropriate federal law enforcement agency responsible for investigating or responding to that terrorist incident, threat, or activity (the "disclosure-without-request" rule). The head of the agency may disclose the return information to officers and employees of the agency to the extent necessary to investigate or respond to the terrorist incident, threat, or activity. IRS is also authorized to disclose returns and taxpayer return information under the disclosure-without-request rule to the Attorney General to the extent necessary for, and solely for use in preparing, an application for ex parte court-ordered disclosure initiated by IRS. The disclosure-without-request rule does not apply where disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation. In addition, upon written request, the IRS may disclose return information (other than taxpayer return information) to law enforcement as well as intelligence agencies that are personally and directly engaged in the response to, or investigation of, any terrorist incident, threat, or activity. The above disclosure provisions expired on Dec. 31, 2007. The Act deletes the provision stating that IRS cannot make disclosures after Dec. 31, 2007, thus making permanent the disclosure authority relating to terrorist activities. Effective Date: For disclosures made after Oct. 3, 2008.

Digest of the Fostering Connections to Success and Increasing Adoptions Act

(P.L. 110-351; Oct. 7, 2008)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter 1, and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest.

The following provision is NOT operative for Hawaii income tax purposes.

CODE SECTION	DESCRIPTION OF PROVISION
§24(a)	**Child tax credit restricted to dependents of taxpayer** Pursuant to §24, a child tax credit of $1,000 is allowed for each qualifying child of the taxpayer. In part, the child must be under 17 years of age to qualify for the credit. Under pre-Act law, there was no express requirement that the qualifying child be a dependent of the taxpayer. The Act specifies that the qualifying child must be a dependent of the taxpayer for purposes of the child tax credit. Specifically, the credit is only allowed for a "qualifying child" for whom the taxpayer is allowed a §151 dependency deduction. Effective Date: For tax years beginning after Dec. 31, 2008.

The following provision is operative for Hawaii income tax purposes.

CODE SECTION	DESCRIPTION OF PROVISION
§§152(c)(1), (c)(3)(A), (c)(4)	**"Qualifying child" must be younger than claimant and be unmarried** The Code provides a uniform definition of a "qualifying child" for purposes of the dependency exemption, child credit, earned income credit (EIC), child care credit, and head-of-household filing status. An individual who does not meet the qualifying child definition may still be claimed as a dependent if the separate requirements for a "qualifying dependent" are satisfied. Under pre-Act law, a "qualifying child" was an individual who satisfied certain tests, including an age requirement that the individual was not yet 19 at the close of the calendar year, or was a full-time student who was not yet 24 at the close of the calendar year. The Act modifies the age requirement for a qualifying child by adding that the child must be younger than the taxpayer who claims such child as a dependent. The Act also provides that the qualifying child cannot be married. Specifically, a "qualifying child" must also be an individual who has not filed a joint return (other than only for a claim of refund) with the individual's spouse. Further, the Act amends §152(c)(4) to provide that if no parent claims a qualified individual as a qualifying child, then no other taxpayer may claim such individual as a qualifying child unless that other taxpayer's adjusted gross income (AGI) is higher than the highest AGI of any parent of the individual. Effective Date: For tax years beginning after Dec. 31, 2008.

Digest of the Worker, Retiree, and Employer Recovery Act of 2008

(P.L. No. 110-458; Dec. 23, 2008)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter 1, and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest.

CODE SECTION	DESCRIPTION OF PROVISION
	The following provision is NOT operative for Hawaii income tax purposes.
Non-Code Section	**Pension Protection Act changes to excise tax on failure to meet minimum funding standards are effective for tax years after 2007** The 2006 Pension Protection Act (PPA, PL 109-280, Aug. 17, 2006) created new funding rules for defined benefit plans and integrated these funding rules into the rules imposing an excise tax on underfunded plans (the percentage excise tax and excise tax base varies for single- and multi-employer plans). Under the Act, the PPA changes made to the excise tax on underfunded plans will apply to employer tax years beginning after 2007, but only for plan years beginning after 2007 that end with or within the employer's tax year. Effective Date: For tax years beginning after 2007, but only for plan years beginning after 2007 that end with or within the employer's tax year.
	The following provisions are operative for Hawaii income tax purposes.
Non-Code Section	**Restrictions on the use of the shortfall funding method by multiemployer plans clarified** Under a “shortfall” funding method, collectively bargained plans may elect to determine the charges to their funding standard accounts on the basis of estimated units of service or production. The Pension Protection Act of 2006 (PPA, PL 109-280, Aug. 17, 2006) provided that a multiemployer plan could adopt, use, or cease using the shortfall funding method if it met the shortfall funding criteria, and that such adoption, use or cessation of use would be deemed to have been approved as a change in funding method by the IRS and the Department of Labor. The two-pronged shortfall funding criteria are: (1) the plan "had not used" the shortfall funding method during the 5-year period ending on the day before the date the plan is to begin using the method, and (2) the plan is not operating under an amortization period extension, and did not operate under an amortization period extension during the five-year period. The Act amends the first prong of the shortfall funding criteria so that a multi-employer pension plan now meets the criteria for deemed IRS approval for use of the shortfall funding method only if the plan "has not adopted, or ceased using" the shortfall funding method during the 5-year period ending on the day before the date the plan is to begin using the shortfall funding period. Effective Date: For plan years beginning after 2007.

