
2009 LEGISLATION UPDATE

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2009 Legislative Update

Texas Law Update

Mortgage Lending - HB 10 - This bill adopts the provisions of the Secure and Fair Enforcement Mortgage Licensing Act to make them applicable to mortgage originators in Texas and establishes licensing standards for mortgage originators in the state.

Cell Phones in Vehicles - HB 55 - This bill preempts all municipal ordinances regulating use of wireless devices (cell phones) in school crossing zones and prohibits use of wireless devices in school crossing zones (a) unless the vehicle is stopped or (b) the driver is using a hands-free device. Any school crossing zone to which the wireless device ban is applied must be marked with signage.

Divorces - HB 72 - The normal waiting period for a divorce to be granted is 60 days from the day of filing the petition. In instances of family violence, a divorce may be granted in less than 60 days if there is a conviction (or a deferred adjudication) for a family violence offense or if there is a protective or other court order pertaining to an instance of family violence.

Barratry and Solicitation of Professional Employment - HB 148 - The anti-barratry law is expanded to encompass solicitations however accomplished instead of only those transmitted by mail. The law applies only to attorneys, chiropractors, physicians, surgeons, private investigators and persons licensed, registered or certified by a state health care regulatory agency. The law does not apply to accountants.

Student Discipline - HB 171 - A school district is now required to take mitigating factors into account when punishing a student, including self defense, lack of intent, disciplinary history and disabilities. Previously, consideration of mitigating factors was optional.

Motor Vehicle Taxes - HB 236 - Persons with orthopedic impairments that require motor vehicle modifications are exempt from the motor vehicle sales tax. The law is clarified that dealers are not to collect any motor vehicle sales tax on such sales where proper exemption documentation is submitted.

Jury Duty - HB 319 - A person is exempt from jury service if they have a child under age 15 who would be left without adequate supervision if the person was required to serve on a jury.

Small Businesses - HB 394 - The Texas Enterprise Fund was established to encourage economic development and job creation in the state. This legislation directs the governor to consider making grants from the fund to encourage the development and location of small businesses in

Texas to in-state small businesses that commit to using the grant to create additional jobs, to out of state small businesses who relocate to the state, or for individual projects creating 100 or fewer jobs. A small business is defined as an independently owned, for profit entity with less than 100 employees.

Tax Sales - HB 406 - Tax sales of real property sometimes generate more funds than are actually owed to the taxing entities. Any excess proceeds from the sale must be remitted to the clerk of the court issuing the order of sale within ten days of the sale. A person who first acquired an interest in the property after the date of the court's judgment ordering the sale may not assert a claim to the excess proceeds. The legislature set rules concerning assignments of rights to receive excess proceeds.

Child Daycare - HB 415 - A law in 2007 provided for a streamlined regulatory process for small business employers to have onsite daycare. This new law increased the number of eligible small businesses by increasing from 50 to 100 the maximum number of employees for the employer to be an eligible small business employer.

New Permits and Licenses - HB 422 - The Comptroller is required to include a notice on all permit and license applications warning the applicant that additional licenses or permits may be necessary from the state or local government and directing the applicant to TexasOnline.com for additional information.

Victim Compensation - HB 453 - A law enforcement agency that receives proceeds from the sale of motor vehicles abandoned as a result of a vehicle pursuit may now use those proceeds to compensate persons whose property was damaged as a result of the pursuit (e.g., fences knocked down as a result of the chase).

Sales Receipts - HB 523 - A sales receipt must not contain an individual's drivers license number. There is a \$500 civil penalty for any violation of this new law.

Residential Leases - HB 534 - A person who guarantees a residential lease is liable for rents owing under the original lease term only, except that a guarantor may agree in an original lease to guaranty a renewal when certain additional information is included in the original lease.

Guardianship Reform - HB 587 - When a court creates a guardianship, the court may authorize the attorney to be compensated by the County, but the compensation is limited to reasonable attorneys' fees and then only if the attorney is not compensated for that work from any other source.

Title Company Escrow Officers - HB 652 - Under the new law, a title company escrow may be a resident of a neighboring state. Prior law required escrow officers to be residents of Texas. A non-resident escrow officer may, in a switch from existing law, also serve as a notary public.

Real Estate Foreclosures - HB 655 - Trustees may now allow a purchaser at a real estate foreclosure sale a reasonable time to deliver the purchase proceeds. Prior law required immediate payment.

Lien Filings - HB 669 - In 1997, as a result of a spate of fraudulent lien filings by anti-government and tax protest groups, legislation was enacted providing penalties for fraudulent lien filings. This law now provides that a lien claimant is not liable for the use of a document in connection with the assertion of a claim unless the lien claimant acts with the intent to defraud.

Journalist Privilege - HB 670 - Texas has followed the lead of a majority of other states in prohibiting a governmental entity from attempting to force a journalist to testify or disclose information or documentation except where the information is not available from another source and the interest of the party seeking the information outweighs the public's interest in gathering and dissemination of news, including the journalist's concerns.

Charities and Medicare Providers - HB 671 - The criminal penalties for theft from a 501(c)(3) charity or by a Medicare provider are increased.

Unpaid Wage Claims - HB 762 - Claims for unpaid wages may now be filed by fax or any other means determined by the Texas Workforce Commission, including potentially via the internet.

Ad Valorem Taxes - HB 770 - If real property or improvements for which a residential property owner holds a homestead exemption is damaged by a casualty or wind or water damage, the property owner may continue the homestead exemption if the owner does not claim an exemption on other property, intends to return to the property, and, within one year of vacating the property, begins active construction or physical preparation of the site. This continued exemption is available for two years. If the property is sold before completion of construction, the property owner must pay the taxes that would have been due but for the continued exemption plus an additional seven percent interest from the date on which the additional tax would have been due. Additionally, a replacement structure is not considered an improvement so long as the square footage of the replacement building is no larger than the square footage of the damaged building and the exterior of the replacement building is not of a higher quality construction and composition than the damaged building. Additionally, the land, buildings and personal property owned by chambers of commerce and economic development organizations are generally exempt from ad valorem taxes.

Economic Development - HB 773 - Texas governmental entities are authorized to abate ad valorem taxes on agreements with property owners. The Property Redevelopment and Tax Abatement Act has been extended to September 1, 2019.

Foreign Commerce - HB 782 - Mexican trucks have been allowed to operate in border commercial zones, including moving trailers between the United States and Mexico. Because some of the Mexican carriers are registering the vehicles in states other than Texas, the new law requires that any vehicles operating in Texas that are owned by a foreign company and not registered in Texas - or in a state with a Texas registration reciprocity agreement - must be registered in Texas.

Economic Development - HB 873 - The threshold requirements for a Moving Image Incentive Program (the movie studios) grant have been reduced to encourage more movie productions in the state.

Billboards - HB 875 - There are criminal penalties for placing signs in road rights of way. In lieu of the criminal penalty, a district attorney or county attorney may sue for the penalty and attorneys fees.

Residential Leases - HB 882 - A landlord is prohibited from cutting off utilities on a residential lease except for bona fide repairs, construction or an emergency. If a landlord cuts off utilities in violation of the law, a tenant may now obtain a writ of restoration with a justice of the peace on an ex parte basis requiring an immediate and temporary restoration of utility services pending a final hearing and service of notice on the landlord.

Employment - HB 978 - The definition of "disability" for purposes of prohibition against persons with employment disabilities has been expanded and is now to be construed broadly and include persons having an impairment that affects a major life activity, even when the impairment is not continuous but is episodic or even in remission.

Ad Valorem Taxes - HB 986 - The time to file for a judicial appeal of an ad valorem ruling has been extended from 45 to 60 days and tax collectors are now required to follow specific rules on refunding of taxes that have been overpaid.

Ad Valorem Taxes - HB 1030 - Appraisal Districts for counties with populations of more than 500,000 are required to establish an electronic ad valorem tax protest program and residents are entitled to receive, by electronic means, copies of the comparable sales data that the district relies upon for its values.

Ad Valorem Taxes - HB 1038 - In determining the value of a particular residential parcel, an Appraisal District is now prohibited from excluding from consideration the value of other residential properties in the same neighborhood that were foreclosed upon in the past three years or that have declined in value because of a declining economy.

Employment - HB 1043 - Former foster children are entitled to preference in employment with a state agency over other applicants for the same position who do not have a greater qualification.

Dispute Resolution - HB 1083 - A court cannot order mediation in a case that is governed by the Federal Arbitration Act.

Wine Deliveries - HB 1084 - Current law allows a winery or out of state wine merchant to ship no more than 3 gallons of wine per 30 days to a consumer. The new law allows delivery of up to nine gallons per month but no more than the existing 36 gallons per year.

Textbooks - HB 1096 - The Texas Higher Education Coordinating Board is required to provide notice to all students enrolled in institutions of higher education of the availability of required or recommended textbooks at retailers other than bookstores.

Residential Leases - HB 1109 - A landlord may not charge a late fee unless the rent is unpaid for at least one full day after the rent was due.

Ad Valorem Taxes - HB 1205 - The designation of an agent for purposes of an ad valorem tax protest must be made in writing and must be signed by the property owner or someone authorized to sign on behalf of the property owner (other than the designated agent). The designation is not effective until a copy of the signed form is filed with the appraisal district.

Ad Valorem Taxes - HB 2105 - This law increases the dollar amount threshold for requiring County Commissioners Court approval of refunds of ad valorem tax payments.

Ad Valorem Taxes - HB 1257 - Portions of this law generally appear to duplicate HB 770. If real property or improvements for which a residential property owner holds a homestead exemption is damaged by a casualty or wind or water damage, the property owner may continue the homestead exemption if the owner does not claim an exemption on other property, intends to return to the property, and, within one year of vacating the property, begins active construction or physical preparation of the site. This continued exemption is available for two years. If the property is sold before completion of construction, the property owner must pay the taxes that would have been due but for the continued exemption plus an additional seven percent interest from the date on which the additional tax would have been

due. Additionally, a replacement structure is not considered an improvement so long as the square footage of the replacement building is no larger than the square footage of the damaged building and the exterior of the replacement building is not of a higher quality construction and composition than the damaged building. And, small businesses (defined as businesses with gross receipts of \$5 million or less) may now remit ad valorem taxes on real and business personal property that is located in a disaster area in equal installment payments by February 1, April 1, June 1 and August 1. Only those taxes assessed before the one year anniversary of the disaster are eligible.