CODE SECTION	DESCRIPTION OF PROVISION
Non-Code Section	**Payments received by employees of bankrupt airlines can be rolled over to Roth IRAs regardless of contribution limits** In general, an individual can make nondeductible contributions to a Roth IRA up to specified annual amounts, depending on his (and his spouse's) modified adjusted gross income, the dollar limits on amounts contributed to traditional IRAs for the year, and the amount contributed (if any) to a traditional IRA for the year. These contribution limits do not apply to “qualified rollover contributions.” The Act provides that a “qualified airline employee” who receives an “airline payment amount,” such terms being defined by the Act, can transfer any portion of that amount to a Roth IRA within 180 days of receipt of the amount (or, if later, within 180 days of the date of enactment of the Act). The transfer is treated as a qualified rollover contribution to the Roth IRA, and the modified AGI limits on amounts that can be annually contributed to a Roth IRA do not apply. The portion of the airline payment amount contributed to the Roth IRA is includible in gross income to the extent the payment would be includible in income were it not part of the rollover contribution. Effective Date: For transfers made after the date of enactment, for airline payment amounts paid before, on, or after the date of enactment.
Non-Code Section	**Airlines can use "smoothing" provision to determine asset values** The 2006 Pension Protection Act (PPA, PL 109-280, Aug. 17, 2006) provided certain relief from enacted funding rules for single-employer defined benefit plans sponsored by commercial passenger airlines, or companies whose principal business is providing catering services to commercial passenger airlines. For minimum contribution purposes, plan sponsors could use the average value of assets over a two-year period, but only if this average method was, among other requirements, permitted by the IRS. Proposed IRS regulations provided minimal opportunity for using an averaging method. The Act provides that the asset values for plans sponsored by commercial airline and commercial airline caterers must be determined using asset smoothing provisions that other single-employer defined benefit pension plans are allowed to utilize. Effective Date: For plan years beginning after Dec. 31, 2007.
Non-Code Section	**Deadline extended to last day of first plan years beginning in 2009 for plans to adopt amendments that reflect special interest rates under funding rules for 2004, 2005, 2006 and 2007 plan years** To determine a plan's current liability for any plan year, for purposes of the minimum full funding limitation under the regular funding rules and the additional funding requirements for underfunded plans, the interest rate used to determine cost had to be within a permissible range of the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year. A plan could have used the interest rate rules for the 2004 through 2007 plan years, even if the employer had not yet adopted a remedial amendment to reflect those rules. The Act extends, to the last day of the first plan year beginning on or after Jan. 1, 2009, the time by which a plan must be amended to reflect the rules allowing

CODE SECTION	DESCRIPTION OF PROVISION
	employers to use the special interest rules for the 2004 through 2007 plan years, for purposes of determining current liability under the minimum full funding limitation under the regular funding rules and the additional funding requirements for underfunded plans.
	Effective Date: Aug. 17, 2006 (enactment date of the 2006 Pension Protection Act).
Non-Code Section	**Rule is added for cash balance plan's three-year vesting requirements; effective dates for interest crediting and other rules are modified**
	Special effective date provisions came into play when applying the interest crediting (§411(b)(5)(B)(i)) and three-year vesting (§411(a)(13)(B)) rules to cash balance plans that were already in existence on June 29, 2005, and to collectively bargained plans.
	The Act amends the special three-year vesting rules to apply only to plan participants who have at least one hour of service after the effective date of the vesting provisions to provide that a plan sponsor may elect to have these provisions apply for any period on or after June 29, 2005, and before the first plan year beginning after Dec. 31, 2007. The Act amends the special effective date rule for collectively bargained plans to provide that for plans maintained under one or more collective bargaining agreements between employee representatives and one or more employers that were ratified on or before Aug. 17, 2006, the interest crediting and three-year vesting requirements do not apply to plan years beginning before the earlier of: (1) the later of the termination of the collective bargaining agreement, or Jan. 1, 2008; or (2) Jan. 1, 2010. Lastly, the effective date for the conversion rules (regarding conversion of a traditional defined benefit plan to an applicable defined benefit plan) is also clarified to apply for any period beginning on or after June 29, 2005.
	Effective Date: Any period beginning on or after June 29, 2005.

The following provision is NOT operative for Hawaii income tax purposes.

§72(t)(2)(G)(iv)	**Flawed technical correction addresses non-existent rule regarding reservists called to active duty after Sept. 11, 2001**
	If an employee takes an “early withdrawal” (before reaching age 59-1/2) from a “qualified retirement plan” (including an IRA), the withdrawn amount is taxable income (except to the extent that the withdrawn amount represents the return of after-tax contributions) and is subject to a 10% early withdrawal tax, subject to certain exceptions, including an exception for any “qualified reservist distribution.” This tax break for reservists was available to individuals ordered or called to active duty after Sept 11, 2001. The provision was set to expire for individuals ordered or called to active duty *on* or after Dec. 31, 2007, but was retroactively made permanent in §107(b) of the Heroes Earnings Assistance and Relief Tax Act of 2008 (PL 110-245, June 17, 2008) (the "Heroes Act").
	The Act amends the reservist provision under the pre-Heroes Act law by providing that the tax break will continue to apply for an individual ordered or called to active duty on Dec. 31, 2007.
	Effective Date: Generally, for distributions after Sept. 11, 2001, for individuals ordered or called to active duty after Sept. 11, 2001, and on or before Dec. 31, 2007.

CODE SECTION	DESCRIPTION OF PROVISION

The following provisions are operative for Hawaii income tax purposes.

§105(j)

Payments from state health reimbursement arrangement (HRA) to deceased participant's nonspouse, nondependent designated beneficiary will not disqualify the HRA, where pre-Jan. 2, 2008 plan language so permits these payments

The gross income of an employee generally does not include employer-provided coverage under an accident or health plan. However, the IRS ruled in Rev. Rul. 2006-36, that amounts paid to an employee under a HRA are not excludible from an employee's gross income if the plan permits amounts to be paid as medical benefits to a designated beneficiary other than the employee's spouse or dependents. Thus, such an HRA was disqualified, and none of the amounts paid by the plan to any person, including reimbursements of medical expenses of the employee, the employee's spouse, or the employee's dependents, are excludible.

The Act provides that, for purposes of the exclusion for amounts paid from a plan for reimbursement of medical expenses, amounts paid (directly or indirectly) to a taxpayer from qualifying accident or health plans will not fail to be excluded from gross income solely because the plan, on or before Jan. 1, 2008, provided for reimbursements of health care expenses of a deceased plan participant's beneficiary who is not a spouse or dependent. Qualifying accident or health plans are plans funded by a medical trust that is established in connection with a public retirement system, if the trust has either been authorized by a state legislature, or has received a favorable ruling from the IRS that the trust's income is not includible in gross income under §115.