Insurance Regulation - HB 1294 - Persons who sell annuity contracts or represent insurers in connection with the sale of annuity contracts must complete certain training before selling annuity contracts. Also, use of certifications and professional designations implying specialized certification or training in advising or servicing senior citizens is prohibited if the certification is not earned, the agent is not eligible, the certification is non-existent or self conferred, it implies education that the agent does not have, or the certification is issued by an entity in the business of instruction or marketing.

Ad Valorem Taxes - HB 1407 - A property owner may redeem property sold at a tax sale by paying the required amount to the tax assessor if the redemption period has not passed and, if the property owner signs an affidavit that the person acquiring the property cannot be found, the purchaser does not reside in the county, the owner and purchaser cannot agree on the redemption amount or that the owner refuses to provide a quitclaim deed. The redemption period for residential homestead, land used for agricultural purposes and mineral interests is two years from the date the deed was recorded. The redemption period for all other property is 180 days from the date the deed was recorded.

Employment Training - HB 1452 - Texas has adopted the federal law definitions of veterans for purposes of job training and employment assistance programs, and in selecting applicants to receive job training or employment assistance programs funded in whole or in part with state monies, priority of service must given to veterans and spouses of veterans who died while on active service.

Insurance Capital and Surplus - HB 1476 - Insurance companies organized under Texas law must have a minimum capital of \$2.5 million and minimum surplus of \$2.5 million. Companies have 10 years within which to increase the minimum capital and surplus to \$2.5 million each.

Employment Shared Work - HB 1637 - For purposes of the unemployment compensation shared work program, the number of normal weekly hours of work is the lesser of (a) the number of hours per week that the employee ordinarily works and (b) an average of 40 hours

per week over a two week period. The purpose of the new law was to include shift workers whose work changes weekly on an alternating week basis as eligible employees under the unemployment compensation shared work program.

Insurance Reserves - HB 1761 - This law sets new standards for reserves for credit life and credit accident and health insurance.

Tax Increment Financing - HB 1770 - A county may designate any contiguous geographic area in the county as a reinvestment zone. A municipality may designate any contiguous or noncontiguous area within the corporate boundaries of the municipality, its extraterritorial jurisdiction or both as a reinvestment zone. The designation of an area in the extraterritorial jurisdiction of a municipality as a reinvestment zone is not affected by the subsequent annexation of that property by the municipality.

Ad Valorem Taxes - HB 1804 - Any nonresident owner of property in Texas on which ad valorem taxes are delinquent may be served by serving the Texas Secretary of State, regardless whether the property owner ever resided in Texas.

Rental Properties - HB 1819 - Cities with populations of 1.7 million or more must adopt minimum habitability standards for multi-family residential buildings having three or more rental units and establish a program for inspection of those buildings to determine if they meet the habitability standards. The municipality may not order the closure of a regulated building unless the municipality makes a good faith effort to locate alternate housing with comparable rental rates in the same school district for the residents displaced by the closure. A property owner commits a class C misdemeanor if the owner violates a standards ordinance adopted by the municipality. A municipality may impose a civil penalty for violation of this law.

Energy Efficiency - HB 1937 - A municipality may designate a district within its boundaries in which it will enter into contracts with property owners to assess properties for energy efficiency public improvements. No assessment can be made without the property owner's consent. The law allows a property owner to pay for energy efficiency improvements through property taxes instead of directly.

Probate - HB 1969 - Penalty or forfeiture clauses in wills and trusts, including clauses that a beneficiary of the will or trust who files a court challenge to the will or trust forfeits any rights under the will or trust, is unenforceable if probable cause exists for bringing the claim and the claim was brought and maintained in good faith.

Identity Theft - HB 2004 - State and local governments and their agencies and nonprofit athletic associations are required to notify individuals when sensitive personal information has been released as the result of an unauthorized breach of a computer system.

Government Purchasing - HB 2082 - In purchasing any real or personal property or services for less than \$100,000, a governmental entity may consider, in addition to the low bid, any other bid for an amount within 5% of the low bid from a person whose principal place of business is within the municipality if the municipality determines in writing that the local bidder offers the best combination of contract price and economic development opportunities, including employment of residents and increased tax revenues to the municipality.

Franchise Taxes - HB 2154 - Physicians may apply for tuition loan repayment assistance if they have met various conditions, including completion of medical practice in a health professional shortage area and provision of medical assistance to participants under the Medicaid and child health plan programs. Additionally, the tax on tobacco products (other than cigars) is increased annually beginning September 1, 2009 through 2013. The proceeds of the increase in tobacco tax are to be allocated in the specified proportions to property tax relief, general revenue fund, and the physician education loan repayment program.

Employment Staff Leasing - HB 2249 - Staff leasing companies may now have their reports filed by assurance organizations with the Texas Department of Licensing and Regulation in electronic form. And, for purposes of determining tax credits, grants and other economic development incentives, employees of staff leasing companies are deemed to be employees of clients, and the clients are solely entitled to any such tax credit, grant or other incentive.

Employment Earned Income Tax Credit - HB 2360- Every employer in Texas is required to provide to every employee by March 1 of each year information regarding general eligibility requirements for the federal earned income tax credit. The information must be provided to each employee in person, by email, through a flyer as a payroll stuffer or by first class mail to the employee. The Texas Workforce Commission and the Comptroller of Public Accounts must provide the written form of notice to each employer by mail and by posting on their respective websites.

Accounting Scholarship – HB 2440 - Administration of the fifth year accounting scholarship has been transferred to the Texas State Board of Public Accountancy. Licensed accountants will contribute \$10 per year to the fund.

Insurance - HB 2456 - The Commissioner of Insurance is authorized to establish additional licensing requirements for persons who sell complex insurance products as determined by the Commissioner.

Economic Development - HB 2531 - The governor is required to prepare an annual report on the Texas Emerging Technology Fund, including the number and amount of awards made, the total private sector, federal funds and other funds obtained in connection with awards made, the name of each award recipient and amount received, and a description of the equity position taken in award recipients and the names of those companies.

Motor Vehicle Sales Tax - HB 2654 - A sale of a motor vehicle - for purposes of the motor vehicle sales tax - now includes any transaction in which a motor vehicle is transferred to another without payment of consideration and that does not constitute a gift. A nominal tax of \$10 is imposed on a transfer between family members, on a person who receives the vehicle from an estate, or on a charitable organization that receives a vehicle. Transfers as gifts must include a statement by both parties and must be notarized.

Eminent Domain - HB 2685 - An entity with eminent domain authority must give a copy of the landowner's bill of rights to any landowner at the time the authority first represents to the landowner that the authority has eminent domain authority and, additionally, provide a copy of the bill of rights to the landowner at least seven days before the authority makes a final offer to a landowner. The Attorney General is required to prepare a new landowner's bill of rights statement.

Ad Valorem Taxes - HB 2814 - An individual is entitled to exempt from ad valorem taxation one personally owned vehicle used for both business and for personal use. The motor vehicle is not required to be rendered for taxation.

Ad Valorem Taxes - HB 3206 - The Texas Commission on Environmental Quality is required to use uniform methods for determining eligibility of pollution prevention equipment for exemption from the ad valorem tax and, further, is to establish a permanent committee to advise the TCEQ on implementation of the pollution control equipment exemption.

Motor Vehicle Registration - HB 3433 - The Department of Motor Vehicles is required to establish a system for an owner of a fleet of 25 or more commercial vehicles to register those vehicles in a single registration for a period of one to eight years. All the vehicles may be registered in the county of residence or principal place of business of the owner or those vehicles being operated most regularly in the same county may be registered as a group.

Ad Valorem Taxes - HB 3613 - The residential homestead of a fully disabled veteran due to a service-related injury is exempt from ad valorem taxes. Lesser exemption amounts are available to disabled veterans with a less than 100% disability. The exemption can be claimed up to one year after the delinquency date of the taxes on the homestead.

Homestead Exemption - HB 3767 - A homeowner may transfer a residential homestead into a living trust without affecting the Texas constitutional homestead exemption so long as the trust settlor is a beneficiary of the trust. A married person must comply with other provisions of Texas law requiring joinder of the spouse in the transfer to the trust, and once title is held by the trust, a trustee of the trust may sell or encumber title to the property without the joinder of either spouse unless expressly prohibited by the trust instrument.

Real Estate Title Insurance - HB 3768 - The Commissioner of Insurance is required to adopt rules providing that, for residential property acquired by an individual, a title insurance policy will also provide coverage for a person who inherits upon the insured's death, the insured's spouse who receives title on a dissolution of the marriage, the trustee or successor of a trust established after the date of title and to which title is transferred, and the beneficiaries of such a trust upon the death of the insured.

Ad Valorem Taxes - HB 3896 - Local ad valorem tax abatements may be deferred to a date after the abatement agreement date, but an abatement period cannot exceed ten years. Additionally, a county may enter into a tax abatement agreement with the owner of personal property in a reinvestment zone to exempt the real property, personal property or both. A county may also enter into a tax abatement agreement with the owner of a leasehold interest in exempt real property in a reinvestment zone to exempt all or part of the value of the leasehold interest. Finally, a county may enter into a tax abatement agreement with the lessee of real property located in a reinvestment zone and exempt from taxation the value of the fixtures, improvements or other real property owned by the lessee and the value of the tangible personal property owned by the lessee.

Mortgage Liens - HB 3945 - Title insurance company officers have been able to sign and record mortgage lien releases in certain instances where the land seller has paid off the loan but the lien release is never delivered. That authority to sign and record lien releases is now extended to a licensed title insurance agent who is given written authority to do so.

Low Income Housing Tax Credits - HB 4275 - In anticipation of receiving federal funds under the American Recovery and Reinvestment Act of 2009 that require the state to distribute those funds in the same manner as awards of housing credits, the new law requires that the same rules apply to both the federal funds and the housing tax program except that there may be a

separate application procedure and separate deadlines for applying, the law is automatically repealed in 2011, and, if allowed by the federal program, the state's interests are to be protected by bonds, an ownership interest in real property, restrictive covenants or liens.

Franchise Tax - HB 4611 - If a lending institution categorizes a loan or security as "Securities Available for Sale" or "Trading Securities", under FAS 115 as of January 1, 2009 (and not including any subsequent amendments), the gross proceeds of the sale of that loan or security are gross receipts for purposes of the franchise tax and included in the apportionment calculation.