Effective Date: For payments made before, on, or after Dec. 11, 2008.

§§401(a)(9)(H) and 402(c)(4)

Required minimum distributions are waived for 2009

[NOTE: §401(a)(9) provides that a plan will NOT be a qualified plan unless it satisfies required distribution rules. Excise tax for failure to make RMD is imposed under §4974.]

Required minimum distribution (RMD) rules apply to participants in “qualified plans” (§401(a) tax-qualified plans, §403(a) employee annuities, §403(b) tax-sheltered annuities, and §457(b) governmental plans) and individual retirement accounts and annuities (IRAs), such that participants are generally required to begin taking distributions no later than Apr. 1 of the year after they attain age 70-1/2 (the “required beginning date”). RMD rules applied to employer-provided qualified retirement plan differ in certain circumstances. An excise tax equal to 50% of the amount by which the RMD exceeds the actual distribution during the taxable year is imposed on the individual (e.g., participant, beneficiary, etc.) for failing to make the RMD.

The Act suspends the RMD rules for the year 2009. Specifically, no minimum distribution is required for calendar year 2009 from: (1) defined contribution plans (as described in §401(a), §403(a), or §403(b)); (2) §457(b) eligible deferred compensation plans, but only if the plan is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and (3) individual retirement plans. This relief applies to life-

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	time distributions to employees and IRA owners, as well as after-death distributions to beneficiaries. For purposes of applying the RMD rules to calendar years after 2009, an individual's required beginning date will be determined without regard to the 2009 RMD waiver.
	Effective Date: For calendar years beginning after Dec. 31, 2008. However, the 2009 RMD waiver rule does not apply to any RMD for 2008 that is permitted to be made in 2009 by reason of an individual's required beginning date being Apr. 1, 2009.
§401(a)(35)(E)(iv)	**Code definition of "one-participant retirement plan" that is exempt from diversification right requirement, is modified**
	The 2006 Pension Protection Act (PPA, PL 109-280, Aug. 17, 2006) provided that certain defined contribution plans must permit participants to diversify the portion of their account balance that is invested in publicly traded employer securities (or non-publicly traded stock related to the performance of a subsidiary of a publicly-traded company) into at least three materially different diversified investment options. This diversification requirement generally applies to contribution plans that hold publicly-traded employer securities. However, an exception was made for a "one-participant retirement plan," as defined by the PPA.
	The Act redefines a "one-participant retirement plan" to be a retirement plan that, on the first day of the plan year, either (1) covered only one individual (or the individual and the individual's spouse) and the individual (or the individual and the individual's spouse) owned 100% of the plan sponsor (whether or not incorporated), or (2) covered only one or more partners (or partners and their spouses) in the plan sponsor.
	Effective Date: For plan years beginning after Dec. 31, 2006.
§§402(c)(11), (c)(11)(A)(i) and (f)(2)(A)	**Plans are required to offer nonspouse beneficiary rollovers starting in 2010**
	The Pension Protection Act of 2006 (PPA, PL 109-280, Aug. 17, 2006) added §401(c)(11) to provide that a nonspouse beneficiary of a deceased employee's eligible retirement plan can make a trustee-to-trustee transfer to an IRA of part (or all) of the deceased employee's account balance in the plan, effective for distributions made after 2006 ("nonspouse beneficiary rollover"). The IRS interpreted §402(c)(11) to mean that plans could, but did not have to, allow for nonspouse beneficiary rollovers. §402(c)(11)(A)(i) provided that a direct rollover of a distribution by a nonspouse beneficiary was a rollover of an eligible rollover distribution only "for purposes of §402(c)." Thus, the distribution was not subject to §401(a)(31) direct rollover requirements; §402(f) notice requirements; or §3405(c) mandatory withholding requirements. Only §401(a) qualified plans, §403(a) qualified annuities, §403(b) tax-sheltered annuities, and §457 governmental plans can offer nonspouse beneficiary rollovers.
	The Act provides that if §402(c)(11) requirements for making a nonspouse beneficiary rollover are satisfied, then the term “eligible rollover distribution” must include any distribution to a designated beneficiary which would be treated as an eligible rollover distribution by reason of a nonspouse beneficiary rollover permitted under: §402(c)(11) for qualified plans; §403(a)(4)(B) for qualified annuities; §403(b)(8)(B) for tax-sheltered annuities; or §457(e)(16)(B) for governmental plans.
	The Act also strikes "for purposes of §402(c)" from §401(c)(11)(A)(i) providing that a

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	transfer must be treated as an eligible rollover distribution. Rollovers by nonspouse beneficiaries will be generally subject to the same rules as other eligible rollovers, including direct rollover requirements; notice requirements; and mandatory withholding requirements. The Act specifies that for purposes of §402(c)(11), an "eligible retirement plan" means only a qualified trust. The Act also makes a technical correction by amending §402(c)(11) to provide that a trust maintained for the benefit of one or more designated beneficiaries must be treated the same way as a "designated beneficiary" (as opposed to a "trust designated beneficiary"), as stated under prior law. Effective Date: For plan years beginning after Dec. 31, 2009, except that amendments to the definition of "eligible retirement plan" and the technical correction described above, are effective for distributions made after Dec. 31, 2006.
§402(g)(2)(A)(ii)	**Excess deferral "gap-period income" need not be distributed with corrective distribution** Excess deferrals (an individual's elective deferrals for the tax year that exceed the applicable dollar limit for that tax year) can avoid double taxation if, before Apr. 15 of the following year, a corrective distribution is made. Under the corrective distribution provisions, the allocable gain or loss for the period between the end of the tax year and the date of distribution (the "gap period") had to be distributed as part of the corrective distribution. The Act amends the corrective distribution provisions such that the distribution of excess deferrals need only include the income allocable to the excess deferral through the end of the tax year for which the deferral was made, rather than through the distribution date. Effective Date: For plan years beginning after Dec. 31, 2007.
§§402(l)(3)(B) and (l)(4)(D)	**Exclusion for distributions from governmental plans to pay for the health insurance of public safety officers extended to apply to self-insured plans; eligible distributions clarified** An employee who is an eligible retired public safety officer can make an election for any tax year to exclude from gross income any distribution from an eligible retirement plan (basically, governmental plans) for health insurance premiums up to a limit of $3,000 annually. The exclusion applies to the extent that the aggregate amount of distributions does not exceed the amount paid by the employee for “qualified health insurance premiums.” (i.e., premiums paid for coverage of the eligible retired public safety officer, his spouse, and dependents, if the coverage was provided by an accident or health insurance plan, or qualified long-term care insurance contract). Further, an amount is treated as a distribution for health insurance premiums only to the extent that it would be includible in gross income without regard to the above exclusion. Under pre-Act law, the aggregate amounts distributed from an eligible retirement plan in a tax year (up to the amount excluded) were treated as includible in gross income (without regard to these exclusion rules) to the extent that the amount did not exceed the aggregate amount which would have been includible if all amounts distributed from all eligible retirement plans were