Franchise Tax - HB 4765 - For purposes of the franchise tax, the \$300,000 floor for gross receipts is increased to \$1 million effective for a report due on or after January 1, 2010 and expires December 31, 2011. The minimum tax exemption of less than \$1,000 is unchanged. Effective January 1, 2012, the gross receipts floor is reduced from \$1 million to \$600,000 and, further, the 80% and 60% credits are changed to 40% for total revenue between \$600,000 and \$700,000 and to 20% for total revenue between \$700,000 and \$900,000. The minimum tax exemption of \$1,000 is unchanged.

Economic Development - HB - 4798 - The City of League City Improvement District has been created for economic development purposes.

Computer Crimes - SB 28 - A person who is not the owner of a computer may not cause a computer to become a zombie or part of a botnet.

Insurance - SB 79 - The Department of Insurance is required to establish a voluntary certification program for persons who market small employer health benefit plans.

Insurance - SB 80 - According to the bill comments, current law prohibits an insurance carrier from offering varying employer contribution rates as an option to small employers (defined as a person who employs on average two to fifty employees). The new law allows an insurance carrier to offer a small employer health benefit plan under which the employer pays 100% of the premium.

College Tuition - SB 93 - The state tuition exemption for former military personnel has been modified to comply with current federal law standards.

Day Care - SB 93 - Licensed day care centers, group day care homes and registered family homes are prohibited from having any item on premises that is intended for use by a child under 13 that is the subject of a recall from the federal Consumer Product Safety Commission

and each year must certify that it has reviewed every bulletin and notice issued by the CPSC and that there are no prohibited items on the premises.

Motor Fuels Tax - SB 254 - A volunteer fire department in the state is exempt from the motor fuels tax on gasoline and diesel fuel sold to the department for its exclusive use. A department may obtain a refund for any motor fuels tax paid on or after July 1, 2009.

Sales Tax and Franchise Tax - SB 636 - A qualified destination management company may exclude from its total revenue the amount of payments made to other persons to provide services, labor, or materials in connection with the provision of destination management services. This law also sets the rules for the proper venue for collection of sales taxes, including that a municipality may not collect sales taxes based upon the existence of a kiosk at which taxable items are not available for immediate delivery to a customer and including rules involving vendors with multiple places of business in the state and sales made when a purchase order is delivered other than in person. The law allows collection of taxes based upon an economic development agreement with a governmental entity.

Ad Valorem Taxes - SB 771 - This law establishes the criteria for valuing property for ad valorem assessment purposes, including that all available evidence specific to the value of a piece of property must be taken into account and that only sales within the 24 months preceding the valuation date are, generally, to be considered. Additionally, this legislation provides for binding arbitration, including a specific program for expedited binding arbitration, in lieu of filing an appeal of a property valuation. CPAs may serve on an ad valorem tax arbitration panel if they have completed thirty hours of arbitration or alternative dispute resolution training.

Ad Valorem Taxes - SB 798 - This legislation modifies the rules for refunds of overpayment or erroneous payment of ad valorem taxes.

Ad Valorem Taxes - SB 873 - This law appears to duplicate parts of HB 1030 and provides that Texas appraisal districts with an internet website available to the public must provide a system whereby a property owner claiming a residential homestead exemption can file an online valuation protest, access all valuation evidence that the district intends to use at a hearing, and receive any settlement offer from the district.

Sales Tax - SB 958 - Aircraft sold in the state for use exclusively in connection with agricultural use, and machinery and equipment used exclusively in connection with an agricultural aircraft operation, are exempt from the sales tax.

Insurance Premiums - SB 963 - Premiums for long term care insurance products may not be implemented until filed with the Department of Insurance and approved by the Commissioner of Insurance.

Sales Tax - SB 1199 - An entity exempt from paying the sales tax may not obtain an exemption for sales taxes paid before the earlier of (1) the date the organization applied for the exemption and (2) the date of assessment of the tax liability as a result of a Comptroller audit. Additionally, a seller is entitled to reimbursement of the sales tax that was refunded to a purchaser of a returned product when the purchaser receives a refund of some or all of the sales price of a taxable item.

Ad Valorem Taxes - SB 1359 - In an appeal from an ad valorem appraisal decision, a property owner may request the court to rule that the property owner has paid the proper amount of taxes pending the appeal. Each taxing entity must be given notice of the hearing and is entitled to participate in the hearing.

Residential Tenancies - SB 1448 - A Justice of the Peace Court may order repairs be made to a leased residential property in an amount up to \$10,000, excluding interest and court costs. An appeal is made to the County Court at Law; the appeal takes precedence in the County Court and may be held at any time after 8 days after the appeal is filed. A property owner filing an appeal does not have to file an appeal bond to prevent enforcement of a judgment.

Ad Valorem Taxes - SB 1458 - This law appears to duplicate the provisions of HB 3896 concerning tax abatements.

Abandoned Assets - SB 1589 - The legislature requires that a person holding unclaimed property must send notice to the owner of the property before sending the property to the Comptroller and, additionally, certain state agencies are required to notify the Comptroller annually of unclaimed property that they are holding.

Security Interests - SB 1592 - Assignments of certain security interests, including liens on motor vehicles, once the security interest is perfected, need not be recorded to retain the priority of the security interest.

Child Support Liens - SB 1661 - The owner of real property against which a child support lien purportedly attaches may serve and file an affidavit in the manner provided by the Property Code for releases of judgment liens and thereby remove the lien attachment against the property.

Motor Vehicle Registration - SB 1759 - This law appears to duplicate the provisions of HB 3433 concerning multi-year commercial fleet motor vehicle registration. Additionally, the law establishes the Texas clean fleet program to encourage owners of diesel powered motor vehicle fleets to convert to alternative fuel or hybrid vehicles. Grant funds are to be made available to owners of fleets of more than 100 vehicles to cover the cost of purchasing the vehicle and installing emissions reducing equipment.

In 2006, the Texas Business Organizations Code became effective. The Code brought together several statutes regarding corporations, partnerships, limited liability companies, non-profit entities and the like into one code. Texas entities formed after January 1, 2006 are governed by the Code, while any entities formed prior to that time are still covered by prior applicable statutes. Entities governed by statute could elect to be governed by the Code prior to 2010 and in the case of mergers or conversions, the resulting entity was also governed by the Code. However, all that will change on January 1, 2010 when all Texas entities will be governed by the Code.

Most legal changes made during the codification process were superficial such as changes to nomenclature (e.g. Articles of Incorporation are now Certificates of Formation). During the last four years, further amendments and adjustments have been made to clarify provisions and make corrections. The recently concluded Texas legislation continued with a lengthy list of amendments to the Code. The following are selected amendments from that list:

SB 1442 revises numerous sections of the Business Organizations Code:

Section 1 clarifies or corrects or adds certain definitions. Clarification of terms includes noting that a conversion transaction may be known by another name (i.e., domestication, continuance or transfer transaction) in a jurisdiction outside this state. The definitions of "conversion," "converted entity" and "converting entity" are corrected to change references from foreign entity or entity to non-Code organization or organization. A conversion transaction can occur in relation to any kind of organization, including a foreign entity. Two new definitions are added. A "non-United States entity" is defined to mean a foreign entity formed under, and the internal affairs of which are governed by, the laws of a "non-United States jurisdiction," which means any foreign country or other foreign jurisdiction other than the United States, the District of Columbia, or any other possession or territory of the United States. The definition of "shareholder" or "holder of shares" will include a beneficial owner of shares if a for-profit corporation adopts a procedure to recognize and deal directly with a beneficial owner.

Section 2 eliminates the prohibition against operating as a railroad company for a domestic entity. In 2007 the Texas Legislature eliminated the provisions allowing the formation of

railroad companies based on the assumption that it was included in the Code. It was not. Therefore, there is no statutory means to form railroad companies under Texas law at this time. The deletion of this prohibition will correct this situation by allowing railroad companies to be formed under the Code. Railroad companies will continue to be regulated by the provisions of Title 112 and other Texas laws in respect of their operations and powers.

Section 3 adds a new subsection (f) to Section 3.202 to prohibit ownership interest certificates from being issued in bearer form. Bearer form certificates have no registered owners. This change does not affect ownership interest certificates held by nominees.

Section 4 adds new Subchapter F to Chapter 3 that authorizes emergency provisions if a majority of the domestic entity's governing persons cannot readily participate in a meeting because of the catastrophic event. The emergency provisions may make all provisions necessary for managing a domestic entity during the emergency. The emergency provisions are effective only during the emergency. The entity's action taken in good faith in accordance with the emergency provisions binds the domestic entity and may not be used to impose liability on a managerial official, employee or agent of the domestic entity.

Section 9 adds a new Section 9.005 that provides requirements for content to be added to an application for registration by a foreign limited liability company whose company agreement establishes or provides for the establishment of designated series of members, managers, membership interests or assets with the specified characteristics.

Section 10 amends Section 9.009(a) to add a requirement that a foreign limited partnership must amend its application for registration if there is a change in its general partner. This is consistent with the treatment of domestic limited partnerships.

Section 12 adds a new Section 9.012 eliminates the need for filing a formal withdrawal of the registration of the foreign entity prior to conversion. It will no longer be necessary because the filing of the certificate of conversion clarifies the status of the converting foreign entity.

Section 14 adds a new subdivision (15) to Section 9.251 to provide that mere ownership of real or personal property in Texas, without more, will not constitute transaction of business in Texas for the purposes of the requirement to register to do business under Code Chapter 9.

Sections 15 through 18 add provisions that authorize conversion and continuance transactions. Section 15 adds a new Section 10.1025 to authorize a converting entity to elect to continue its existence in its current organizational form and jurisdiction of formation in connection with its conversion under Chapter 10. This election is only available to a domestic entity of one

organizational form that is converting into a non-United States entity of the same organizational form or a non-United States entity of one organizational form converting into a domestic entity of the same organizational form. The permitted election must be adopted and approved as part of the plan of conversion for the converting entity and permitted by, or not prohibited by or inconsistent with, the laws of the applicable non-United States jurisdiction. The concepts in this new section are based on similar concepts contained in the entity laws of the State of Delaware. Because the converting entity continues to exist in both jurisdictions, Chapter 9 will not apply to the entity after its conversion and continuance.

Section 16 revises Section 10.103(a) to provide that, because a conversion of ownership or membership interests is not required in a conversion and continuance transaction, a description of such conversion is not necessary in the plan of conversion. In addition, a statement must be included in the plan of conversion to the effect that the converting entity is electing to continue its existence in its current organizational form and jurisdiction of formation after the conversion becomes effective.

Section 17 adds new Section 10.109 that specifies the effects of a conversion and continuance transaction. In this type of transaction, the converting entity continues to exist both in its current organizational form and jurisdiction of formation and in the same organizational form in the new jurisdiction of formation, as a single entity subject to the laws of both jurisdictions. The property interests, liabilities and obligations of the entity remain unchanged.

Section 19 adds a new subsection (g) to Section 10.361 to permit a beneficial owner of an ownership interest that is entitled to dissenters' rights to file a petition for appraisal. An ownership interest is entitled to dissenters' rights only if the record or registered owner has taken the steps in Subchapter H of Chapter 10 to perfect those rights, and a petition for appraisal may be filed only if the dissenting record or registered owner and the entity responsible for satisfying the obligations to dissenters have not agreed on the fair market value of the ownership interest. If the dissenting record or registered owner is the trustee of a voting trust or other nominee holder of the ownership interest for a beneficial owner, then the new subsection (g) authorizes the beneficial owner, as the person with the direct economic interest in the ownership interest entitled to dissenters' rights, to pursue the dissenters' rights by petitioning a court for appraisal. The nominee holder of the ownership interest then need not serve as plaintiff in the appraisal action.

Section 21 clarifies the provisions of Section 10.367(b) to specify the rights of a dissenting owner after the termination of the owner's right of dissent under that section. The owner's status as an owner of the owner's ownership interest is restored as if the owner's demand for

payment of the fair value of the ownership interest had not been made under Section 10.356. If the owner's ownership interest was cancelled, converted or exchanged as a result of the action or a subsequent action, the dissenting owner is entitled to receive the same cash, property, rights and other consideration received by the owners of the same class and series of ownership interests held by the owner as if the owner's demand for the payment of the fair market value of the ownership interest had not been made under Section 10.356. The validity of any actions of the domestic entity cannot be challenged because of the restoration of the owner's ownership interest or the other rights or entitlements of the owner under subsection (b). The dissenting owner is also entitled to receive any dividends or other distributions made with respect to his or her ownership interest as if the demand had not been made.

Section 27 amends Section 21.152 to clarify, in subsection (a), that the certificate of formation must include a designation of rights of each class and series of shares only if more than one class or series of shares is authorized. A new subsection (d) is also added to this section to expressly state the requirement, which is implied in Chapter 21 (and in the TBCA), that the authorized class or classes or series of shares collectively have general voting rights and the right to the residual corporate assets upon winding up and termination. If more than one class or series of shares is authorized, these two fundamental rights need not be in a single class or series of shares. If only one class of shares is authorized, those shares must have the two fundamental rights, but the certificate of formation does not need to so state.

Section 30 adds a new subsection (c) to Section 21.157 to clarify that a for-profit corporation may issue shares into escrow when the consideration is future services or benefits, or a promissory note payable, to the corporation. A corporation's authority to so issue shares is implicit in Chapter 21 (and in the TBCA). This express statement of authority does not affect any of the applicable conditions to an issuance of shares provided in Subchapter D of Chapter 21. An issuance into escrow will be conditioned upon, among other things, the corporation's receipt of the required statutory consideration (such as the par value of any par-value shares).

Section 32 amends Section 21.171 to clarify, in new subsections (a) and (b), the meaning of "outstanding" shares and the requirement that there always be outstanding shares of one or more classes or series that collectively have general voting rights and the right to the residual corporate assets upon winding up and termination. These concepts are implicit in Chapter 21 (and in the TBCA). The requirement of the new subsection (b), like that of the new subsection (d) to be added to Section 21.152, may be satisfied collectively by classes or series of shares. If more than one class or series of shares is outstanding, the two fundamental rights need not be in a single class or series of shares.

Section 33 amends Section 21.201 to add new subsections (b)-(d) that authorize a for-profit corporation to adopt a procedure for recognizing and directly dealing with a beneficial owner of its shares. Chapter 21 of the Code, like the TBCA, contemplates that a corporation directly communicates and deals with only a record or registered holder of its shares. It is typical, however, in the case of publicly held securities, for shares to be held by a nominee, through securities depositories (i.e., in “street name”), so that the ultimate owner of the shares is not the record or registered holder. The new subsections enable a corporation, if it desires, to recognize the beneficial owner as the “shareholder” and to communicate and deal directly with the beneficial owner instead of the record or registered holder. The extent of this recognition is at the corporation’s discretion; it may recognize the beneficial owner for all purposes or only for certain purposes, such as giving notice of shareholders’ meetings or paying dividends. The procedure for recognition is also subject to the corporation’s discretion, except that it must include the nominee’s filing with the corporation of a statement identifying, and providing other relevant information regarding, the beneficial owner. A beneficial owner’s decision to follow the procedure to become recognized as the “shareholder” is also subject to his or her discretion.

Section 36 amends Section 21.406(a) to permit a certificate of formation to grant corporate directors different voting rights, without the existing condition in subsection (a) that the directors be elected by separate classes or series of shares. Also, a new sentence is added at the end of the subsection to clarify that any different director voting rights apply to votes not only on board matters, but also on committee matters, unless the certificate of formation provides otherwise.

Section 37 clarifies Section 21.418(b) to connect the provisions of subsection (b) to the contract or transaction described in subsection (a), as well as the relationship or interest of the director or officer described in subsection (a). It also clarifies that board action regarding an interested-director contract or transaction may be taken by a unanimous written consent of directors or of board committee members, including the consent of the interested director. This provision, which is implied in Chapter 21 (and in the TBCA), treats action taken by unanimous written consent in the same manner as action taken at a directors’ or committee meeting at which the interested director participates and votes.

Section 39 adds a new subsection (c) to Section 101.106 to clarify that Sections 9.406 and 9.408 of the Business & Commerce Code do not apply to membership interests in a limited liability company. Sections 9.406 and 9.408 contain limitations on the enforceability of contractual provisions that restrict transfer of payment intangibles and other general intangibles. Subsection (c) also expressly states that such Business & Commerce Code sections will not

supersede the enforcement as a contract among the members of any provision in a company agreement that would otherwise be ineffective under those sections.

Section 40 clarifies Section 101.112(c) of the Code to specify that although a charging order constitutes a lien on the judgment debtor's membership interest in a limited liability company, that lien may not be foreclosed upon under the Code or any other law. This was the intent and effect of the other provisions in Section 101.112.

Section 41 amends Section 101.206 to add a new subsection (f) to clarify that the limitations on distributions by a limited liability company do not apply to payments for reasonable compensation for past or present services, or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program. In addition, subsection (a) is clarified to indicate that the restrictions on distributions by a limited liability company are subject to distributions made in compliance with Chapter 11. Subsection (d) is clarified by revising the sentence structure to conform to the source provision in the TLLCA.

Section 42 adds new Section 101.208 to clarify that a company agreement of a limited liability company may establish or provide for the establishment of record dates with respect to allocations and distributions.

Section 45 adds a new Subchapter M to Chapter 101 to permit limited liability companies to establish series of members, managers, membership interests or assets to which different assets and liabilities may be allocated. The provisions are modeled after the series LLC provisions in Section 18-215 of the DLLCA. Through appropriate provisions in the company agreement and certificate of formation, the assets of one series could be isolated from the liabilities attributable to a different series. These provisions would allow considerable flexibility in structuring limited liability companies in Texas.

Section 46 adds new Section 151.004 to clarify that a partnership may have elected or appointed officers in accordance with Section 3.103. This change makes clear that Section 3.103 applies to partnerships, as originally intended by that provision.

Section 47 amends Section 152.801(a) to clarify that the liability protection provided to partners in a limited liability partnership applies to any obligation of the partnership, including an obligation of the partnership to another partner. The amendment also clarifies that the partnership agreement of a limited liability partnership may specify that a partner is personally liable for a debt or obligation of the partnership, notwithstanding that the partnership is a limited liability partnership.

Section 52 amends Section 153.210 to add a new subsection (b) to clarify that the limitations on distributions by a limited partnership do not apply to payments for reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

Section 53 amends Section 153.256(c) to clarify that although a charging order constitutes a lien on the judgment debtor's partnership interest in a limited partnership, that lien may not be foreclosed upon under the Code or any other law. This was the intent and effect of the other provisions in Section 153.256.

Sections 54 and 55 amend Sections 153.309(c) and 153.311(d) to clarify that the limitation on a limited partner's liability is not affected by the forfeiture of a limited partnership's right to transact business in Texas because of its failure to file reports with the Secretary of State or by any resulting cancellation of its certificate of formation or foreign registration by the Secretary of State. The amendments are intended to make the Code provisions consistent with the corresponding provisions in Section 13.06(d) and 13.08(b) of the TRLPA, from which they are derived.

Section 57 adds a new subsection (c) to Section 154.001 to clarify that Sections 9.406 and 9.408 of the Business & Commerce Code do not apply to partnership interests in a partnership. Sections 9.406 and 9.408 contain limitations on the enforceability of contractual provisions that restrict transfer of payment intangibles and other general intangibles. Subsection (c) also expressly states that such Business & Commerce Code sections will not supersede the enforcement as a contract among the partners of any provision in a partnership agreement that would otherwise be ineffective under those sections.

Section 62 adds a definition of "foreign filing entity" to Section 71.002 of the Business & Commerce Code. Section 71.002 contains the definitions of the terms used in the assumed name statute. Other changes correct language to remove the word "registered" from the phrase "limited liability partnership." The Business Organizations Code has eliminated the use of that word in referring to those kinds of partnerships. The term "person" is expanded to include foreign filing entities, and the definition of "office" is revised to specify what the office of a foreign filing entity is.

Section 65 corrects Section 71.052 of the Business & Commerce Code to eliminate references to "corporation" in subsection (2)(E). These references are not needed because the definition of the term "company" does not include incorporated entities (i.e. corporations). Subsection (4) is also amended to add a reference to a foreign filing entity and to change references to

“limited liability partnership” from “registered limited liability partnership,” which is consistent with the terminology in the Business Organizations Code.