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	treated as one contract for purposes of determining the inclusion of the distribution in the employee's income.
	The Act changes the definition of "qualified health insurance premium" by replacing the reference to "health insurance plan" with "health plan" (i.e., to include self-insured plans).
	The Act also clarifies the amount of a distribution that would otherwise be includible in gross income. Under the Act, the aggregate amounts distributed from an eligible retirement plan in a tax year (up to the amount excluded) are treated as includible in gross income (without regard to these exclusion rules) to the extent that the amount does not exceed the aggregate amount which would have been includible if all amounts to the credit of the eligible public safety officer in all eligible retirement plans maintained by the employer who maintains the plan from which the distributions are made, were distributed during the tax year, and all of those plans were treated as one contract for purposes of determining under §72 the aggregate amount which would have been includible in the employee's income.
	Effective Date: For distributions made in tax years beginning after Dec. 31, 2006.
§404(a)(7)(A)	**Deduction limit modified for contributions to combinations of plans**
	Under certain conditions, an overall limit on deductible contributions applies. If the overall deduction limit applies, the total amount deductible in a tax year under the trusts and plans cannot exceed the greater of: (1) 25% of the compensation otherwise paid or accrued during the tax year to the beneficiaries under the plans; or (2) the amount of contributions made to or under the defined benefit plans, to the extent that these contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard for any of the defined benefit plans for the plan year which ends with or within the tax year (or for any earlier plan year). For single-employer defined benefit plans, the amount necessary to satisfy the minimum funding standard for the plan year (item (2)) was not less than the plan's funding shortfall, determined under the §430 minimum funding rules.
	The Act amends the provisions of §404(a)(7)(A) such that, for a single-employer defined benefit plan, the amount necessary to satisfy the minimum funding standard for the plan year is not less than the excess (if any) of the plan's funding target (as defined by §430(d)(1)) over the value of the plan's assets (determined under §430(g)(3)).
	Effective Date: For years beginning after Dec. 31, 2007.
§404(a)(7)(C)(iii)	**Deduction limit for contributions to defined contribution plans in combination with other plans is modified**
	Under pre-Act law, where an employer contributes to one or more defined contribution plans, the overall deduction limit on contributions to a combination of plans applies only to the extent that the defined contribution plan contributions exceeds 6% of the compensation otherwise paid or accrued during the tax year to the plans' beneficiaries.
	The Act provides that if defined contributions do not exceed 6% of compensation otherwise paid or accrued during the tax year to the beneficiaries under the plans, the overall limit on combinations of plans does not apply to the employer contributions to the defined benefit plans to which the overall limit would otherwise

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	apply, and if the contributions exceed 6% of compensation, the overall deduction limit is applied by only taking into account the contributions to the extent that they exceed 6%. Effective Date: For contributions for tax years beginning after Dec. 31, 2005.
§§408A(c)(3)(B) and (d)(3)(B)	**Distributions from “designated Roth accounts” may be rolled over to a Roth IRA tax-free without meeting pre-2010 conditions for “eligible retirement plans”** Under the Pension Protection Act of 2006 (PPA, PL 109-280, Aug. 17, 2006), a taxpayer was allowed to rollover into a Roth IRA, a distribution from any "eligible retirement plan" (i.e., a qualified retirement plan, a §403(b) annuity, a governmental §457 plan, or an IRA). However, for tax years beginning before 2010, an amount in an individual's eligible retirement plan could not be rolled over to a Roth IRA in a qualified rollover contribution if, for the tax year in which the distribution is made from the plan: (1) the individual's “modified adjusted gross income” exceeded $100,000, or 2) the individual was married and filed a separate return. Under pre-Act law, only distributions from another Roth IRA were not subject to these qualified rollover contribution requirements. The Act provides that distributions from a "designated Roth account" can be rolled over to a Roth IRA without having to meet the pre-2010 tax year requirements for qualified rollover contributions from an eligible retirement plan to a Roth IRA. The Act also provides that distributions from a designated Roth account to a Roth IRA are tax-free. Effective Date: For distributions made after Dec. 31, 2007.
§409A(b)(3)(A)(ii)	**Rule penalizing restriction of nonqualified deferred compensation (NQDC) plan assets in connection with a restricted period of employer's defined benefit plan is limited to restrictions for covered employees** §409(A)(b)(3)(A)(ii) provides that if an employer's nonqualified deferred compensation plan provides that assets will be restricted to the provision of benefits under the plan in connection with a restricted period as defined by the Code (or other similar financial measure as determined by the IRS) of any defined benefit pension plan of the employer, or if assets are so restricted, then those assets are treated as property transferred in connection with the performance of services under §83. The Act amends §409(A)(b)(3)(A)(ii) by specifically applying the provision to assets that are restricted under a NQDC plan "with respect to an applicable covered employee," as defined by the Code. Effective Date: For transfers or other reservation of assets after Aug. 17, 2006.
§411(a)(13)(A)	**Application of the "cash out" rules to cash balance plans is clarified** The Pension Protection Act of 2006 (PPA, PL 109-280, Aug. 17, 2006) provided special rules for “applicable defined benefit plans” (hybrid pension plans that met certain vesting, interest rate, and minimum benefit requirements) that determine any portion of a participant's benefits under a lump sum-based benefit formula.