Section 67 amends Section 71.102 of the Business & Commerce Code to change references to “limited liability partnership” from “registered limited liability partnership” and “for-profit corporation” from “business corporation” which are consistent with the terminology in the Business Organizations Code. Another change clarifies that the type of entity can be either foreign or domestic. Another change eliminates an unnecessary requirement to state the registered office and registered agent if the registrant is required to and maintains a registered office in Texas. In that situation, the registrant only needs to list the address of its principal office.

Section 75 provides that the effective date of the bill is September 1, 2009.

Federal Law update

The following is a partial list and summary of federal legislation passed thus far this year:

The Lilly Ledbetter Fair Pay Act (January 29) which amends the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes. The gist of which extends the period during which a claimant may bring suit for alleged discriminatory practices.

The EEOC website provides the following summary:

On January 29, 2009, President Obama signed the Lilly Ledbetter Fair Pay Act of 2009 ("Act"), which supersedes the Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 550 U.S. 618 (2007). *Ledbetter* had required a compensation discrimination charge to be filed within 180 days of a discriminatory pay-setting decision (or 300 days in jurisdictions that have a local or state law prohibiting the same form of compensation discrimination).

The Act restores the pre-*Ledbetter* position of the EEOC that each paycheck that delivers discriminatory compensation is a wrong actionable under the federal EEO statutes, regardless of when the discrimination began. As noted in the Act, it recognizes the "reality of wage discrimination" and restores "bedrock principles of American law."

Under the Act, an individual subjected to compensation discrimination under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, or the Americans with Disabilities Act of 1990 may file a charge within 180 (or 300) days of any of the following:

- when a discriminatory compensation decision or other discriminatory practice affecting compensation is adopted;
- when the individual becomes subject to a discriminatory compensation decision or other discriminatory practice affecting compensation; or
- when the individual's compensation is affected by the application of a discriminatory compensation decision or other discriminatory practice, including each time the individual receives compensation that is based in whole or part on such compensation decision or other practice.

The Act has a retroactive effective date of May 28, 2007, and applies to all claims of discriminatory compensation pending on or after that date.

The Children's Health Insurance Reauthorization Act (February 4) which states as its purpose to provide dependable and stable funding for children's health insurance under titles XXI and XIX of the Social Security Act in order to enroll all six million uninsured children who are eligible, but not enrolled, for coverage today through such titles. The Act extends and expands the State Children's Health Insurance Program (now referred to as CHIP, not SCHIP) which was enacted a decade ago as part of the Balanced Budget Act of 1997 (BBA). CHIPRA adds \$33 billion in federal funds for children's coverage over the next four and half years, and is expected to provide coverage to 4.1 million children in Medicaid and CHIP who otherwise would have been uninsured by 2013.

The Omnibus Public Lands Management Act (March 30) which includes over 160 bills related to public lands, national parks, historic sites and battlefields, conservation and wilderness designation, national heritage areas and corridors, and historic trails. This legislation establishes a new system of public lands that will protect some 26 million acres of American heritage. Officially called the National Landscape Conservation System, it is comprised of certain lands, waterways and cultural resources managed by the Bureau of Land Management.

The Family Smoking Prevention and Tobacco Control Act of 2009 (June 22) includes the following elements:

- FDA will create a new Center for Tobacco Products to oversee the science-based regulation of tobacco products in the United States.
- By October 2009, cigarettes will be prohibited from having candy, fruit, and spice flavors as their characterizing flavors.
- By January 2010, tobacco manufacturers and importers will submit information to FDA in their possession about ingredients and additives in tobacco products, a description of the nicotine content and delivery, and the health consequences of tobacco products.
- By April 2010, FDA will issue the agency's 1996 regulation aimed at reducing young people's access to tobacco products and curbing the appeal of tobacco to the young. When the regulation becomes effective, a number of measures will take effect, including:
 - Tobacco manufacturers may no longer sponsor sporting, athletic, and entertainment events using tobacco product brand names and logos;
 - Tobacco manufacturers may no longer sell or give away clothing or other items which bear the brand name or logo of a tobacco product; and
 - Tobacco manufacturers will no longer be able to distribute free samples of cigarettes, and free samples of smokeless tobacco will be allowed only in adult-only facilities.
- By July 2010, tobacco manufacturers may no longer use the terms "light," "low," and "mild" on tobacco products.
- By July 2011, warning labels for cigarettes and smokeless tobacco products will be revised and strengthened. Warnings will comprise the top 50 percent of the front and rear panels of the package. FDA will issue regulations requiring graphics on labels depicting the health risks of smoking.

The Family Smoking Prevention and Tobacco Control Act of 2009 also provides the FDA with regulatory authority to regulate marketing and promotion of tobacco products and set performance standards for tobacco products to protect the public health.

The Credit Card Accountability, Responsibility and Disclosure Act of 2009

The Consumers Union provides the following useful breakdown of the law:

Restricts all interest rate increases during the first year

Stops credit card issuers from raising interest rates in the first year after a credit card account is opened, except:

When the increase is under a variable interest rate.

At the end of the promised time period for a promotional rate. For example, the issuer can offer 3% for six months and then 12% after that. (The promotional period must be at least 6 months.)

If the required minimum payment is not received within 60 days after the due date.

Restricts interest rate increases on *existing balances*

Credit card issuers cannot raise interest rates on existing balances unless:

The increase is under a variable interest rate.

It is the end of a promised time period for a promotional rate.

The required minimum payment is not received within 60 days after the due date.

Increases notice for rate increase on *future purchases*

After the first year, the card issuer can raise the rate on *future purchases* with 45 days notice. No notice is required for increases due to one of the reasons state above.

Preserves the ability to pay off on the old terms

Credit card issuers can't change the terms for repaying a balance, except that the issuer may give the cardholder either:

Five years to pay off the outstanding balance at the old rate; or

An increased minimum payment that has no more than twice as much of a contribution to paying down the balance as the old minimum payment.

Places limits on fees and penalty interest

If the interest rate increases because the minimum payment is not received within 60 days after the due date, the rate must go back to the original lower rate if the consumer makes on time minimum payments for 6 months.

No over-the-limit fees may be charged unless the consumer has asked for the account to be set up to allow transactions which will exceed the credit limit.

An over-the-limit fee may be imposed only once per billing cycle if the balance is above the credit limit on the last day of the billing cycle.

No fees to make a payment except for expedited payments arranged through a service representative.

A card issuer who increases the interest rate must review the account every 6 months and to decrease the rate if indicated by the review.

Penalty fees (late fee, over-the-limit fee, etc.) must be reasonable and proportional to the omission or violation. The Federal Reserve Board must issue rules to set standards to decide what fee levels are reasonable, and it may set up “safe harbors” for acceptable fee levels.

Two-cycle billing is prohibited. An issuer cannot reach back to an earlier billing cycle when calculating the amount of interest charged in the current cycle.

Protects young consumers

- Before issuing a card to a person under the age of 21, the card issuer must obtain an application which contains either:

Signature of a cosigner over the age of 21, or

Information indicating an independent means of repaying any credit extended.

- Card issuers may not raise the credit limit on accounts held by a person under the age of 21 who has a cosigner without written permission from the cosigner.
- No prescreened credit card offers to people under the age of 21 unless the consumer has consented to receive prescreened offers.
- Restricts card issuers from providing tangible gifts to students on campus in exchange for filling out a credit card application.
- Requires colleges to publicly disclose any marketing contracts made with a card issuer.

Prevents deceptive marketing of credit reports

Advertisements for free credit reports must disclose that free credit reports are available under Federal law at: AnnualCreditReport.com.

Requires enhanced disclosures

Requires issuers to disclose the period of time and total interest it will take to pay off the card balance if only minimum monthly payments are made.

Requires 45 day written notice before the issuer can raise the APR or make any other significant change to the card agreement.

Establishes gift card protections

Gift cards cannot expire less than five years from the date the card was purchased or money was last added to the card, whichever is later.

No fees if the card has been used within the past 12 months. If a card remains unused for 12 months, then there can be one fee a month.

Stronger state laws continue to apply, including for both expiration dates and fees.

The bill covers both retailer gift cards and prepaid general use gift cards (the ones that often are branded as Visa, American Express, MasterCard, or Discover.) The law does not cover rewards, loyalty, telephone or promotional cards and does not cover paper gift cards or paper gift certificates.

Helping Families Save Their Homes Act of 2009 (May 20). Some key elements of the act include the following:

- Excludes certain home mortgage debt from being counted in calculating a debtor's eligibility to file in Chapter 13, making it available to certain high income/high debt individuals who would otherwise be required to file in Chapter 11.
- Amends Bankruptcy Code section 502(b) to disallow a claim that is subject to any remedy for damages or rescission as a result of the claimant's failure to comply with the Truth in Lending Act or other applicable state or federal consumer protection law in effect when the noncompliance took place, notwithstanding the prior entry of a foreclosure judgment.
- Amends Bankruptcy Code section 1322(b) to permit modification of certain mortgages that are secured by the debtor's principal residence in specified respects. The

modification authority applies in a chapter 13 case where the debtor's principal residence is the subject of a notice that a foreclosure may be commenced. New section 1322(b)(11) allows the court to modify the rights of a mortgagee by:

- (1) providing for payment of the amount of the allowed secured claim as determined under section 506(a)(1);
- (2) prohibiting, reducing, or delaying any adjustable interest rates applicable on and after the date the case is filed;
- (3) extending the repayment period of the mortgage for a period that is no longer than the longer of 40 years (reduced by the period for which the mortgage has been outstanding) or the remaining term of the mortgage beginning on the filing date of the case; and
- (4) providing for the payment of interest at an annual percentage rate calculated at a fixed annual percentage rate equal to that used for conventional mortgages as published by the Board of Governors of the Federal Reserve System, plus a reasonable premium for risk.

Fraud Enforcement and Recovery Act (May 20) which expands the risk of liability for institutions receiving federal funds. Among other things FERA amends the False Claims Act which penalizes the "knowing" submission of false or fraudulent claims to the United States government. Violators are subject to treble damages plus civil penalties of up to \$11,000 for *each* false claim submitted. FERA made the following amendments:

Expanding the definition of "claim" to include demands for payments made by subcontractors and subgrantees to entities receiving federal funds.

Expanding the reach of the "reverse false claim" provision to include the retention of overpayments and possibly even the failure to pay administrative fines.

Affirmatively allowing the federal government to share information with False Claims Act whistleblowers as well as state agencies named as co-plaintiffs in a False Claims Act lawsuit.

Additionally, FERA extends federal fraud laws (including financial institution fraud, false statements, and mail and wire fraud) to mortgage lending businesses which the federal government does not directly regulate or insure.

FERA makes it a federal crime for government contractors to defraud the United States of funds under TARP and the economic stimulus package, including government purchases of preferred stock in financial institutions.

The American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5)(ARRA). The House version was introduced by David Obey on January 25, 2009 in the House of Representatives; it was passed by the House just 3 days later on January 28, 2009 by a vote of 244 to 188. The Senate version was introduced by Harry Reid on January 6, 2009 and was passed by the Senate on February 10, 2009 by a vote of 61 to 37. The reconciled bill was reported by the joint conference committee on February 12; agreed to by the House and the Senate on February 13 and signed into law by President Obama on February 17, 2009.

The 'stimulus' package is estimated to cost around \$787 billion and contains about \$326 billion in tax relief. A number of non-tax provisions were included such as the stimulus payments to the states for use in construction projects and the like, and the final six pages of the 407-page document contain a new set of executive compensation restrictions designed to ensure that Troubled Asset Relief Program (TARP) funds are directed toward the public interest. The following summary is devoted to a number of the tax portions of the bill:

Individual tax incentives:

A. **"Making Work Pay" Tax Credit:** ARRA provides for a refundable tax credit of up to \$400 for working individuals and up to \$800 for married taxpayers filing joint returns for 2009 and 2010.

This tax credit will be calculated at a rate of 6.2 percent of earned income and will phase out for taxpayers with modified adjusted gross income in excess of \$75,000, or \$150,000 for married couples filing jointly.

For people who receive a paycheck and are subject to withholding, the credit will typically be handled by their employers through automated withholding changes in early spring. These changes may result in an increase in take-home pay. The amount of the credit will be computed on the employee's 2009 income tax return filed in 2010. Taxpayers who do not have taxes withheld by an employer during the year can also claim the credit on their 2009 tax return.

Nonresident aliens and dependents do not qualify for the credit. Also, the credit is reduced by the amount of any stimulus payment received by the taxpayer from the VA, Railroad Retirement Board and Social Security as well as the temporary one-time refundable credit of \$250 paid in 2009 to certain government retirees who are not eligible for Social Security (discussed below in Paragraph G).

B. Refundable First-Time Home Buyer Credit: Previously, the Housing and Economic Recovery Act of 2008 established a tax credit for first-time homebuyers for up to \$7,500. For homes purchased in 2008, the credit was similar to a no-interest loan to be repaid in 15 equal, annual installments beginning with the 2010 income tax year. ARRA expanded the first-time homebuyer credit by increasing the credit amount to \$8,000 for purchases made in 2009 before Dec. 1. For a home purchased in 2009, the credit does not have to be paid back unless the home ceases to be the taxpayer's main residence within a three-year period following the purchase.

First-time homebuyers who purchase a home in 2009 can claim the credit on either a 2008 tax return, due April 15, 2009, or a 2009 tax return, due April 15, 2010. The credit may not be claimed before the closing date. But, if the closing occurs after April 15, 2009, a taxpayer can still claim it on a 2008 tax return by requesting an extension of time to file or by filing an amended return.

The amount of the credit begins to phase out for taxpayers whose modified adjusted gross income is more than \$75,000 or \$150,000 for joint filers. Taxpayers can claim 10 percent of the purchase price up to \$8,000 or \$4,000 for married individuals filing separately. Also, ARRA clarifies that no credit will be allowed for the section 1400C first-time home buyer credit for residents of DC if this credit is claimed for a home purchased from January 1 to December 1, 2009.

C. New Vehicle Tax Deduction: ARRA allows a deduction for state and local sales and excise taxes paid on the purchase of new cars, light trucks (weighing less than 8500 lbs and treated as a motor vehicle under Title II of the Clean Air Act and which use begins with the taxpayer), motor homes whose original use starts with the taxpayer and motorcycles (also weighing less than 8500 lbs) through 2009. It also provides for the deduction of other taxes or fees paid in states with no sales tax. The deduction is available regardless of whether a taxpayer itemizes deductions on Schedule A.

Purchases before Feb. 17, 2009 and in 2010 or after are not eligible for this special deduction.

The deduction is limited to the tax on up to \$49,500 of the purchase price of an eligible motor vehicle. The deduction is phased out for joint filers with modified adjusted gross income between \$250,000 and \$260,000 and other taxpayers with modified AGI between \$125,000 and \$135,000.

D. Enhanced Tax Credits:

i. ARRA provides a temporary increase in the earned income tax credit (EITC) for taxpayers with three or more qualifying children. The maximum EITC for this new category is \$5,657 up from \$5028. ARRA also increases the beginning point of the phase out range for the credit for all married couples filing a joint return, regardless of the number of children. These changes apply to 2009 and 2010 tax returns.

Specifically, for families with three or more qualifying children, ARRA increased the EITC credit percentage from 40 to 45%. For 2009, the increased percentage would be applied against a family's first \$12,570 of earned income.

The credit begins to phase out at \$21,420 for married taxpayers filing a joint return with children and completely phases out at \$40,463 for one child, \$45,295 for two children and \$48,279 for three or more children. For married taxpayers filing a joint return with no children, the credit begins to phase out at \$12,470 and completely phases out at \$18,440.

ii. Child Tax Credit: Under the ARRA, more families will be eligible for the additional child tax credit because of a change to the way the credit is figured. Taxpayers who cannot take full advantage of the child tax credit because the credit is more than the taxes they owe may receive a payment for some or all of the credit not used to offset their taxes. It is a refundable credit, which means taxpayers may receive refunds even when they do not owe any tax.

ARRA reduces the minimum earned income amount used to calculate the additional child tax credit to \$3,000. Before ARRA, the minimum earned income amount was set to rise to \$12,550. Reducing the amount to \$3,000 permits more taxpayers to use the additional child tax credit and increases the amount of the payments they may receive.

This change applies to tax years beginning in 2009 and 2010.

iii. The American Opportunity Credit effectively replaces the existing Hope Scholarship Credit. It temporarily increases the amount of the existing Hope credit, extending it to cover 4 years of schooling, raising the income limits on that credit and allowing up to 40% of the credit to be refunded. Many of those eligible will qualify for the maximum annual credit of \$2,500 per student. The credit applies to 100% of the first \$2000 of qualified expenses and 25% of the subsequent 2000.

The full credit is available to individuals whose modified adjusted gross income is \$80,000 or less, or \$160,000 or less for married couples filing a joint return. The credit is phased

out for taxpayers with incomes above these levels. These income limits are higher than under the existing Hope and Lifetime Learning Credits.

The American Opportunity Credit is not available on the 2008 returns which taxpayers are filing during 2009. It also adds required course materials to the list of qualifying expenses and allows the credit to be claimed for four post-secondary education years instead of two.

E. Commuter tax exclusion: ARRA provides the monthly tax exclusion for employer-provided commuter highway vehicle transportation and transit pass benefits be increased to \$230, effective from March through December 2009.

Employees may exclude from income \$230 per month in transit benefits and \$230 per month in parking benefits — up to a maximum of \$460 per month. Employees may receive benefits for commuter transportation and transit passes and benefits for parking during the same month; they are not mutually exclusive.

These qualified transportation fringe benefits are excluded from an employee's gross income for income tax purposes and from an employee's wages for payroll tax purposes.

Previously, there were two separate monthly exclusion amounts, one for transit passes and commuter highway transportation — such as commuter vans — and a different one for qualified parking. The exclusion amount for qualified parking was set at a higher rate. The new law makes all the exclusion amounts equal and sets them at the higher rate for qualified parking. The law provides the equal benefits through Dec. 31, 2010.

The monthly exclusion amount for 2010 will be adjusted for inflation and has not yet been set.

F. Unemployment Benefits exemption: Every person who receives unemployment benefits during 2009 is eligible to exclude the first \$2,400 of these benefits when they file their tax return next year. For a married couple, the exclusion applies to each spouse, separately. Thus, if both spouses receive unemployment benefits during 2009, each may exclude from income the first \$2,400 of benefits they receive.

Unemployed workers can choose to have income tax withheld from their unemployment benefit payments. Withholding on these payments is voluntary. However, choosing this option may help avoid a surprise year-end tax bill or a possible penalty for having paid too little tax during the year. Those who choose this option will have a flat 10 percent tax withheld from their benefits.

The IRS recommends that unemployed workers who expect to receive more than \$2,400 in benefits this year should consider having tax withheld from their benefit payments in excess of that amount. Those unemployed workers who have already chosen to have tax taken out of their benefits, should consider the \$2,400 exclusion in determining whether to continue to have tax withheld.

G. The Economic Recovery Payment:

A one-time payment of \$250 will be made in 2009 to:

- Retirees, disabled individuals and Supplemental Security Income (SSI) recipients receiving benefits from the Social Security Administration.
- Disabled veterans receiving benefits from the U.S. Department of Veterans Affairs.
- Railroad Retirement beneficiaries.

The IRS will not make this payment — unlike last year's economic stimulus program rather the payment will be made by the respective agency. The Social Security Administration Web site has a special section on the economic recovery payment.

The economic recovery payment will be a reduction to any Making Work Pay credit for which the recipient qualifies. The Making Work Pay credit will be claimed on the recipient's 2009 tax return filed in 2010.

H. Health Coverage Tax Credit (HCTC): The Trade Adjustment Assistance Health Coverage Improvement Act was recently passed as part of ARRA. The HCTC is changing as a result of this new law. The HCTC helps certain trade-affected workers, retirees, and their families pay their health insurance premiums. The HCTC makes health coverage more affordable by paying 65% of health insurance premiums for individuals who are eligible for the tax credit.