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	Applicable defined benefits plans were not treated as failing to meet certain rules, solely because the present value of a participant's accrued benefits was expressed as the balance in the participant's hypothetical account (for cash balance plans), or as the accumulated percentage of the participant's final average compensation (for pension equity plans).
	The Act adds the §411(a)(11) "cash-out" rules to the list of requirements that applicable defined benefit plans are not treated as failing to meet solely due to the fact that these plans expressed participants' accrued benefits as the balance in the participant's hypothetical account, or as the accumulated percentage of the participant's final average compensation.
	Effective Date: For distributions made after Aug. 17, 2006, for periods beginning on or after June 29, 2005.
§411(b)(5)(B)(i)(II)	**Violation of preservation of capital rule by cash balance plans is treated as a violation of age discrimination rules**
	Under the §411(b)(1)(H)(i) age discrimination rules, a defined benefit plan may not provide for the cessation or reduction of benefit accruals for an employee because of the employee's reaching a certain age, or risk disqualification. A safe harbor from the age discrimination rules existed for “applicable defined benefit plans,” provided that certain rules were satisfied. The "preservation of capital" rule requires an applicable defined benefit plan to provide that interest credits will not result in a hypothetical account balance (or similar amount) being less than the aggregate amount of the hypothetical allocations. However, under pre-Act law, there were no clear consequences for violating the "preservation of capital" rule.
	The Act amends the "preservation of capital" rule to provide that an applicable defined benefit plan will be treated as failing to meet the age discrimination rules of §411(b)(1)(H) if it fails the preservation of capital rule.
	Effective Date: For years beginning after Dec. 31, 2007.
§412(c)(7)(A)	**One-year prohibition on plan amendments that increase plan liabilities isn't triggered by a prior retroactive amendment that didn't reduce any participant's accrued benefits**
	The minimum funding rules provide that an amendment that increases plan liabilities by increasing benefits, changing benefit accruals, or changing the rate at which plan benefits become nonforfeitable cannot be adopted, among other conditions, if a previous plan amendment described in §412(d)(2) (a retroactive plan amendment) has been made at any time in the preceding 12 months (24 months for a multiemployer plan).
	The Act clarifies that the restriction on plan amendments applies to a previous §412(d)(2) retroactive plan amendment made at any time in the preceding 12 months (24 months for a multiemployer plan), but only if the amendment reduced any participant's accrued benefit.
	Effective Date: For plan years beginning after 2007.
§412(d)(1)	**A change in a plan's valuation date is treated as a change in the plan's funding method for minimum funding standard purposes**

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	Under the minimum funding rules, a change to a plan's funding method, valuation date, or plan year can take effect only with IRS consent.
	The Act removes the reference to “valuation date” in the list of changes under the minimum funding rules that require IRS consent. Thus, a change in a plan's valuation date is treated as a change in the plan's funding method.
	Effective Date: For plan years beginning after 2007.
§§414(w)(3) and (w)(5)	**Definition of "eligible automatic contribution arrangements," from which permissive withdrawals can be made, is broadened**
	The Pension Protection Act of 2006 (PPA, PL 109-280, Aug. 17, 2006) enabled plan participants for applicable employer plans (i.e., §401(a) employees' trust, §403(b) annuity, and §457(b) eligible deferred compensation plan) to make withdrawals ("permissible withdrawals") within 90 days of the date that the first automatic contribution is made to a participant's eligible automatic contribution arrangement (EACA). Under pre-Act law, contributions under an EACA were to be invested in accordance with regulations to be prescribed by the Department of Labor (DOL).
	The Act repeals the requirement that EACA contributions be invested in accordance with DOL regulations. The Act also extends the permissible withdrawal rules by expanding the definition of "applicable employer plan" to include a simplified employee pension the terms of which provide for a salary reduction arrangement described in §408(k)(6) (SARSEP), and a simple retirement account described in §408(p)) (SIMPLE IRA).
	Effective Date: For plan years beginning after Dec. 31, 2007.
§414(w)(6)	**Automatic contribution permissible withdrawals disregarded for purposes of the elective deferral limit**
	A permissible withdrawal from an eligible automatic contribution arrangement (EACA) is not taken into account for purposes of the participation and nondiscrimination rules applicable to 401(k) plans..
	The Act provides that a permissive withdrawal is also not taken into account in determining the annual limit on elective deferrals under §402(g)(1).
	Effective Date: For plan years beginning after Dec. 31, 2007.

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§414(x)(1) **Defined benefit and 401(k) plan components in an "eligible combined plan" must be terminated separately**

The Pension Protection Act of 2006 (PPA, PL 109-280, Aug. 17, 2006) established rules for an "eligible combined plan" (i.e., combination of a defined benefit plan and a 401(k) plan) for plan years beginning after 2009. The rules are applied to the defined benefit component and the 401(k) component separately, in the same manner as if each component were not part of the eligible combined plan.

The Act provides that when an eligible combined plan is terminated, the plan administrator must terminate the defined benefit plan and the 401(k) plan separately.

Effective Date: For plan years beginning after Dec. 31, 2009.

§415(b)(2)(E)(v) **Mortality table used for adjusting defined benefit plan limits is conformed to the mortality table used for plan funding purposes**

Under §417(e)(3)(B), the present value of accrued benefits in a defined benefit plan must be determined using the "applicable mortality table," which is a mortality table modified as appropriate by the IRS, and based on the mortality table specified for the plan year under §430(h)(3)(A). The defined benefit plan limit rules specify that the prevailing commissioner's mortality table described in §807(d)(5)(A) was to be used to adjust any benefit or limitation under §415(b)(2)(B) (adjustment of benefits that are paid in a form other than a straight life annuity for the purpose of applying the limitations on benefits); §415(b)(2)(C) (actuarial adjustment of the dollar limitation for retirement benefits that begin before social security retirement age); or §415(b)(2)(D) (actuarial adjustment of the dollar limitation for retirement benefits that begin after age 65).

The Act provides that the mortality table used for purposes of adjusting any benefit or limitation under §§415(b)(2)(B) through (D) must be the "applicable mortality table" described in §417(e)(3)(B).

Effective Date: For plan years beginning after Dec. 31, 2008, but may be applied to any plan year beginning after 2007 and before 2009, or to any portion of any such plan year, if the plan sponsor elects.

§415(b)(2)(E)(vi) **Interest rate rules for determining lump-sum and other benefits not payable as a straight life annuity are modified for certain small (100 or fewer participants) defined benefit plans**

To be tax qualified, §415 prescribes that the annual benefit accrued by a defined benefit plan participant (whether or not the benefit is vested), or the annual benefit payable to a defined benefit plan participant at any time under the plan, be equal to a certain sum (as calculated by §415). If a retirement benefit is paid in any form other than a straight life annuity (e.g., a lump sum), the benefit must be adjusted to a straight life annuity. If a benefit is payable in a form that is subject to minimum value rules (§417(e)), the interest rate that must be used in adjusting the benefits is prescribed by the Code (the "interest rate rules"). Under pre-Act law, there was no variation of these rules for small plans.

The Act modifies the interest rate rules for adjusting a participant's benefit to a straight life annuity for plans maintained by "eligible employers" so that the interest rate must be the greater of 5.5%, or the interest rate specified in the plan for

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	actuarial purposes. An "eligible employer" is an employer that had no more than 100 employees who received at least $5,000 of compensation from the employer for the preceding year. Other provisions apply. Effective Date: For years beginning after Dec. 31, 2008.
§420(c)(1)(A)	**Rules permitting use of excess defined benefit plan assets to fund current and future retiree health benefits are clarified** A defined benefit plan can provide health benefits to retired employees through a sub-account maintained under the plan (a “401(h) account”). Under §420, certain over-funded plans are allowed (in any tax year before 2014) to transfer their excess assets to the 401(h) account for purposes of funding the retiree health benefits provided under the account, as long as the transfer is a “qualified transfer.” In addition to other requirements, a qualified transfer must satisfy the “use requirement,” under which any assets transferred to a 401(h) account must only be used to pay qualified current retiree health liabilities for the taxable year of the transfer. Any transferred assets (and allocable income) which are not used in this way must be transferred out of the 401(h) account, and returned to the general assets of the plan. The amount returned is treated as an employer reversion, and is thus subject to a 20% excise tax under §4980). The Pension Protection Act of 2006 (PPA, PL 109-280, Aug. 17, 2006) amended the scope of §420 transfers to apply to expected costs of current and future retiree health liabilities (a "qualified future transfer"), or the expected cost of retiree health liabilities under a collective bargaining agreement during the “collectively bargained cost maintenance period” (generally, the shorter of either the covered retiree's remaining lifetime, or the coverage period provided by the health plan) (a "collectively bargained transfer"). However, under pre-Act law, the use requirement itself made no reference to the permissible use of transferred assets to cover future retiree health liabilities under either a qualified future transfer or a collectively bargained transfer. Thus, any such otherwise qualified transfer amounts were technically subject to the 20% excise tax. The Act amends the use requirement to include the rule that any assets transferred pursuant to a qualified future transfer or a collectively bargained transfer can be used to pay the expected cost of future retiree health liabilities. Effective Date: For transfers made after Aug. 17, 2006.
§430(b), (h)(2), (i)(2), (j)(3), and (k)(6)(B)	**Definition of "target normal cost" modified to account for expected plan-related expenses and mandatory employee contributions; other funding rules on interest rates, at-risk plans, and quarterly payments clarified** Under the 2006 Pension Protection Act (PPA, PL 109-280, Aug. 17, 2006), the minimum required contribution to a defined benefit plan (other than a multiemployer plan) for a plan year depends on whether the plan has a funding excess for the plan year or a funding shortfall as determined under §430. For plans with a funding excess, the minimum funding contribution is the plans' “target normal cost” for the plan year, less the excess of the value of plan assets over the funding target. For plans with a funding shortfall, the minimum required contribution is the sum of the target normal cost for the plan year; the “shortfall amortization charge” (if any) for

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the plan year; and the "waiver amortization charge" (if any) for the plan year.

A plan's target normal cost for a plan year includes the present value of all benefits that are expected to accrue or to be earned under the plan during the plan year. However, under pre-Act law, the target normal cost, including such cost for at-risk plans (discussed below), did not take into account the plan-related expenses or the mandatory employee contributions expected to be paid during the plan year. In addition, specified interest rates and mortality tables were used in applying the minimum funding rules. Further, a plan was in "at-risk status" for a plan year if: (1) The plan's "funding target attainment percentage" (the ratio of the value of plan assets to the plan's funding target) for the preceding plan year is less than 80% (the "80% test"), and (2) the funding target attainment percentage for the preceding plan year, determined by using the additional actuarial assumptions for at-risk plans, is less than 70% (the "70% test"). Under a transition rule applicable to 2008 through 2010, to determine a fund's at-risk status, the funding target attainment percentage for the 70% test transition rule may be determined by using methods of estimation provided by the IRS.

The Act amends the definition of a plan's target normal cost for any plan year such that it equals the excess of: (1) the sum of the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, plus the amount of plan-related expenses expected to be paid from plan assets during the year; over (2) the amount of mandatory employee contributions expected to be made during the plan year.

The Act also provides that, for any plan year, segment interest rates must be used to determine the plan's target normal cost (as well as the plan's funding target) and that the segment interest rates are used to determine the present value of plan benefits, rather than liabilities.

Further, the Act allows the IRS to determine the funding target attainment for both the 80% test and the 70% test funding target attainment percentages for purposes of applying the transition rule. The Act changes the determination of the at-risk target normal cost by adding to the sum the plan year's expected plan-paid expenses and mandatory employee contributions. As under pre-Act law, however, the same loading factor must still be added for 2 of the 4 preceding plan years. Finally, the Act provides that, for plan years beginning in 2008, the determination of whether a plan has funding shortfalls may be determined using the methods of estimation that IRS may provide.