The HCTC is a refundable tax credit; it is paid in full no matter how much federal income tax an eligible individual owes. The HCTC is available on a monthly basis to help individuals pay their health insurance costs as they become due or on a yearly basis when they file their federal tax return. The HCTC Program partners with various federal and state agencies and Health Plan Administrators (HPAs) to deliver the tax credit to eligible individuals. The HCTC was created as part of the Trade Act of 2002. Congress created the HCTC Program to help:

- workers who lost their jobs due to trade and qualified for Trade Adjustment

Assistance (TAA) or Alternative Trade Adjustment Assistance (ATAA)

- retirees, over age 55, whose pensions were taken over by the Pension Benefit Guaranty Corporation (PBGC)

The HCTC legislation also provided that family members of these trade-affected workers and retirees can receive the tax credit.

Changes That Affect All HCTC Eligible Individuals:

- The tax credit has increased from 65% to 80% of qualified health insurance premiums. If you are a monthly HCTC participant, the 80% tax credit amount will be reflected on your HCTC invoice beginning in April 2009.
- Newly-enrolled participants will soon be able to receive a credit on their HCTC account for qualified health insurance payments they paid in 2009 while enrolling in the monthly HCTC Program. The HCTC Program will begin offering this option in August 2009.
- Beginning in January 2010, qualified family members may continue receiving the HCTC for up to 24 months (but not beyond December 31, 2010) after the primary eligible individual experiences the following life events:
 - Enrollment in Medicare
 - Divorce
 - Death

Changes That Affect Certain Groups of HCTC Eligible Individuals

- Training and waiver requirements have changed for certain TAA recipients, making it easier to be eligible for the HCTC.
- Section 1899 F of the TAA Health Coverage Improvement Act of 2009 temporarily extended COBRA benefits for HCTC-eligible individuals through the timeframes listed below (but not beyond December 31, 2010). Employers are responsible for extending COBRA benefits for these individuals and should check with their counsel if they have questions about the new law.
 - TAA-eligible and ATAA-eligible individuals can receive COBRA for as long as

they continue to meet the definition of TAA-eligible and ATAA-eligible individuals.

- PBGC benefit recipients can receive COBRA as a lifetime benefit, and in the event of the benefit recipient's death, their surviving spouse and dependents can receive COBRA for an additional 24 months.
- COBRA Health Insurance Continuation Premium Subsidies make individuals ineligible for the HCTC during the same month. If you receive a 65% COBRA Subsidy through your former employer - a new program established by the economic stimulus bill – you will not be eligible to receive the HCTC during that same month. The new COBRA Program is different from the HCTC Program.

NOTE: The Trade Adjustment Assistance Health Coverage Improvement Act of 2009 expires on December 31, 2010. At this time, the changes to the HCTC - including the new timeframes for extended benefits - are only valid for the remainder of 2009 and 2010.

I. Energy Incentives:

Residential Energy Property Credit (Section 1121): ARRA increases the energy tax credit for homeowners who make energy efficient improvements to their existing homes. The new law increases the credit rate to 30 percent of the cost of all qualifying improvements and raises the maximum credit limit to \$1,500 for improvements placed in service in 2009 and 2010.

The credit applies to improvements such as adding insulation, energy efficient exterior windows and energy-efficient heating and air conditioning systems.

A similar credit was available for 2007, but was not available in 2008. Homeowners should be aware that the standards in the new law are higher than the standards for the credit that was available in 2007 for products that qualify as “energy efficient” for purposes of this tax credit. The IRS has issued guidance that will allow manufacturers to certify that their products meet these new standards.

Until the guidance is released, homeowners generally may continue to rely on manufacturers’ certifications that were provided under the old guidance. For exterior windows and skylights, homeowners may continue to rely on Energy Star labels in determining whether property purchased before June 1, 2009, qualifies for the credit. Manufacturers should not continue to provide certifications for property that fails to meet the new standards.

Residential Energy Efficient Property Credit (Section 1122): This nonrefundable energy tax credit will help individual taxpayers pay for qualified residential alternative energy equipment, such as solar hot water heaters, geothermal heat pumps and wind turbines. The new law removes some of the previously imposed maximum amounts and allows for a credit equal to 30 percent of the cost of qualified property.

Plug-in Electric Drive Vehicle Credit (Section 1141): ARRA modifies the credit for qualified plug-in electric drive vehicles purchased after Dec. 31, 2009. To qualify, vehicles must be newly purchased, have four or more wheels, have a gross vehicle weight rating of less than 14,000 pounds, and draw propulsion using a battery with at least four kilowatt hours that can be recharged from an external source of electricity. The minimum amount of the credit for qualified plug-in electric drive vehicles is \$2,500 and the credit tops out at \$7,500, depending on the battery capacity. The full amount of the credit will be reduced with respect to a manufacturer's vehicles after the manufacturer has sold at least 200,000 vehicles.

Plug-In Electric Vehicle Credit (Section 1142): ARRA also creates a special tax credit for two types of plug-in vehicles — certain low-speed electric vehicles and two- or three-wheeled vehicles. The amount of the credit is 10 percent of the cost of the vehicle, up to a maximum credit of \$2,500 for purchases made after Feb. 17, 2009, and before Jan. 1, 2012. To qualify, a vehicle must be either a low speed vehicle propelled by an electric motor that draws electricity from a battery with a capacity of 4 kilowatt hours or more or be a two- or three-wheeled vehicle propelled by an electric motor that draws electricity from a battery with the capacity of 2.5 kilowatt hours. A taxpayer may not claim this credit if the plug-in electric drive vehicle credit is allowable.

Conversion Kits (Section 1143): ARRA also provided a tax credit for plug-in electric drive conversion kits. The credit is equal to 10 percent of the cost of converting a vehicle to a qualified plug-in electric drive motor vehicle and placed in service after Feb. 17, 2009. The maximum amount of the credit is \$4,000. The credit does not apply to conversions made after Dec. 31, 2011. A taxpayer may claim this credit even if the taxpayer claimed a hybrid vehicle credit for the same vehicle in an earlier year.

Treatment of Alternative Motor Vehicle Credit as a Personal Credit Allowed Against AMT (Section 1144): Starting in 2009, ARRA allows the Alternative Motor Vehicle Credit, including the tax credit for purchasing hybrid vehicles, to be applied against the Alternative Minimum Tax. Prior to the new law, the Alternative Motor Vehicle Credit could not be used to offset the AMT. This means the credit could not be taken if a taxpayer owed AMT or was reduced for

some taxpayers who did not owe AMT.

Business Tax Incentives:

A. New Clean Renewable Energy Bonds (Section 1111): The new law increases the amount of funds available to issue new clean renewable energy bonds from the one-time national limit of \$800 million to \$2.4 billion. These qualified tax credit bonds can be issued to finance certain types of facilities that generate electricity from renewable sources (for example, wind and solar).

B. Qualified Energy Conservation Bonds (Section 1112): The new law increases the amount of funds available to issue qualified energy conservation bonds from the one-time national limit of \$800 million to \$3.2 billion. These qualified tax credit bonds can be issued to finance governmental programs to reduce greenhouse gas emissions and other conservation purposes.

C. Extension of Renewable Energy Production Tax Credit (Section 1101): The new law generally extends the "eligibility dates" of a tax credit for facilities producing electricity from wind, closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower and marine and hydrokinetic renewable energy. The new law extends the "placed in service date" for wind facilities to Dec. 31, 2012. For the other facilities, the placed-in-service date was extended from December 31, 2010 (December 31, 2011 in the case of marine and hydrokinetic renewable energy facilities) to Dec. 31, 2013.

D. Election of Investment Credit in Lieu of Production Credit (Section 1102): Businesses who place in service facilities that produce electricity from wind and some other renewable resources after Dec 31, 2008 can choose either the energy investment tax credit, which generally provides a 30 percent tax credit for investments in energy projects or the production tax credit, which can provide a credit of up to 2.1 cents per kilowatt-hour for electricity produced from renewable sources. A business may not claim both credits for the same facility.

E. Repeal of Certain Limits on Business Credits for Renewable Energy Property (Section 1103): The new law repeals the \$4,000 limit on the 30 percent tax credit for small wind energy property and the limitation on property financed by subsidized energy financing. The repeal applies to property placed in service after Dec. 31, 2008.

F. Coordination With Renewable Energy Grants (Section 1104): Business taxpayers also can apply for a grant instead of claiming either the energy investment tax credit or the renewable

energy production tax credit for property placed in service in 2009 or 2010. In some cases, if construction begins in 2009 or 2010, the grant can be claimed for energy investment credit property placed in service through 2016, and for qualified renewable energy facilities, the grant is 30 percent of the investment in the facility and the property must be placed in service before 2014 (2013 for wind facilities).

G. Temporary Increase in Credit for Alternative Fuel Vehicle Refueling Property (Section 1123): The new law modifies the credit rate and limit amounts for property placed in service in 2009 and 2010. Qualified property (other than property relating to hydrogen) is now eligible for a 50 percent credit, and the per-location limit increases to \$50,000 for business property (increases to \$2,000 for other/residential locations). Property relating to hydrogen keeps the 30 percent rate as before, but the per-business location limit rises to \$200,000.

H. Work Opportunity Tax Credit (WOTC) Businesses planning to claim the credit for eligible unemployed veterans and unskilled younger workers hired during the first part of 2009 have until Aug. 17 to request the certification required for these workers, according to the Internal Revenue Service.

Newly-revised Form 8850, now available on IRS.gov, is used by employers to request certification from their state workforce agency. ARRA added unemployed veterans returning to civilian life and “disconnected youth” to the list of groups covered by the credit. Though eligible unemployed veterans and disconnected youth who begin work anytime during 2009 or 2010 may qualify a business for the credit, certification by the state workforce agency is required.

In general, an unemployed veteran is a person discharged or released from the military during the five years preceding the hiring date who received unemployment benefits for at least four weeks during the one-year period ending on the hiring date. A “disconnected youth” is a person age 16 to 24 on the hiring date who has not been regularly employed or attending school and who meets other requirements.

The WOTC offers tax savings to businesses that hire workers belonging to any of 12 targeted groups, including unemployed veterans and disconnected youth. The other 10 include people ages 18 to 39 living in designated communities in 43 states and the District of Columbia, Hurricane Katrina employees, recipients of various types of public assistance, and certain veterans, summer youth workers and ex-felons. The instructions for Form 8850 detail the requirements for each of these groups.