Effective Date: The amendments to §§ 430(b) and (i) apply to plan years beginning after Dec. 31, 2008. If the plan sponsor so elects, such amendments shall apply to a plan for the first plan year beginning after Dec. 31, 2007. All other amendments apply to plan years beginning after Dec. 31, 2007.

§430(c)(5)(B) — **Transition rule for determining a pension plan's funding shortfall is clarified**

The 2006 Pension Protection Act modified the minimum funding rules such that an amortization base had to be established for any funding shortfalls (i.e., plan's funding target for the year exceeds the value of the plan's assets). The PPA included transition provisions for plan years beginning after 2007 and before 2011, such that no amortization base had to be established if the value of plan assets for the plan year equaled the following percentages of the funding target for the plan year: 92% for 2008, 94% for 2009, and 96% for 2010. However, the transition rule did not apply to any plan year after 2008 unless, for each preceding plan year after

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	2007, the plan's shortfall amortization base was zero.
	The Act extends the transition rule to plan years beginning after 2008 even if, for each preceding plan year after 2007, the plan's shortfall amortization base was not zero.
	Effective Date: For plan years beginning after Dec. 31, 2007.
§430(g)(3)(B)	**"Smoothing" provision to allow for adjustment for expected earnings required when averaging fair market values to determine value of plan assets for purposes of the single-employer defined benefit plan funding rules**
	Generally, in applying the minimum funding standards for defined benefit plans, the value of plan assets is the fair market value of the assets. Under certain conditions, a plan may determine the value of plan assets on the basis of the averaging of fair market values (the "smoothing" provision). Under pre-Act law, averaging of plan assets were adjusted for contributions and distributions, but were not adjusted for expected earnings.
	The Act provides that any averaging of the fair market values of plan assets must also be adjusted for expected earnings. Expected earnings must be determined by the plan's actuary on the basis of an assumed earnings rate specified by the actuary, but not in excess of the third segment interest rate (based on the corporate bond yield curve, §430(h)(2)(C)(iii)), as specified by IRS.
	Effective Date: For plan years beginning after Dec. 31, 2007.
§432	**Multiemployer plan sponsors may elect to retain prior plan year's status as endangered or critical for the plan year during the period beginning Oct. 1, 2008 through Sept. 30, 2009**
	Generally, for plan years beginning after 2007, any multiemployer defined benefit plan that is in endangered or critical status, and that is subject to the §412 and §431 funding rules, must adopt and comply with a funding improvement plan (if in endangered status) and a rehabilitation plan (if in critical status). For plans in critical status, additional required contributions and benefit reductions apply, and employers are relieved of liability for minimum required contributions under the otherwise applicable funding rules, provided that a rehabilitation plan is adopted and followed.
	The Act allows the sponsor of a multiemployer defined benefit pension plan to elect, for a plan year beginning during the period beginning on Oct. 1, 2008, and ending on Sept. 30, 2009 (the “applicable plan year”), to treat the plan's status for purposes of §432 to be the same as the plan's status for the preceding plan year, notwithstanding the actuarial certification of the plan's status in the applicable plan year (as determined under §432(b)(3)). Thus, a multi-employer plan sponsor may delay the designation of the plan as in endangered or critical status, effectively postponing the requirement to update its funding improvement or rehabilitation plan and schedules. Other provisions apply.
	Effective Date: For the first plan year beginning during the period from Oct. 1, 2008, through Sept. 31, 2009.
§432	**Funding improvement and rehabilitation periods for multiemployer plans in**

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	endangered or critical status for plan years beginning in 2008 or 2009 may be extended three years
	As noted above, for plan years beginning after 2007, any multiemployer defined benefit plan that is in endangered or critical status, and that is subject to the §412 and §431 funding rules, must adopt and comply with a funding improvement plan (for a multiemployer plan in endangered status) and a rehabilitation plan (for a multiemployer plan in critical status). A 10-year funding improvement period and 10-year rehabilitation period applies. A 15-year funding improvement period applies to a plan that is "seriously endangered.
	The Act allows a plan sponsor of a multiemployer defined benefit pension plan to elect, for a plan year beginning in 2008 or 2009, to extend the plan's otherwise applicable funding improvement or rehabilitation period by three years. Other provisions apply.
	Effective Date: For plan years beginning after Dec. 31, 2007.
§§432(b)(3)(D)(iii) and (e)(8)(C)(iii)	**Responsibility for issuing model notices explaining multiemployer plans' critical funding status shifted from the Department of Labor (DOL) to the IRS**
	Under pre-Act law, the DOL was required to issue a model notice that plans in critical status could use to meet notification requirements. The DOL also was to issue regulations prescribing the form and manner (including a model notice) in which the notice of adjustable benefit reduction could be provided to the required parties.
	The Act transfers responsibility for developing the above regulations and model notices from the DOL to the IRS.
	Effective Date: For plan years beginning after Dec. 31, 2007.
§§432(c)(7) and (e)(3)(C)	**Schedule for implementing and enforcing default funding improvement and rehabilitation plans for underfunded multiemployer plans clarified; ERISA enforcement provision added**
	A multiemployer pension plan in endangered status must adopt and follow a funding improvement plan that's designed to increase the multiemployer plan's funding level over a 10-year period. Within 30 days after the funding improvement plan is adopted, the multiemployer plan sponsor must provide at least one schedule to the bargaining parties showing revised benefit structures, revised contribution structures, or both, which, if adopted, are reasonably expected to allow the multiemployer plan to meet the funding improvement plan's financial benchmarks. Under pre-Act law, if the parties involved in the collective bargaining agreement fail to agree on changes to contribution or benefit schedules after the initial agreement that was created upon entering endangered status expires, then a default schedule (provided by §432 of the Code) must be implemented as of the earlier of the date on which the Department of Labor (DOL) certifies that the bargaining parties are at an impasse, or the date that is 180 days after the date on which the collective bargaining agreement expires.
	The Act modifies the triggering event for imposing the default funding improvement plan or default rehabilitation plan on the bargaining parties such that the default plans are imposed if the bargaining parties fail to adopt a contribution schedule with terms consistent with the funding improvement plan or rehabilitation plan, and a