The certification requirement applies to all groups of workers except employees who were Hurricane Katrina victims. Normally, a business must file Form 8850 with the state workforce agency within 28 days after the eligible worker begins work. But under a special rule, businesses have until Aug. 17, 2009, to file this form for unemployed veterans and disconnected youth who begin work on or after Jan. 1, 2009 and before July 17, 2009. Notice 2009-28, posted on IRS.gov and the instructions for Form 8850 provide details on this special rule.

I. **COBRA extension:** Workers who have lost their jobs may qualify for a 65 percent subsidy for COBRA continuation premiums for themselves and their families for up to nine months.

Eligible workers will have to pay 35 percent of the premium to their former employers. To qualify, a worker must have been involuntarily separated between Sept. 1, 2008, and Dec. 31, 2009. Workers who lost their jobs between Sept. 1, 2008, and enactment, but failed to initially elect COBRA because it was unaffordable, get an additional 60 days to elect COBRA and receive the subsidy.

This subsidy phases out for individuals whose modified adjusted gross income exceeds \$125,000, or \$250,000 for those filing joint returns. Taxpayers with modified adjusted gross income exceeding \$145,000, or \$290,000 for those filing joint returns, do not qualify for the subsidy.

Small business tax breaks:

A. **Section 179 Deduction:** A qualifying taxpayer can choose to treat the cost of certain property as an expense and deduct it in the year the property is placed in service instead of depreciating it over several years. This property is frequently referred to as section 179 property.

Under ARRA, qualifying businesses can continue to expense up to \$250,000 of section 179 property for tax years beginning in 2009. Without ARRA, the 2009 expensing limit for section 179 property would have been \$133,000. The \$250,000 amount provided under the new law is reduced if the cost of all section 179 property placed in service by the taxpayer during the tax year exceeds \$800,000.

The new law does not alter the section 179 limitation imposed on sport utility vehicles, which have an expense limit of \$25,000.

B. **Reduction of Estimated Tax Payments:** Normally, small businesses have to pay 110 percent of their previous year's taxes in estimated taxes. ARRA permits small businesses to reduce

their estimated payments to 90 percent of the previous year's taxes. The individual's AGI must be less than \$500,000 and he/she must certify that more than 50% of the gross income shown on his/her return for the prior tax year was income from a small business which means income from a trade or business with an average number of employees of 500 or less.

C. Extension of Bonus Depreciation Deductions Through 2009: Bonus depreciation is extended through 2009, allowing businesses to take the 50% bonus depreciation allowed under the Economic Stimulus Act of 2008. Under the rules, 50% of the basis of qualified property may be deducted within the first year of a property's purchase. The remaining 50% is recovered under otherwise applicable depreciation rules. Generally, qualified property includes the following:

- Water utility property;
- Certain computer software;
- Qualified leasehold improvement property; and
- Property with a MACRS recovery period of 20 years or less.

D. Capital Gains Tax Break for Investment in Small Business: Investors in small business who hold their investments for five years can exclude from taxation 75 percent of their capital gains. A small business cannot have assets over \$50 million and must conduct an active trade or business.

E. Cancellation of Indebtedness: ARRA allows certain business to elect to recognize cancellation of indebtedness income over 5 years, beginning in 2014, for specified types of business debt repurchased by the business after December 31, 2008 and before January 1, 2011. Debt includes bonds, debentures, notes, certificate or any other instruments constituting indebtedness issued by a C corporation or any other "person" in connection with the conduct of a trade or business by such person. Once made, the election is irrevocable. ARRA also provides for the acceleration of deferred items such as the liquidation or sale of substantially all of the assets of the taxpayer or the cessation of business by the taxpayer.

Bonds

Build America Bonds and Recovery Zone Economic Development Bonds: IRS Notice 2009-26 provides information on new tax incentives for Build America Bonds and the implementation plans for the refundable credit payment procedures for these bonds. This notice also includes guidance on the modified Build America Bond program for Recovery Zone Economic Development Bonds.

News release 2009-33, IRS Issues Guidance on New Build America Bonds, contains more detail.

Governmental issuers of Build America Bonds and Recovery Zone Economic Development Bonds must submit Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds, to request refundable credit payments payable under Section 6431. Also see Form 8038-CP Instructions.

Education-Related Bond Provisions

Qualified Zone Academy Bond Allocations for 2008 and 2009 sets the maximum face amounts of the Qualified Zone Academy Bonds that may be issued within each state. These bonds may be issued to finance certain expenses relating to a qualified zone academy established by a local education agency. See Notice 2009-30.

Qualified School Construction Bond Allocations for 2009, sets the maximum face amounts of the Qualified School Construction Bonds that may be issued by each state and large local education agency. These bonds may be issued to finance certain construction and land acquisition expenses relating to public school facilities. See Notice 2009-35.

Energy-Related Bond Provisions

Qualified Energy Conservation Bond Allocations for 2009 sets the maximum amount of Qualified Energy Conservation Bonds that may be issued by each state and large local government and provides certain interim guidance for these bonds. See Notice 2009-29.

New Clean Renewable Energy Bonds Application and Requirements, solicits applications for allocations of the present total national bond volume limitation authority of \$2.4 billion to issue new Clean Renewable Energy Bonds. The notice also provides eligibility requirements that a project must meet to be considered for a volume cap allocation and other details. See Notice 2009-33.

IRS activities

A. Amnesty regarding reporting of foreign bank accounts: If you have a foreign bank or investment account and you fail to disclose them to the IRS, unknowingly, the penalties now start at \$10,000. Knowing failure to disclose can incur a penalty of \$100,000 or half the balance of the account.

While nothing is new in this compliance requirement, the IRS is now granting amnesty until September 23, 2009 to file all delinquent returns (going back 6 years) without assessing

penalties if all income earned on these accounts had been properly included in your income tax filings.

You are also required to file Form TD F 90-22.1 as a separate disclosure if:

- You are a US person (individual or entity);
- You have a financial account in a foreign country;
- You have a financial interest in the account or even signature authority over an account; and
- The aggregate amounts in the account valued in US dollars exceed \$10,000 at any time during the calendar year.

B. Revenue Ruling 2009-9 and Revenue Procedure 2009-20: The IRS set out guidance regarding safe harbor treatment for reporting tax losses due to theft. Basically, most investors may deduct up to 95% of their theft losses in 2008 and apply the unused portion towards seeking refunds for taxes paid from 2003 forward. The purpose was to allow investors defrauded by the likes of Bernard Madoff some tax relief related to their losses.

The safe harbor (if elected by the taxpayer) allows the amount to be deducted in the year of discovery to be determined as follows:

- Multiply the taxpayer's net investment by 95%;
- Subtract from this product the sum of any actual or potential recovery from insurance including the SIPC.

If the qualified investor is suing persons other than the promoter in bankruptcy, then the deduction is reduced to 75%. Net Investment is the sum of the following:

- All investor contributions; plus
- All phantom income included in the taxable income for all years before discovery; minus
- All withdrawals in all years.

If future recoveries differ from the loss claimed in the year of discovery, then the qualified investor would have income or an additional deduction in the later, depending on the actual amount that is recovered.

A qualified investor is one who is a US taxpayer and had no actual knowledge of the scheme prior to it becoming known in the general public. This does not include persons who invested through a fund although the fund may be a qualified investor. If the fund makes the election,

then the individual investors in the fund would receive their allocation of the theft loss. There is no theft loss allowed by investments which were otherwise deductible when made such as contributions to 401(k) and IRAs.

To elect the safe harbor, the taxpayer must attach signed statements to timely filed returns for the year of discovery. The taxpayer must agree not to file amended returns to exclude phantom income from the years preceding the discovery year.

Gregory P. Crinion



Practice Areas:

- Consumer and Commercial Collections
- Business Law, Counseling and Transactions
- Real Estate Law, Development and Transactions
- Business Organizations and Incorporation
- Homeowner and Property Owner Associations
- Environmental Law
- Trials and Appeals

Greg Crinion is managing partner of the firm's Bay Area Houston, Texas office. He holds the highest rating for legal ability and ethics based upon peer reviews offered by Martindale-Hubbell.

Education:

Juris Doctor, University of Wisconsin Law School, cum laude (Editor in Chief and Writer, Wisconsin International Law Journal)

Master of Business Administration, University of Minnesota

Bachelor of Business Administration, University of Wisconsin - Eau Claire, cum laude

Experience:

1999 to present -- Partner with Ashby Crinion LLP, Houston, Texas

1997-1999 -- Partner with Citti & Crinion, L.L.P., Bay Area, Houston, Texas

1987-1997 -- Equity partner (and associate) with Jackson Walker LLP (Trial and Environmental Law Sections), Houston, Texas

1985-1987 -- Attorney with Exxon Company, U.S.A. (Litigation Section, Houston, Texas) and Exxon Corporation (Litigation Section, New York, New York)

Admitted to Practice:

U.S. Supreme Court	State of Texas
U.S. Court of Appeals for the Fifth Circuit	State of Wisconsin
U.S. Court of Appeals for the Seventh Circuit	District of Columbia (inactive)
U.S. District Court for the Southern District of Texas	State of Colorado (inactive)
U.S. District Court for the Western District of Texas	
U.S. District Court for the Northern District of Texas	
U.S. District Court for the Eastern District of Texas	
U.S. District Court for the Western District of Wisconsin	

Marian Richardson



Practice Areas:

- general business and transactional law
- merger and acquisitions
- entity selection and formation
- business contracts
- employment agreements
- commercial lease review and negotiation
- bank loan documentation

Education:

1981 -- University of Texas at Austin with BBA in Finance (cum laude).

1985 – University of Texas at Austin with a JD.

Experience:

2007 to present -- Partner with AshbyCrinion, LLP.

2002 to 2006 -- Shareholder in the Business Section of Cotton, Bledsoe, Tighe and Dawson, PC where she also served on the Board of Directors.

1985 to 2002 – Shareholder with Calvin, Richardson, Verner, Armstrong & Camp, PC where she also served on the Board of Directors.

Professional Affiliations:

Corporate Counsel section of the Houston Bar Association.

Business Section of the State Bar of Texas.

Representative Engagements:

Negotiated and created an entity for the collaboration of four separate national trade associations to organize and host semi-annual expositions.

Negotiated independent contractor agreement on behalf of vendor to local quasi governmental entity.

Negotiated several Master Service Agreements on behalf of the service supplier.

Currently, Marian Richardson may be contacted via phone at 713.739.1100 or email at mrichardson@ashbycrinion.com.