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	schedule from the multiemployer plan sponsor. The timing rules are also modified by eliminating the reference to the date of the DOL's certification of a bargaining impasse as the date on which the default funding improvement plan and the default rehabilitation plan can be imposed. Thus, a multiemployer plan sponsor must now implement the default schedule beginning on the date that is 180 days after the expiration date of the collective bargaining agreement under which plan contributions are made. Effective Date: For plan years beginning after Dec. 31, 2007.
§432(f)(2)(A)(i)	**Participants whose annuity starting date comes before critical status notice is sent by underfunded multiemployer plan, are not subject to restriction on accelerated benefit payments** To preserve the assets of multiemployer plans in critical status, such plans are subject to limits on making lump-sum payments. Effective on the date that the notice of certification of a multiemployer plan's critical status for the initial critical year is sent, the plan cannot make any payment in excess of the monthly amount paid under a single life annuity (plus any social security supplements), subject to certain exceptions. The Act amends the restriction on making payments in excess of the monthly amount paid under a single life annuity to provide that the restriction only applies to participants or beneficiaries whose annuity starting date occurs after the date that the notice is sent. Effective Date: For plan years beginning after Dec. 31, 2007.
§432(i)(9)	**Rules changed in how to calculate excise tax imposed for failing to timely adopt a rehabilitation plan** If a plan sponsor fails to adopt a rehabilitation plan for a plan in critical status in a timely manner, the sponsor is subject to an excise tax imposed under §4971(g)(4) of the Code. The Act revises the excise tax penalty determination timing. The Act rearranges the definition of plan sponsor (for purposes of §§ 431, 432, and 4971(g)) and adds a special rule for §404(c) plans (i.e., certain negotiated plans that were established before 1954 under an agreement between the federal government and employee representatives during a period of government operation, under the government's seizure powers, of a major part of the productive facilities of the industry in which the employer was engaged). Effective Date: For plan years beginning after 2007 that end with or within any tax year beginning after 2007.

CODE SECTION	DESCRIPTION OF PROVISION
§436(d)(5)	**Lump-sum payments of $5,000 or less are not subject to funding-based limit on accelerated forms of distribution**

Generally, qualified plans are not permitted to immediately distribute any nonforfeitable accrued benefit without the consent of the participant. However, a plan may immediately distribute a lump sum accrued plan benefit whose present value is $5,000 or less, without a participant's consent. The Pension Protection Act of 2006 (PPA, PL 109-280, Aug. 17, 2006) added a funding-based limit for single-employer defined benefit plans on the distribution of “prohibited payments” (benefits in a form other than a life annuity), such that the payment of a lump-sum benefit from a defined benefit plan was barred where the plan fails to meet specified funding targets.

The Act amends the definition of “prohibited payment” so that the term does not include the payment of a benefit which, under §411(a)(11), may be immediately distributed without the participant's consent.

Effective Date: For plan years beginning after Dec. 31, 2007.

§436(e)(1) **Temporary rule allows avoidance of future benefit accrual limitation if plan's "adjusted funding target attainment percentage" (AFTAP) for the preceding plan year is 60% or more**

Single-employer defined benefit plans are subject to certain funding–based limits on benefits and benefit accruals, including a limit on benefit accruals for plans with severe funding shortfalls. Among the limitations is a requirement providing that if the plan's AFTAP is less than 60% for a plan year, all future benefit accruals under the plan must cease as of the valuation date for the plan year (“future benefit accrual limitation”). A plan's AFTAP is the ratio, expressed as a percentage, that the value of the plan's assets (generally reduced by any funding standard carryover balance and prefunding balance) bears to the plan's funding target for the year (determined without regard to a whether a plan is in at-risk status under the minimum funding rules).

The Act provides that, in the case of the first plan year beginning during the period beginning on Oct. 1, 2008, and ending on Sept. 30, 2009, §436(e)(1) (limit on benefit accruals for plans with severe funding shortfalls) will be applied by substituting the plan's AFTAP for the preceding plan year for the percentage for the plan year, but only if the AFTAP for the preceding year is greater.

Effective Date: For the first plan year beginning during the period beginning on Oct. 1, 2008, and ending on Sept. 30, 2009.

CODE SECTION	DESCRIPTION OF PROVISION
§436(k)	**IRS may prescribe rules for application of the funding-based benefit and accrual limits to small plans with alternate valuation dates**

For purposes of applying the minimum funding standards, all determinations (e.g., funding target, target normal cost, etc.) for a plan year of a single-employer defined benefit plan must be made as of the plan's valuation date for the plan year (except as otherwise provided). Generally, a plan's valuation date is the first day of the plan year. However, if on each day during the preceding plan year a plan had 100 or fewer participants (a "small plan"), then the plan may designate any day during the plan year as its valuation date for that plan year and succeeding plan years. The PPA added funding-based limits on the types of distributions and benefit accruals that a plan may make when it does not meet certain minimum funding levels, determined by reference to the plan's adjusted funding target attainment percentage (AFTAP) as of the valuation date. Under pre-Act law, there was no provision for coordinating the alternate valuation date available to small plans with the funding-based limits on distributions and benefits.

The Act provides that, for a plan which has designated a valuation date other than the first day of the plan year, the IRS may prescribe rules for the application of the funding-based limits as necessary to reflect the alternate valuation date for small plans.

Effective Date: For plan years beginning after Dec. 31, 2007.

§436(l)	**"Single-employer plan" defined for funding-based benefit limit purposes**

"Single-employer" defined benefit plans are subject to funding-based limits on the types of distributions and benefit accruals that a plan may make when it does not meet certain minimum funding levels. Under pre-Act law, "single-employer plan" was not defined for this purpose.

The Act defines "single-employer plan" as a plan that is not a multiemployer plan. A "multiemployer plan" is defined as a plan: (1) to which more than one employer is required to contribute; (2) which is maintained under one or more collective bargaining agreements between one or more employee organizations and more than one employer; and (3) which satisfies Department of Labor regulations.

Effective Date: For plan years beginning after Dec. 31, 2007.

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